

Appeal Nos.139/2024, 166/2024 & 98/2023 in Complaint No.RAJ-RERA-C-2022-5465  
Appeal No.99/2023 in Complaint No.RAJ-RERA-C-2022-5450  
Appeal No.111/2023 in Complaint No.RAJ-RERA-C-2022-5069  
Appeal No.125/2023 in Complaint No.RAJ-RERA-C-2022-5470  
Appeal No.43/2024 in Complaint No.RAJ-RERA-C-2022-5467  
Appeal No.140/2024 in Complaint No.RAJ-RERA-C-2023-6328  
Appeal No.159/2024 in Complaint No.RAJ-RERA-C-2022-6467

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**BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR**

Appeal No.139/2024  
In  
Complaint No.RAJ-RERA-C-2022-5465

Air Force Naval Housing Board, Air Force Station, New Delhi- 110003 through its Project Director,  
Khasra No.55/1, Benar Road, village – Boyatawala, Jaipur, Rajasthan- 302012.  
Mobile No: 9971847580, Email Id: [sri16111979@gmail.com](mailto:sri16111979@gmail.com)

.....Appellant

**VERSUS**

Arpita Jain Garg, 5, Air Force Selection Board, VIP Chowk, Borjhar Kamrup Assam- 781015.  
Mobile No: 6358904068, Email Id: [DPKIAF@gmail.com](mailto:DPKIAF@gmail.com)

.....Respondent

**WITH**  
Appeal No.166/2024  
In  
Complaint No.RAJ-RERA-C-2022-5465

Arpita Jain Garg, 5, Air Force Selection Board, VIP Chowk, Borjhar Kamrup Assam- 781015.  
Mobile No: 6358904068, Email Id: [DPKIAF@gmail.com](mailto:DPKIAF@gmail.com)

.....Appellant

**VERSUS**

Air Force Naval Housing Board, Air Force Station, New Delhi- 110003 through its Project Director,  
Khasra No.55/1, Benar Road, village – Boyatawala, Jaipur, Rajasthan- 302012.  
Mobile No: 9971847580, Email Id: [sri16111979@gmail.com](mailto:sri16111979@gmail.com)

.....Respondent

**WITH**  
Appeal No.98/2023  
In  
Complaint No.RAJ-RERA-C-2022-5465

Suresh Kumar, Village post Gangiasar, via Fatehpur, Dist. Sikar, Rajasthan – 332301.  
Mobile No: 9784842942, Email Id: [sk54271@gmail.com](mailto:sk54271@gmail.com)

....Appellant

**VERSUS**

Air Force Naval Housing Board, Director General, Air Force Naval Housing Board, Air Force  
Station, Race Course, New Delhi 110 001.  
Mobile No: 9971847580, Email Id : [sri16111979@gmail.com](mailto:sri16111979@gmail.com)

**WITH**

Appeal Nos.139/2024, 166/2024 & 98/2023 in Complaint No.RAJ-RERA-C-2022-5465  
Appeal No.99/2023 in Complaint No.RAJ-RERA-C-2022-5450  
Appeal No.111/2023 in Complaint No.RAJ-RERA-C-2022-5069  
Appeal No.125/2023 in Complaint No.RAJ-RERA-C-2022-5470  
Appeal No.43/2024 in Complaint No.RAJ-RERA-C-2022-5467  
Appeal No.140/2024 in Complaint No.RAJ-RERA-C-2023-6328  
Appeal No.159/2024 in Complaint No.RAJ-RERA-C-2022-6467

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Appeal No.99/2023  
In  
Complaint No. RAJ-RERA-C-2022-5450

Nitin Agarwala, 1327, Sector 2, RK Puram, New Delhi – 110220.  
Mobile No: 9971847580, Email Id: [nitiindu.ag@gmail.com](mailto:nitiindu.ag@gmail.com)

....Appellant

**VERSUS**

Air Force Naval Housing Board, Director General, Air Force Naval Housing Board, Air Force Station, Race Course, New Delhi 110 001.  
Mobile No: 9971847580, Email Id : [sri16111979@gmail.com](mailto:sri16111979@gmail.com)

....Respondent

**WITH**  
Appeal No.111/2023  
In  
Complaint No. RAJ-RERA-C-2022-5069

Balinder Lal, M/164, Sector-25, Noida-201301, Mobile No: 9818133159, Email Id: [balinderlal@yahoo.co.in](mailto:balinderlal@yahoo.co.in)

**VERSUS**

Air Force Naval Housing Board, Air Force Station, New Delhi- 110003 through its Project Director, Khasra No.55/1, Benar Road, village – Boyatawala, Jaipur, Rajasthan- 302012.  
Mobile No: 9971847580, Email Id: [sri16111979@gmail.com](mailto:sri16111979@gmail.com)

**WITH**

Appeal No.125/2023  
In  
Complaint No. RAJ-RERA-C-2022-5470

Air Force Naval Housing Board, Air Force Station, New Delhi- 110003 through its Project Director, Khasra No.55/1, Benar Road, village – Boyatawala, Jaipur, Rajasthan- 302012.  
Mobile No: 9868223495, Email Id: [directorgeneral@afnhb.org](mailto:directorgeneral@afnhb.org)

....Appellant

**VERSUS**

Ashwani Kumar Goyal, 1002, 10<sup>th</sup> Floor, Block 1, DDA(HIG) Flats Motia Khan, Paharganj Central, New Delhi-110055.  
Mobile No: 9868970840, Email Id: [GOYALASHWANIKUMAR44@gmail.com](mailto:GOYALASHWANIKUMAR44@gmail.com)

**WITH**

Appeal No.43/2024  
In  
Complaint No. RAJ-RERA-C-2022-5467

Appeal Nos.139/2024, 166/2024 & 98/2023 in Complaint No.RAJ-RERA-C-2022-5465  
Appeal No.99/2023 in Complaint No.RAJ-RERA-C-2022-5450  
Appeal No.111/2023 in Complaint No.RAJ-RERA-C-2022-5069  
Appeal No.125/2023 in Complaint No.RAJ-RERA-C-2022-5470  
Appeal No.43/2024 in Complaint No.RAJ-RERA-C-2022-5467  
Appeal No.140/2024 in Complaint No.RAJ-RERA-C-2023-6328  
Appeal No.159/2024 in Complaint No.RAJ-RERA-C-2022-6467

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Air Force Naval Housing Board, Air Force Station, Race Course, New Delhi – 110003.

Mobile No: 9810126249, Email Id: [directorgeneral@afnhb.org](mailto:directorgeneral@afnhb.org)

**VERSUS**

Sumit Agarwal, 23154, Prestige Shantiniketan, ITPL Main Road, Whitefield, Bangalore-560048.

Mobile No: 9971909508, Email Id: [sumit.agarwal.cirt@gmail.com](mailto:sumit.agarwal.cirt@gmail.com)

**WITH**

Appeal No.140/2024

In

Complaint No.RAJ-RERA-C-2023-6328

Air Force Naval Housing Board, Air Force Station, New Delhi- 110003 through its Project Director,  
Khasra No.55/1, Benar Road, village – Boyatawala, Jaipur, Rajasthan- 302012.

Mobile No: 9868223495, Email Id: [directorgeneral@gmail.com](mailto:directorgeneral@gmail.com)

.....Appellant

**VERSUS**

Satyapal Singh Jhajharia, I-802, Jalvayu Tower, Village- Byotawala, Benard, Jaipur- 302012.

Mobile No: 9757306531, Email Id: [satypalsingh151966@gmail.com](mailto:satypalsingh151966@gmail.com)

.....Respondent

**AND**

Appeal No.159/2024

In

Complaint No.RAJ-RERA-C-2022-6467

Sumit Agarwal, 23154, Prestige Shantiniketan, ITPL Main Road, Whitefield, Bangalore-560048.

Mobile No: 9971909508, Email Id: [sumit.agarwal.cirt@gmail.com](mailto:sumit.agarwal.cirt@gmail.com)

**VERSUS**

Air Force Naval Housing Board, Air Force Station, Race Course, New Delhi – 110003.

Mobile No: 9810126249, Email Id: [directorgeneral@afnhb.org](mailto:directorgeneral@afnhb.org)

**CORAM:**

Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)

**PRESENT:**

For appellants/complainants : Ms. Unnati Vijay, Advocate  
Appellants/complainants-Suresh Kumar, Nitin Agarwala &  
Ashwani Kumar Goyal in person.

For appellant/respondent/"AFNHB" : Mr. Mahender Singh Yadav, Advocate

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## ORDER

Reserved on 06<sup>th</sup> September and 8<sup>th</sup> October, 2024

Pronounced on 25<sup>th</sup> October, 2024

**Per : Hon'ble Yudhisthir Sharma, Member (Judicial)**

The above captioned appeals under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (shall hereinafter be referred to as the "Act of 2016") arise out of the different orders passed by Raj. Real Estate Regulatory Authority (herein after referred to as "Regulatory Authority"). Total seven complaints were preferred by the appellants-complainants (shall hereinafter be referred to as the "complainants") against the promoter-respondent Air Force Naval Housing Board (shall hereinafter be referred to as the "AFNHB") mainly for refund of the deposited amount with interest on the basis of delay in completion of project and possession was not handed over to the allottees in stipulated time with some other ancillary issues.

Since all the appeals are related to common project in the name and style of Jaipur Phase-II "**Jal Vayu Tower**", therefore, these appeals are being decided by this common order. The learned Regulatory Authority passed the following orders on complaints preferred by the complainants-allottees:-

- (a) In Complaint No: RAJ-RERA-C-2022-5465 preferred by Arpita Jain Garg and in RAJ-RERA-C-2023-6328 preferred by Satyapal Singh Jhajharia, Regulatory Authority by order dated 04<sup>th</sup> March, 2024 directed as follows:-

*"In view of the facts mentioned above, the complainants are directed to take possession. The respondent-promoter is directed to pay delay interest to the complainants at the rate prescribed in the Rajasthan Real Estate (Regulation & Development) Rules, 2017 at SBI highest MCLR +*

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*2% [i.e., 8.85 + 2 = 10.85%] w.e.f. expected date of delivery of possession to the date of offer of possession excluding the period of moratorium as notified by the Authority.”*

(b) In Complaint No: RAJ-RERA-C-2022-5467 preferred by Sumit Agarwal, Regulatory Authority by order dated 23<sup>rd</sup> November, 2023 directed as follows :-

*“In view of the facts, and observations as mentioned above, we deem it fit to direct the promoter to pay delay interest @8.75% (highest MCLR of SBI) + 2% p.a. to the complainant w.e.f. from 01.11.2019 extended date of delivery of possession) to 08.07.2021 (date of offer of possession), excluding the period of moratorium as notified by the Authority.”*

(c) In Complaint No: RAJ-RERA-C-2022-5470 preferred by Ashwani Kumar Goyal, Regulatory Authority vide order dated 31<sup>st</sup> August, 2023 directed as follows :-

*“In view of the facts, and observations as mentioned above, we deem it fit to direct the promoter to pay delay interest @8.6% (highest MCLR of SBI) + 2% p.a. to the complainant w.e.f. from 01.11.2019 (extended date of delivery of possession) to 19.02.2021 (date of offer of possession), excluding the period of moratorium as notified by the Authority.”*

(d) In Complaint No: RAJ-RERA-C-2022-5450 preferred by Nitin Agarwala and RAJ-RERA-C-2022-5549 preferred by Suresh Kumar; Regulatory Authority, respectively, vide order dated 05<sup>th</sup> April, 2023 and 12<sup>th</sup> April, 2023, passed the following directions:-

*“Accordingly, we direct the respondent society to pay interest to the complainant at the rate of 3 percent as already promised by them, on the amount paid by the complainant from the promised date of completion, December, 2017, till the date of handing over the possession deducting from this a period of 22 months for which the construction had to be stopped because of the JDA notice which was beyond the control of the respondent.  
The matter stands disposed of in terms of above directions.”*

(e) In Complaint No.RAJ-RERA-C-2022-5069, preferred by late Mr. Balinder Lal, Regulatory Authority by order dated 18/07/2023, passed the following directions:-

*“Accordingly, we direct the respondent society to pay interest to the complainant at a rate of 3 percent as already promised by them, on the amount paid by the complainant from the promised date of completion, Dec 2017, till the date of handing over the possession deducting from this a period of 22 months for which the construction had to be stopped because of the JDA notice which was beyond the control of the respondent.*

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*At the same time the complainant is directed to take possession of the apartment after settling the accounts with the respondent which should include any balance amount to be paid by the complainant and the compensation by way of interest at a rate of 3 per cent as directed above.*

*The matter stands disposed of in terms of above directions.”*

2. The complainants/appellants Mr. Nitin Agrawal, Mr. Suresh Kumar and late Mr. Balinder Lal preferred appeals bearing Nos.98/2023, 99/2023 and 111/2023 being aggrieved by order of the learned Regulatory Authority dated 05/04/2023, 12/04/2023 and 18/07/2023 whereby, only 3% interest was provided from December, 2017 till handing over the possession of units excluding 22 units due to stop work notice of Jaipur Development Authority (shall hereinafter be referred to as the “JDA”) but moratorium period as notified by the learned Regulatory Authority on 13/05/2020 of one year was not excluded and Regulatory Authority also directed to take possession of units/DUs to complainants Ms. Arpita Jain and late Mr. Balinder Lal. The physical possession was taken by Mr. Suresh Kumar on 6<sup>th</sup> August, 2021 by Mr. Nitin Agarwala on 9<sup>th</sup> March, 2021 by Mr. Sumit Agarwal on 8<sup>th</sup> July, 2021 by Mr. Satyapal Singh Jhahharia on 7<sup>th</sup> April 2021 and Ashwani Kumar Goyal on 7<sup>th</sup> April 2021 before filing of complaints. The AFNHB has not preferred any appeal against impugned-orders passed by the learned Regulatory Authority in which only 3% Delay interest was provided to complainants Nitin Agrawal, Suresh Kumar & late Balinder Lal and interest was also offered by AFNHB to above complainants in compliance of the order passed by the learned Regulatory Authority but complainant Mr.Balinder Lal, did not take possession of unit/DU and preferred an appeal in which relief was sorted for total refund on deposited amount with interest. Thereafter, he died on 15/08/2024 and his legal heirs have been taken on record.

3. Complainant-Ms.Arpita Jain Garg, also didn't take possession and preferred an appeal bearing No.166/2024 praying for withdrawal from project and relief was sorted for total refund on deposited amount with interest on each deposits form 01<sup>st</sup> January, 2018 till getting complete occupancy certificate, as per Sections 18(1)(a) & 19(4) of the Act of 2016 and according to the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (shall hereinafter be referred to the "Rules of 2017").

4. Mr. Sumit Agarwal also preferred an appeal bearing No.159/2024 praying for total interest from January 2018 i.e. the promised date of possession till date of obtaining the final occupancy certificate and to execute sale-deed with the appellant.

5. The appellants/respondents-AFNHB have also preferred appeals (Appeal Nos.:125/2023, 43/2024, 139/2024 and 140/2024) against order of learned Regulatory Authority, in which, interest @SBI highest MCLR+ 2% i.e. 8.85 + 2%= 10.85% has been provided from 01<sup>st</sup> January, 2018 (expected date of possession) or 01/01/2019 (extended date of possession) to actual date of possession or date of offer of possession excluding moratorium period from 13<sup>th</sup> May, 2020 to 13<sup>th</sup> March, 2021 due to Covid-19 as notified by the Regularity Authority on 13<sup>th</sup> May, 2020. It sought the following relief:-

**In Appeal Nos.139/2024 & 140/2024:-**

*"In view of the facts and grounds mentioned in paragraph 5 above, the appellant most respectfully prays that this Hon'ble Tribunal may very graciously be pleased to accept and allow this Appeal of the appellant/defendant and quash and set aside the impugned Order dated 04.03.2024 (Ann.-A/1) passed by the Regulatory Authority and consequently dismiss the Complaint of the Complainant/respondent against the appellant/defendant or in the alternative modify the impugned order dated 04.03.2024 (Ann.-A/1) and reduce the delay interest from 10.85% (8.85%+2%) p.a. to 3% p.a. as offered by the appellant".*

**In Appeal Nos.125/2023:-**

*"In view of the facts and grounds mentioned in paragraph 5 above, the appellant most respectfully prays that this Hon'ble Tribunal may very graciously be pleased to accept and allow this Appeal of*

*the appellant/defendant and quash and set aside the impugned Order dated 31.08.2023 (Ann.-A/1) passed by the Regulatory Authority and consequently dismiss the Complaint of the Complainant/respondent against the appellant/defendant or in the alternative modify the impugned order dated 31.08.2023 (Ann.-A/1) and reduce the delay interest from 10.6% (8.6%+2%) p.a. to 3% p.a.”.*

**In Appeal Nos.43/2024:-**

*“In view of the facts and grounds mentioned in paragraph 5 above, the appellant most respectfully prays that this Hon’ble Tribunal may very graciously be pleased to accept and allow this Appeal of the appellant/defendant and quash and set aside the impugned Order dated 23.11.2023 (Ann.-A/1) passed by the Regulatory Authority and consequently dismiss the Complaint of the Complainant/respondent against the appellant/defendant or in the alternative modify the impugned order dated 23.11.2023 (Ann.-A/1) and reduce the delay interest from 10.75% (8.6%+2%) p.a. to 3% p.a.”.*

6. For the sake of convenience, the brief facts and date wise synopsis of all the appeals are summarized, as under:-

S. No.	Appeal No.	Appeal Title	Allotment letter	Offer letter of clearance & possession	Date of physical possession	Grounds & Relief of Appeals	Amount u/S.43(5)	Remarks
1.	99/2023	Nitin Agarwala Vs. AFNHB	15.04.2015	09.03.2021	29.04.2023	<p><b>Prayed for:-</b></p> <p>To overturn the decision of RERA for award of interest @3% promised by respondent on amount paid by appellant from Dec. 2017 till date of handing over possession deducting therefrom period of 22 months, during which period, construction period was stopped by JDA’s notice and direct respondent to comply in the following time bound manner:-</p> <p>(i) To Undertake final costing for Phase I and refund excess funds to appellant. Costing for Phase II may be done separately delinking it from Phase I.</p> <p>(ii) Pay compensation for delayed period w.e.f. Dec. 2017 till date of settlement of refund at Rs.25,000/- p.m.</p> <p>(iii) Direction be issued for payment of interest @MCLR+1% on amount deposited, w.e.f. Dec. 2017 till date of physical possession.</p> <p>(iv) Direction be issued for return of the LTMF to appellant or transfer it to RWA allowing MMC charges to be reduced.</p> <p>(v) Pay MMC &amp; electricity charges w.e.f. July 22 to 29.4.23 for Rs.32,839/- including Rs.31,189/- for MMC and Rs.1650/- for electricity for period when possession of dwelling was not given to appellant.</p>	NIL	Rs.2,02,986/- offered on 28.08.2023 in compliance of RERA order



						(vi) Pay compensation of Rs.25,000/- p.m. or more for entire period of delay i.e. w.e.f. 1.1.2018 till date of possession/date of obtaining OC (whichever is later), towards mental agony.		
2.	98/2023	Suresh Kumar Vs. AFNHB	28.11.2014	06.07.2021	06.08.2021	-----do-----	NIL	Rs.1,22,392/- offered on 11.09.2023 in compliance of RERA order
3.	111/2023	Balinder Lal Vs. AFNHB	28.11.2014	22.09.2021	Possession not taken in compliance of order passed by Regulatory Authority	<b>Prayed for:-</b> (i) To overturn the decision of RERA for award of interest @3% promised by respondent on amount paid by appellant from Dec. 2017 till date of handing over possession deducting therefrom period of 22 months, during which period, construction period was stopped by JDA's notice. At the same time the complainant is directed to take possession of apartment after settling accounts with respondent which should include any balance amount to be paid by complainant and compensation by way of interest @3%, as directed above. (ii) To direct respondent in accordance with Section 18(1) of the Act to permit appellant to withdraw from project and pay interest @MCLR+1% or more, on amount paid in instalments, from the date of each payment made, till the date of refund in a time bound manner. (iii) To direct respondent to pay compensation for delayed period w.e.f. 1.1.2018 onwards till date of settlement of refund @Rs.25,000/- p.m. or more as deem fit by this Tribunal towards loss of rent from the dwelling. (iv) To direct respondent to pay compensation of Rs.25,000/- p.m. or more for the entire delayed period w.e.f. 1.1.2018 till date of refund towards mental agony.	NIL	Rs.2,02,695/- offered on 14.09.2023 in compliance of RERA order praying for Withdrawal from project
4.	159/2024	Sumit Agarwal Vs. AFNHB	-----	-----	-----	(i) Impugned-order suffers from manifest perversity and legal infirmities being in violation of Act of 2016 & Rules of 2017; hence, it is arbitrary. (ii) Learned RERA acted in contravention of Section 18 i.e. (a) date of possession should have been reckoned as per the terms & conditions agreed upon between the parties & (b) due date of possession specified in Agreement to Sell shall prevail,	-----	

					<p>in the light of observations of the Hon'ble Supreme Court as well as Bombay High Court, respectively, in <b>Imperia Structures Ltd. Vs. Anil Patni and Ors. AND Neelkamal Relators Suburban Pvt. Ltd. &amp; Anr. Vs. UOI &amp; Ors.</b>, but learned RERA disregarded the said guidelines and directed respondent to pay interest from revised date of delivery of possession, which is not acceptable by appellant.</p> <p>(iii) Sec.18 postulates delivery of possession with delayed interest from date of possession till handing over possession and as per Sec.19(10) respondent could only handover possession of dwelling unit to appellant only after obtaining occupancy certificate; but both the aspects were overlooked by the learned RERA.</p> <p>(iv) Learned RERA failed to consider that possession offered by respondent to appellant was without any Completion &amp; Occupancy Certificates, which is illegal possession letter, whereas appellant is entitled to receive interest from the agreed date of possession i.e. January 2018 till the date of obtaining the Occupancy Certificate by respondent.</p> <p>(v) Learned RERA arbitrarily directed respondent to pay interest from the date extended date of delivery contrary to guidelines laid down by the Hon'ble SC in <b>Newtech Promoter &amp; Developers Pvt.Ltd. Vs. State of U.P. &amp; Ors.</b></p> <p>(vi) Learned RERA arbitrarily excluded delay of 22 months w.e.f. 28.09.2015 to 26.07.2017 and arbitrarily came to conclusion that date of delivery of possession shall end in October 2019. Hence, appellant cannot be made to suffer due to fault of respondent; and as such, appellant is entitled to receive interest from the expected date of delivery i.e. January 2018 till obtaining of Occupancy Certificate by respondent.</p> <p>(vii) Learned RERA failed to appreciate that there is no concept of 'obtaining partial occupancy certificate' and only 'partial completion certificate' can be obtained by respondent.</p> <p><b>Prayed for:-</b></p>	
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						<p>(i) To quash and set-aside impugned-order dated 23.11.2023</p> <p>(ii) To direct respondent to pay interest from January 2018 (promised date of possession) till date of obtaining final occupancy certificate as respondent has not obtained a valid occupancy certificate.</p>		
5.	166/2024	Arpita Jain Garg Vs. AFNHB	-----	-----	-----	<p>(i) Impugned-order suffers from manifest perversity and legal infirmities being in violation of Act of 2016 &amp; Rules of 2017; hence, it is arbitrary.</p> <p>(ii) Sec.18 postulates delivery of possession with delayed interest from date of possession till handing over possession and as per Sec.19(10) respondent could only handover possession of DU to appellant only after obtaining occupancy certificate; but both the aspects were overlooked by the learned RERA.</p> <p>(iii) Learned RERA failed to consider that possession offered to appellant was without any occupancy certificate, which is illegal possession letter and hence, appellant is entitled to receive refund with interest from the date of each deposit.</p> <p>(iv) Learned RERA passed impugned-order contrary to guidelines laid down by Hon'ble SC in <i>Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna</i> that allottees cannot be made to wait indefinitely and if the occupancy certificate is not obtained then, allottee is entitled to seek refund with interest.</p> <p>(v) Learned RERA arbitrarily directed respondent to pay interest from the extended date of delivery contrary to guidelines laid down by the Hon'ble SC in <i>Newtech Promoter &amp; Developers Pvt.Ltd. Vs. State of U.P. &amp; Ors.</i></p> <p>(vi) Learned RERA failed to appreciate that there is no concept of 'obtaining partial occupancy certificate' and only 'partial completion certificate' can be obtained by respondent.</p> <p><b>Prayed for:-</b></p> <p>(i) To quash and set-aside the impugned-order dated 04.03.2024</p> <p>(ii) To direct respondent to refund entire amount deposited by appellant with interest from the date of each deposit till realization of amount.</p>	-----	<b>Praying for Withdrawal from project</b>

						(iii) If this Hon'ble Tribunal deems fit that appellant to take possession then, interest shall be calculated from January 2018 (promised date of possession) till date of handing over possession, which can only be done after respondent obtains the final and valid occupancy certificate, which the respondent failed to obtain.	
6A	125/2023	AFNHB Vs. Ashwani Kumar Goyal	15.04.2015	19.02.2021	07.04.2021	The appellants/respondents- AFNHB have also preferred appeals (Appeal Nos.125/2023, 43/2024, 139/2024 and 140/2024) against order of learned Regulatory Authority in which, interest @SBI highest MCLR+2% i.e. 8.85+2%=10.85% have been provided from 01 <sup>st</sup> January, 2018 (expected date of possession) or 01/01/2019 (extended date of possession) to actual date of possession or date of offer of possession excluding moratorium period from 13 <sup>th</sup> May, 2020 to 13 <sup>th</sup> March, 2021 due to Covid-19 as notified by the Regulatory Authority on 13 <sup>th</sup> May, 2020.	Rs.3,11,298/-
6B.	43/2024	AFNHB Vs. Sumit Agarwal	27.11.2014	08.07.2021	22.03.2022	-----do-----	Rs.4,74,032/-
6C.	139/2024	AFNHB Vs. Arpita Jain Garg	28.11.2024	No	Possession not taken in compliance of order passed by Regulatory Authority	-----do-----	Rs.12,01,032/-
6D	140/2024	AFNHB Vs. Satyapal Singh Jhajharia	28.11.2024	16.03.2021	07.04.2021 & 28.09.2021 Sale-deeds executed	-----do-----	Rs.5,26,600/-

7. Facts relevant to decide these appeals in brief are that AFNHB is a welfare organisation registered under the Societies Registration Act, 1860 (shall hereinafter be referred to as the "Act of 1860") with objective of providing residential houses to the Retired Air Force and Naval Personnel and Widows of the Personnel of these Services only on "No profit No loss" basis under **Self-financed housing scheme**. The AFNHB does not possess any funds to its own and

it is completely run by the contributions collected from allottees of various housing projects in the country. In the present matter, the AFNHB launched a group housing project, in the name & style of Jaipur, Phase- II in year 2011 and after getting sufficient amount from allottees as per policy, AFNHB issued allotment letters to some of the allottee/complainants in February, 2012 with tentative date of completion and the scheduled date for handing over the unit was at the end of 2014. Thereafter, AFNHB issued a broadcast on 04<sup>th</sup> June, 2014 declaring that the announced scheme stand shelved and it will be launched with revised cost and specification with a right to refund, if opted for withdrawal from scheme but if allottees opted to continue with scheme, assurance was given for allotment in the scheme launched in future. The complainants opted to continue with scheme and again an allotment-letter was issued on 28<sup>th</sup> November, 2014 to complainant Ms. Arpita Jain and late Balinder Lal with new specifications and cost, which were accepted by the allottees. Accordingly, the AFNHB launched the project with revised cost and specifications at Village-Byotawala in Jaipur for developing 444 flats (DUs) in 11 towers on 10 acres land with proposed height of 30.5 meters and after approval of building plans on 27<sup>th</sup> June, 2013 from JDA, work order was awarded to one contractor M/s. VIPL-MIPL with PDC of 30 months and work is to be completed by the end of 2017 in which withdrawal from scheme only be permitted if waiting list exist (Clause-12) and tentative date of completion was end of year 2017 (Clause-17). Thereafter, the AFNHB has obtained a partial Completion Certificate (CC) for towers C, D, E, F, H, J & L and Community Hall on 28<sup>th</sup> October, 2021 and partial Occupancy Certificate (OC) for said towers on 20<sup>th</sup> June, 2022. The allottees of this project have formed association and registered on 18<sup>th</sup> May, 2022. Notices for paper's/physical possession was

issued to allottee/complainants-Ms.Arпита Jain Garg & late Mr.Balinder Lal on 11<sup>th</sup> May 2022 lastly before partial occupancy certificate was issued.

8. It is revealed from the record that all the complainants filed complaints before the Regulatory Authority in the month of August 2022 onwards after taking possession of units or final letter of clearance and possession issued by AFNHB. It is also evident from the record that before filing complaints, complainants Ms.Arпита Jain and late Mr.Balinder Lal never requested to AFNHB for withdrawal from project, meaning thereby, the intent to withdraw from the project and claim for refund with interest was demanded for the first time in the complaints itself before the Regulatory Authority.

9. Ms. Unnati Vijay, learned counsel appearing for complainant/appellant Arпита Jain Garg and LRs of Balinder Lal submitted that Respondent-AFNHB utterly failed to provide possession of the unit within the stipulated period i.e. December, 2017, thus, the delay is admitted on the part of AFNHB for which arbitrary/unilaterally it was decided to provide trivial rate of interest only of 3% on deposited hard earned money of allottees. It has also been admitted that the appellant has deposited total amount as per the time schedule. The offer letter issued by AFNHB without obtaining complete occupancy certificate is *per-se* illegal because there is no provision of Partial Completion or Occupancy Certificate in Clauses-16.4 & 16.5 of the Rajasthan Building bye-laws. Though, partial completion certificates have been obtained but some defects are there as pointed out in the pleading of appeal and project is not completed till today i.e. boundary wall is incomplete. Therefore, complainants are unqualified right to total refund on demand with interest from 01<sup>st</sup> January, 2018 till complete occupancy certificate obtained by AFNHB from the

date of each deposits and mandatory pre-deposit under Section 43(5) of the Act of 2016, is required to be deposited before the appeals are entertained.

She also cited following judgements rendered by the Hon'ble Apex Court and Hon'ble High Court in support of her contentions, as follows:-

**(1) In *Newtech Promoters and Developers Pvt. Ltd. V/S State of UP (202 INSC 716)*,**

Hon'ble Apex Court held, as under:-

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1) (a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act."*

Hon'ble Apex Court regarding pre-deposit u/S.43(5) of the Act of 2016 also observed, as under:-

*"137. In our considered view, the obligation cast upon the promoter of pre-deposit Under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged Under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for o in violation of Articles 14 or 19(1)(g) of the Constitution of India."*

**(2) In *Balaji Construction Company V/s. Anjusha Ajit Kadam & Ors. (2024:BHC-***

**AS:8201)**, Hon'ble Bombay High Court held, as under:-

*"30. I accordingly proceed to answer first question of law formulated by holding that the Appellant must deposit the amount of interest as directed by MahaRERA as a precondition for entertainment of Appeals before the Appellate Tribunal, even though its liability to pay such interest is not in present but in future. This would however be subject to deduction of amount of interest in respect of COVID-19 pandemic period as per Notifications/Order Nos. 13 and 14 dated 2 April 2020 and 18 May 2020."*

(3) In **T. Chitty Babu V/S Union of India and Ors. (AIR 2021 Mad 15)**, Hon'ble Madras

High Court held, as under:-

*"24. Having considered all the judgments and the provisions in question, we find that the words "it shall not be entertained" occurring in the proviso to Sub-Section (5) of Section 43 of the 2016 Act, is a preliminary injunction. This prevents even the presentation of an appeal. The Clause "before the said appeal is heard" ultimately is a final injunction to the process of appellate exercise of jurisdiction. Conjointly, to our mind, this clearly shuts out even the presentation or physical filing of an appeal before the Appellate Authority, as the total amount to be deposited as against compensation is a sine qua non. The justification for the same by the respondents is to prevent any form of exploitation, as the promoter or the builder is in a far more dominant position financially or otherwise and the allottee being pitted against such dominants require protection of his life time savings in such investments. It is in order to protect the interest of an allottee that such stringent conditions were necessarily required after it was experienced that promoters and builders had been enriched themselves at the cost of individuals who were made to run to Courts and fight long drawn litigations to recover their priced investments. This being a laudable object to our mind is a reasonable approach because it ensures refund of the amount as well as compensate the allottee proportionately. Such a provision will also act as a deterrent to promoters and builders not to withhold the money of the investors against their wishes in the event of violators and butters of ensure timing racision and sue expected levels of accuracy in construction. This object in no way prejudices the promoters or the builders, but only seeks to protect an allottee from any form of exploitation or hardship that may be faced by an allottee in the event he does not get his due return as per the terms of the agreement."*

In **Expersion Developers Pvt. Ltd. V/s. Sushma Ashok Shiroor : (AIR 2022 SC 1824)**,

Hon'ble Apex Court held, as under:-

*"6.1. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure v. Trevor D'Lima, this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation."*

10. Per contra, authorized representative and Mr. Mahendra Yadav, learned counsel for the AFNHB argued that AFNHB is a welfare organisation registered under the Act of 1860 with objective of providing residential houses to the Retired Air Force and Naval Personnel and Widows and rendering services only on "No profit No loss" basis under Self-financed housing scheme. He further submitted that *firstly* the construction work was delayed on account of "Stop



Work" Notice issued by the JDA and termination of contract with M/s. VIPL-MIPL for almost 02 years (2015 to 2017) and *secondly* the construction work was delayed on account of imposition of restrictions due to COVID-19 for 01 year since the labourers and material were not available during Lock Down period. Both the causes of delay were unforeseen and fall under *Force De Majeure*.

11. Furthermore, we have also offered interest @3% for those allottees, who have opted for continuing with project and after obtaining the Occupancy Certificate (OC), AFNHB immediately offered possession of allotted DUs to the complainants. If the higher rate of interest is provided then again be resolved from the allottees, which is not in the welfare of the allottees also. During the course of arguments, they provided date-wise synopsis of the matter depicting the present status of the project. All the complainants have obtained possession of their respective unit as per synopsis except, Ms. Arpita Jain Garg and late Mr. Balinder Lal. They are also not entitled to get entire refund and are bound to take possession of the allotted units to them as per order of the learned Regulatory Authority.

12. Ms. Unnati Vijay, learned counsel appearing for Ms. Arpita Jain Garg and late Mr. Balinder Lal submitted in rejoinder to reply that AFNHB launched the scheme in Jaipur in 2011, whereas their maps were approved from the competent authority on 27/06/2013, which fact is revealed from the order passed by the learned JDA Appellate Tribunal, Jaipur. It is hence clearly demonstrated the oblivious and nonchalant attitude of the AFNHB, which is raising money from the allottees without the maps getting approved.

Counsel further submitted that AFNHB is enjoying interest at the rate of 10-12% from the money deposited by the allottees, whereas the allottees are being provided only 3% interest.

Counsel further submitted that AFNHB issued fresh allotment letter dated 28/11/2014 to the appellant, wherein date of completion was mentioned till end of 2017. Hence, it is clear that the AFNHB has miserably failed to complete the project. It is further submitted that the finances had to be availed of by the appellant at her own level. Had the AFNHB completed the project within time, the appellant could have utilized and enjoyed the unit, but till date the project is not complete and the appellant is facing financial burden due to the defaults owing to faults of the AFNHB. Counsel further submitted that the AFNHB has casually mentioned that they never assured the complainant for having the construction work completed within time, meaning thereby, AFNHB was pre-determined that the project will be delayed.

Counsel further submitted that it was obligatory on the part of the AFNHB to refund the amount with interest from each date of deposit demanded by the complainant if the project is getting delayed but the AFNHB without seeking prior consent of appellant-Arpita Jain Garg issued a letter to her changing therein the date of completion, which was never acceptable to the appellant.

Counsel further submitted that without getting the maps approved or having a contractor to construct the project, the AFNHB issued allotment letters to the allottees. She further submitted that appellant is not inclined to take possession of a unit in such a project, which is still

under construction. It was obligatory on the part of the AFNHB to obtain all the necessary and requisite approvals before launching the project, but has failed to do so. Hence, the delay in completing the project is not attributable to the appellant hence, she is entitled to receive refund along with interest from the date of each deposit till actual realization at the rate of MCLR+2%.

**13.** Mr.Suresh Kumar, Mr.Nitin Agarwal and Mr.Ashwani Kumar Goyal, complainants-allottees are present in person and apart from arguments advanced by Advocate, Ms. Unnati Vijay, they also pointed out some defects in the said project regarding incomplete boundary wall, extra parking, electricity wiring, electricity charges, solar kitchen, quality of bricks etc. etc. with Phase-II of the project. The complainants stated that the information under Right to Information Act was not provided by the AFNHB and due to bifurcation of the project, they are not able to live in the allotted units with peace and security due to ongoing construction of Phase-II. They also prayed that Phase-II is to be separated from Phase-I and compensation may also be provided for Rs.25,000/- (Rupees Twenty Five Thousand only), for the entire period from 01<sup>st</sup> January, 2018.

**14.** We have heard both the learned counsel for the parties at length, also representative on the behalf of the AFNHB and some allottees who were present in court, perused the material on record, so also gave our thoughtful consideration to the rival submissions put forth.

**15.** In the above captioned appeals, following questions are to be determined by this Tribunal:-

{ 20 }

- (i) As to whether, complainants/allottees-Ms. Arpita Jain Garg and LRs. of late Mr. Balinder Lal, have unqualified right to seek refund on demand and entitled to refund of entire deposited amount under Sections 18(1)(a) and 19(4) of the Act of 2016?
- (ii) Whether, AFNHB is entitled to, exclude the period of 22 months due to stop work notice by JDA, and termination of contract and also moratorium of 12 months period due to Covid-19 as notified by the learned Regulatory Authority on 13<sup>th</sup> May, 2020?
- (iii) Whether, complainants/allottees are entitled for delay interest @3% as unilaterally decided by AFNHB or at the rate prescribed by the Rules of 2017 i.e. SBI highest MCLR+2% from, 01<sup>st</sup> January, 2018/ 01<sup>st</sup>, November, 2019 till date of possession or the date of offer of possession or till complete occupation certificate?

**16. Question No. 1**

**(In Appeal Nos.166/2024, 139/2024 & 111/2023)**

Question No.1 is related to only appeal preferred by Ms. Arpita Jain Garg and counter appeal preferred by AFNHB and appeal preferred by late Mr. Balinder Lal.

It is pertinent to mention here that complainant-Ms.Arpita Jain Garg and late Mr.Balinder Lal sought relief before the Regulatory Authority in complaints alternatively in two parts:-

- (i) The applicants be permitted to surrender the Dwelling Units (DUs) without monetary loss to the applicant and refunded the entire money with interest.

- (ii) Alternatively, if the possession is taken, then interest may be provided for the delayed period i.e. w.e.f. January 2018 till receipt of occupancy certificate.

17. It is an admitted fact from the pleadings of parties and arguments advanced by them that all the complainants/allottees have deposited entire due amount (consideration) against the respective unit allotted to them. It is further pertinent to mention here that out of total 444 DUs, for 282 DUs of Jaipur Phase-II, Part-I (consisting of towers C, D, E, F, H, J & L and community hall), partial completion and partial occupancy certificate have been obtained on 28<sup>th</sup> December, 2021 and 22<sup>nd</sup> June, 2022, respectively, and Resident Welfare Association (RWA) has also been registered under the Act of 1860, after election on 15<sup>th</sup> December, 2021. At present, in project Part-I out of total 282 allottees, 263 have already taken possession of their DUs, including complainants of present matters except, Ms. Arpita Jain Garg and late Mr. Balinder Lal.

18. The whole controversy involved in these appeals can be divided into two parts i.e. before enactment of the Act of 2016 and after enactment of the Act of 2016. Admittedly, before enactment of the Act of 2016, all allottees of the present appeals are governed including AFNHB by "MARTER BROCHURE January, 2012", the general Rules and Regulations that govern "Self housing schemes" launched by "AFNHB". The project Jaipur Phase- II is also covered in "Self housing schemes". Some clauses of Master Brochure are reproduced, as under:-

### **MASTER BROCHURE**

Para-0206 Chapter –II provide as under:-

*“No interest/ compensation shall be paid to an allottee for the delay in completion of a project or change in the handing over schedule of the Dwelling Units. While every effort will be made by the Board to ensure timely completion of the projects, delays cannot be ruled out.”*

*Para – 601 Chapter – VI provide for “Tentative Cost” and para 0617 provide “Interest and Refund”*

In the light of above Regulations, in the year 2014 (04<sup>th</sup> June, 2014), the respondent declared initial scheme stand shelved by way of broadcast giving opportunity to quit from project to all allottees but complainants including Ms. Arpita Jain Garg and late Mr. Balinder Lal opted to continue with scheme (with new specification, cost, terms & conditions).

19. Thereafter, again an allotment letter was issued on 28<sup>th</sup> November, 2014 with new terms & conditions, wherein, Clauses-12 & 17 provided as under:-

**Clause-12. Withdrawals:** *Since the Dwelling Units are being constructed based on the demand of the allottees withdrawals can be permitted only if a waiting list exists and another waitlisted person steps into fill in the vacancy created by a withdrawal. If a withdrawal is approved the amount will be deducted as under:*

		<b>Officers</b>	<b>Others</b>
(a)	<i>After receipt of Registration Fees and Prior to issue of this Allotment Letter</i>	<i>Rs. 10,000/-</i>	<i>Rs.7,000/-</i>
(b)	<i>Upto 45 days after issue of allotment letter</i>	<i>Rs. 15,000/-</i>	<i>Rs. 10,000/-</i>
(c)	<i>More than 45 days after issue of Allotment Letter</i>	<i>Rs. 30,000/-</i>	<i>Rs.20,000/-</i>

**Clause-17. Completion of Scheme:** *As per the contracted constructions schedule, the dwelling units are expected to be ready for possession by end of 2017. However, due to unforeseen circumstances beyond the control of AFNHB if the completion of project get delayed, no interest and/or compensation shall become payable. The unforeseen/unexpected changes in rules and regulations of local authority state government, whether ban of sand mining or any other unpredictable and unforeseen causes beyond the control the board can at times act as force de majeure and cause unwanted delays in completion of the project.*

20. It is well settled that when one party has, by his words or conduct made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted accordingly, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert from promise or assurance. In the present case, the complainants/allottees have not only accepted these conditions but also have deposited instalments as per time schedule, till February, 2020, by taking loans from financial institutions. The AFNHB constructed the units as per acceptance of allottee and paper and physical possession was issued by the AFNHB, on 01<sup>st</sup> February, 2022 & 01<sup>st</sup> May, 2022, respectively. The relief from withdrawal from the project was sought for the first time, after notice for possession before Regulatory Authority in the complaints itself. No facts are on record show that any waiting list exists; on the contrary, as per contentions of AFNHB scheme remained under subscribed and subscribers were not even 50% of the DUs and started withdrawing from scheme. Considering the scenario, therefore, the AFNHB decided to complete the work with new contactor (M/s. MGB) after bifurcating the project in two parts comprising of 282 DUs in Part-I & 162 DUs in Part-II.

21. The complainants/allottees pointed out some defects in the project, some personal problems to take possession of the unit due to ongoing constructions of 162 DUs in Part-II but as per above discussion, since project was bifurcated due to under-subscription, action taken by the AFNHB seems to be bonafide and AFNHB have ample right to **bifurcate** the project to protect the rights of the allottees. Partial completion and occupancy certificates were obtained and, thereafter, possession letter was issued, therefore, allottees are **estopped** from

claiming refund and withdrawal from project at this juncture, especially when AFNHB is only a welfare society, who renders services to its allottees on “no profit no loss” basis.

**22.** It was argued during the course of arguments that the society is no more “no profit no loss” institution since the Management Committee - “Jal Vayu Tower” on 28/07/2017 had indicated in their web update that they have spent Rs.51.61 crores on the project as against 34.32 crores collected from the allottees and the organization has funds of Rs.17.3 crores in excess for investment for one single project, which cannot be called a No Profit No Loss Organisation running “Self-Financing” housing schemes. It was also argued that the AFNHB has ventured into Farm Housing Projects and started constructing more houses than the requirement with the sole intention to sale the dwelling units to other category of allottees including civilians at an escalated price to generate more profits. A copy of the advertisement/pamphlet issued by the AFNHB is also annexed with the following averments:-

“देश के जवानों के बीच रहने का सुनहरा मौका”

**23.** The counsel for the AFNHB and its representative fairly admitted the fact stating that due to under-subscription of the project and withdrawal therefrom, to cope up with the losses of the allottees, the case is taken up with the State Government for dilution of the scheme. Since the AFNHB is having no fund being a self-financing institution, the AFNHB members recommended the proposal and ultimately, the State Government granted permission to the AFNHB on 11/08/2023 to include civilians in the said scheme.



24. It is evident from the arguments advanced by the parties that initially, the project was started long back in the year 2011 but due to one and another reason, the project could not be completed and owing thereto, the cost of the project was gradually increased and when there was under-subscription in withdrawal from the project, the AFNHB decided for dilution of the scheme to cope up with the losses of allottees with the permission of the State Government then, the action taken by the AFNHB, cannot change the character of the Welfare Society and its action seems to be bonafide to cover up the losses of allottees being self-financed institution. There is no document/audit report or any other circumstances, which favour the contention of the appellant-complainants that the AFNHB is converted into a profit making institution. So far as excess fund is concerned, reply of respondent shows that at present, the respondent is facing huge deficit even after spending its reserve funds, which was stuck-up in various projects on account of pending construction work, ongoing litigation and to comply with the orders of the court regarding refund, interest etc., which seems to be justified and reasonable.

Allahabad High Court in the matter of ***Air Force Naval Housing Board Air Force Station Vs. U.P. Real Estate Regulatory Authority and Ors. in RERA Appeal Nos.1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26 of 2022 decided on 12.04.2022***, observed, as under:-

*“77. It is an admitted case of the appellants that they have formed society for providing affordable houses to the serving and retired Air Force and Naval personnel. Further in case of under-subscription of the project, the scheme is diluted and the flats are sold to Army personnel, Coast Guard, Para military personnel, Central and State Government employees. Further, there is no embargo upon the flats being sold to the civilians/public once it is allotted and sold to the serving and retired Air Force and Naval personnel. Moreover, there is no denial to the fact that the appellants are venturing into bigger project and making flats and Farm Houses”.*

From the above, it is clear that the purpose and object of AFNHB is diluted and now they are venturing into bigger projects but the Hon'ble Allahabad High Court never held that the character of the AFNHB has been changed and now converted from Welfare Society to Profit Making Institution. Therefore, the contention of the appellant-complainant is not acceptable.

25. A plain reading of Clauses 16.4 & 16.5 of the Rajasthan Urban Area Building Regulations, 2020 shows that there is no specific bar to issue partial completion/partial occupancy certificate for bifurcated project, if condition **preclauts** are fulfilled by the promoter. It is clear from the above definitions that if the pre-condition defined as above is fulfilled; then, the competent authority can issue the Completion & Occupancy Certificates. In the present case, the Partial Completion & Occupancy Certificates may be treated as Complete Completion or Occupancy Certificates for Towers C, D, E, F, H, J & L with Community Hall. This Tribunal is also don't have any jurisdiction to check the legality and validity of the certificate issued by the local bodies in its jurisdiction. In the above facts and circumstances, the law laid down by the Hon'ble Apex Court in **Newtech Promoters and Developers Pvt. Ltd.** (supra) and other judicial pronouncements regarding unqualified right of refund to allottees on demand, is not applicable to this juncture on self-financed schemes against accepted terms & conditions.

The other judicial pronouncements cited by the counsel for allottees are related to mandatory compliance of Section 43(5) of the Act of 2016, but it is clear from record that AFNHB has deposited certain amounts (in the appeals preferred by AFNHB) as per order passed by the learned Regulatory Authority and calculation has not been challenged by any of the allottee/complainant as indicated in preceding para no. 5.

26. As per above discussion, allottees are not entitled for refund of entire deposited amount and directions given by learned Regulatory Authority for taking possession of DUs deserve to be affirmed.

### **Question No. 2**

27. This question for determination is related to *force de majeure* pointed out by the AFNHB. The AFNHB pointed out mainly two circumstances by which they are prevented to complete the project in stipulated time.

28. Firstly, when the construction reached to the advanced stage of 7<sup>th</sup> floor in most of the towers, JDA issued "Stop Work" notice on 28<sup>th</sup> September, 2015 under Sections 32 & 33 of the Jaipur Development Authority Act, 1982 on the basis of guidance issued by MOD dated 18<sup>th</sup> May, 2011 restricting heights of 12 meters of any construction within 100 metres of any construction within 100 meters of defence land, because of the objection raised by one captain of the Army before JDA, in the appeal filed by AFNHB before JDA Appellant Tribunal, Jaipur. The notice dated 28<sup>th</sup> September, 2015 was quashed with the direction that AFNHB is entitled to resume construction work according to the approved building plan dated 27<sup>th</sup> June, 2013 by order dated 26<sup>th</sup> July, 2017 passed by the JDA Appellate Tribunal, Jaipur.

29. It is noted that the notice issued by JDA was not quashed on the basis that it was illegal or without any jurisdiction but on the basis of the fact that earlier guideline dated 18<sup>th</sup> May, 2011 was amended subsequently vide Circular No.11 dated 12<sup>th</sup> June, 2017 (during pendency of appeal) by which it deletes the requirement of NOC within the paraferri to 100 meters of army

cantonment area. For the sake of clarity, observations of JDA Appellant Tribunal, Jaipur are reproduced, as under:-

*“The impugned notices were issued in the light of prevailing requirement of NOC from the military station, as at that time the building was within the vicinity of 100 meter of defence establishments hence, the stop work notices issued by the JDA were well within the jurisdiction and were legal. During the pendency of this appeal the above mentioned order dated 12<sup>th</sup> June, 2017 of state government deleted that the requirement of NOC beyond the vicinity of 10 meter from the outer boundary of defence establishments.”*

**30.** We can very well imagine that what would be the fate of hard earned money of allottees, if modified Circular No.11 dated 12<sup>th</sup> June, 2017 could not have been issued by the Government of Rajasthan. It clearly revealed from record that layout building plan was prepared by AFNHB violating the requirement of MOD dated 18<sup>th</sup> May, 2011 regarding 12 metre height within 100 metre of defence land issued by Defence, despite the fact that all the stake holders are defence personnel.

**31.** We may presume that such type of society should know about all the Rules, bye-laws and Circulars issued in this regard. Surprisingly, JDA has also approved the plan contrary to the prevailing guidelines without due application of mind. Therefore, AFNHB is not entitled to get any benefit owing to its own negligence and can't be treated as “*Force De Majeure*” defined in Section 6 of the Act of 2016. The impugned-orders were not sustainable to this extent in which, exclusion of 22 months period was accepted for the purpose of computing interest, in the eyes of law. Delay occurred due to termination of contract of the then contractor was also not attributed to the allottees for which arbitration proceeding are completed against the said contractors and according to the AFNHB, the arbitral award is to be pronounced in new future.

32. Secondly, at this juncture, on 01<sup>st</sup> May, 2017, the Act of 2016 was promulgated and respondent got the project registered with the RAJ-RERA Authority and obtained registration No: RAJ/P/2017/553 on 18<sup>th</sup> December, 2017 as an ongoing project. Meanwhile, due to Covid-19 pandemic, one order was issued by the learned Regulatory Authority on 13<sup>th</sup> May, 2020 whereby, extension of 12 months period was granted to the estimated finish dates and validity of registration to those real estate projects, which were registered and not already completed, lapsed or revoked as on 19<sup>th</sup> March, 2020. Since the project of AFNHB was incomplete on the very said date; therefore, AFNHB can claim exclusion of moratorium period while computing the interest on the ground of delay.

Question No.2 replied accordingly.

### **Question No. 3**

33. Admittedly, the AFNHB declared 3% compensation interest to be provided for those complainants, who opted to continue with the project in February, 2018 on the basis of one resolution of the Board. The learned Regulatory Authority also provided only 3% rate of interest to complainants-Mr. Suresh Kumar, Mr. Nitin Agarwala & late Mr. Balinder Lal with the following observation:-

*"We direct the respondent-society to pay interest to the complainant at a rate of 3 percent as already promised by them".*

It is pertinent to mention here that when 3% interest declared by the AFNHB; at that time, AFNHB was registered on 26/12/2017 with RAJ-RERA and accordingly, the provisions of the Act of 2016 and the Rules of 2017 were applicable to the AFNHB; in which, rate of interest

is prescribed i.e. MCLR+2% as provided by the learned Regulatory Authority to the other complainants except above mentioned three complainants-appellants.

It is noted that rate of 3% interest was unilaterally decided by the AFNHB without assigning any reasons, justifications or support of any Rules & Regulations. It is evident from the record that AFNHB is charging rate of interest for delay instalments, which is near about 9-10% along with equalisation charges. The complainants annexed the documents of financial institutions, which show that the complainants are paying 9.5% and above rate of interest on the Home Loan taken from different financial institutions.

It is pertinent to mention here that the interest was claimed by the claimants/allottees after enactment of the Act of 2016 in which, the AFNHB was registered as a 'promoter'. Therefore, the respondent-AFNHB is not empowered to deviate from the mandate of the Act of 2016 as well as the Rules of 2017.

It may be treated a welfare and bonafide action of AFNHB before enactment of the Act of 2016 to compensate the allottees because there is no provision to provide delay interest in Regulations (Master Brochure, 2012) but after registration as promoter, the AFNHB is not at liberty to deviate from the provisions of the Rules of 2017 as per the directions given by the Hon'ble Apex Court in the case of **Newtech Promoters and Developers Pvt. Ltd.** (supra) and in other cases as cited by counsel for complainants-appellants. Therefore, all above three complainants are entitled to get delay interest as prescribed in the Rules of 2017 i.e. highest MCLR + 2%.

Question No. 3 replied accordingly.

34. In the light of above observations, Question No.1 is decided in favor of AFNHB, Question No.2 regarding *Force De Majeure* is decided in favor of respondent-board partially, accordingly, the respondent-board is entitled to get the exclusion of only moratorium period due to Covid only while computing the delay interest and lastly, as per observation of Question No.3, all the complainants allottees are entitled for delay interest @ of Highest SBI MCLR+ 2% as per prevailing Rules of 2017.

Complainants in their pleadings and arguments pointed out some defects and argued that till today, the said project is not complete for peaceful living in project and claimed for compensation. The Hon'ble Apex Court in the judicial pronouncement of **Newtech Promoter & Developers Pvt.Ltd.** (*supra*) while dealing with the provisions of Section 14(3) of Act of 2016, observed, as under:-

*"Section 14 relates to adherence to sanctioned plans and project specifications by the promoter. Section 14(3) empowers the allottee to receive compensation in the event there is any structural defect or any other defect in workmanship etc. Section 14(3) reads as under:*

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled, to receive appropriate compensation in the manner as provided under this Act"*

For that, Section 71 provides power to adjudicate the matter with the adjudicating officer and the compensation for interest shall be decided by Adjudicating Officer on factors mentioned in Section 72 of the Act of 2016. Therefore, we expect from the respondent-board to rectify such defects and also to adopt all protective measures regarding ongoing construction of Phase-II so that the health, peace and privacy of the allottees may not be compromised.

Otherwise, the allottee-complainants are at liberty to approach for compensation before the appropriate forum.

**35.** In view of the aforesaid observations:-

(i) Appeal No.166/2024 Arpita Jain Garg Vs. Air Force Naval Housing Board and Appeal No.111/2023 : LR of Balinder Lal Vs. Air Force Naval Housing Board are liable to be rejected to the extent of refund of entire deposited amount. Hence, rejected. The complainants/appellants are directed to take possession of DUs as per order of the learned Regulatory Authority.

(ii) Appeal No.98/2023 : Suresh Kumar Vs. Air Force Naval Housing Board, Appeal No.99/2023 : Nitin Agarwala Vs. Air Force Naval Housing Board and Appeal No.111/2023 : LRs of late Balinder Lal Vs. Air Force Naval Housing Board are liable to be accepted to the extent that complainants/allottees are entitled to get delay interest at the rate of highest SBI MCLR+2% from 1<sup>st</sup> January, 2018 to till the date of handing over the possession of DUs (In appeal No.98/2023 and 99/2023 and from 1<sup>st</sup> January, 2018 till offer of possession after completion certificate (In Appeal No.111/2023 and 166/2024 without excluding the period of 22 months due to stop work notice of J.D.A. but excluding moratorium period of Covid-19 as notified by the learned Regulatory Authority on 13<sup>th</sup> May, 2020 and orders of learned Regulatory Authority are modified accordingly.

(iii) Appeal No.159/2024 : Sumit Agarwal Vs. Air Force Naval Housing Board, is partly accepted to the extent that complainant/appellant-Sumit Kumar and also complainant/respondent-Ashwani Kumar Goyal is entitled for delay interest at the rate of SBI



highest MCLR+2% i.e. 1<sup>st</sup> January, 2018 to till the date of handing over the possession of DUs excluding the moratorium period as notified by Regulatory Authority.

(iv) Appeal Nos.139/2024 (Air Force Naval Housing Board V/s. Arpita Jain), 140/2024 (Air Force Naval Housing Board V/s. Satyapal Singh Jhajharia), 125/2023 (Air Force Naval Housing Board V/s. Ashwani Kumar Goyal) & 43/2024 (Air Force Naval Housing Board V/s. Sumit Agarwal) preferred by Air Force Naval Housing Board are disposed of accordingly. The AFNHB is directed to pay delay interest/difference as per above observations in each appeal to the complainants within 45 days from the date of passing of this order and submit compliance report within 15 days to this Tribunal, thereafter;

(v) Registry of this office is directed to handover the amount to the allottees, deposited under Section 43(5) of the Act of 2016 by AFNHB in their appeals.

36. Pending interim order(s)/application(s) if any, stand closed.

37. A copy of this order be transmitted to the learned counsel for the parties and RAJ-RERA, Jaipur and also be kept on record in every appeal.

38. Cost made easy.

39. Files be consigned to record.

**Mr. Rajendra Kumar Vijayvargia,**  
Member (Technical)

**Mr. Yudhisthir Sharma,**  
Member (Judicial)