



REAL ESTATE

# Possession Without Protest Is No Waiver

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# UP REAT Affirms the Mandatory Nature of Delay Interest Under RERA

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*Uttar Pradesh Awastha Vikas Parishad v. Real Estate Regulatory Authority, Lucknow & Ors.*

Appeal No. 340 of 2024 | UP Real Estate Appellate Tribunal | Decided: 06 May 2026

## Introduction

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In a significant ruling that reinforces the protective framework of the Real Estate (Regulation and Development) Act, 2016, the Uttar Pradesh Real Estate Appellate Tribunal has unequivocally affirmed that a promoter's obligation to pay delay interest under the proviso to Section 18(1) of the Act is absolute, mandatory, and cannot be extinguished by the allottee's acceptance of possession without formal protest. The judgment, delivered by a bench comprising Mr. Justice Suneet Kumar and Mr. Rameshwar Singh, settles a crucial question concerning the interplay between jurisdictional propriety and the substantive rights of homebuyers under RERA.

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## Background and Facts

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The appellant, Uttar Pradesh Awastha Vikas Parishad (the Promoter), launched a residential scheme designated "Neelgiri Enclave" at Sector-17, Vrindawan Yojna, Lucknow, in the year 2012. Pursuant to an allotment letter dated 08 August 2013, Flat No. 17-AH/72/F-06 was allotted to the respondent-allottee, Rajendra Kumar Vikal, against full and timely payment of the agreed sale consideration.

As per the terms of the agreement, the project was to be completed within 24 months, with the stipulated completion date being 27 August 2015. However, the Promoter failed to adhere to this timeline. The offer of possession was made only on 31 August 2017, and physical possession was delivered as late as 27 October 2018, representing a delay of over three years beyond the contractually agreed date. The allottee, having chosen not to withdraw from the project, filed a complaint before the Adjudicating Officer, UP RERA, Lucknow, seeking delay interest. The Adjudicating Officer ruled in the allottee's favour vide order dated 02 August 2023, prompting the Promoter to prefer the present appeal before the Tribunal.

## Issues in Contention

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Two principal questions fell for determination before the Tribunal. The first concerned whether the impugned order of the Adjudicating Officer was passed without jurisdiction, given that claims for delay interest under Section 18(1) of RERA are properly instituted before the Regulatory Authority. The second question was whether the allottee, having accepted possession of the unit without registering any formal protest, had thereby waived his entitlement to claim delay interest from the Promoter.

## Submissions of the Parties

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### Appellant's Submissions

Learned counsel for the Promoter placed primary reliance on the Supreme Court's authoritative pronouncement in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors.*, (2021) SCC Online SC 1044, wherein it was held that the Adjudicating Officer lacks inherent jurisdiction to entertain claims for delay interest, and that such relief must be sought before the Regulatory Authority. On the merits, it was contended that the allottee, having accepted possession without protest, had implicitly waived any claim to delay interest under the proviso to Section 18(1) of the Act.

## Respondent's Submissions

Counsel for the allottee urged the Tribunal to exercise its appellate jurisdiction to conclusively resolve the dispute on admitted facts, rather than relegate the parties to fresh adjudication before a coordinate forum. It was submitted that the proviso to Section 18(1) imposes a self-executing and unconditional obligation upon the promoter to pay delay interest without the allottee being required to institute proceedings or raise a formal demand. The use of the imperative "shall" in the proviso, it was argued, makes the obligation both mandatory and automatic, leaving no room for the Promoter to condition his liability on the allottee's prior formal complaint.

## Court's Analysis

The Tribunal unequivocally upheld the challenge to the Adjudicating Officer's jurisdiction, confirming that the impugned order was without legal authority. However, rather than mechanically remanding the matter, the Tribunal invoked Section 44(6) read with Section 53(1) of the Act to exercise its powers to do complete justice on the admitted facts before it.

On the question of waiver, the Tribunal delivered a categorical rejection of the Promoter's contention. It held that the proviso to Section 18(1) confers an absolute right upon the allottee to receive delay interest, and that this right cannot be curtailed by the mere act of taking possession. To accept the Promoter's argument, the Tribunal reasoned, would be to incentivise every promoter to insist on possession before honouring their statutory obligation, thereby rendering the provision illusory. The mandatory character of the word "shall", the Tribunal emphasised, admits of no such dilution.

Significantly, the Tribunal drew support from the Allahabad High Court's ruling in *Ratan Buildtech Pvt. Ltd. v. Anil Kumar* (RERA Appeal No. 72 of 2025, decided 04 August 2025), which held that the computation of statutory interest under Section 18 is "essentially a mathematical exercise" requiring no adjudicatory determination. Once the fact of delay is admitted, the interest follows as a matter of legal inevitability, irrespective of whether an explicit admission of liability exists.

## Final Decision

The Tribunal set aside and quashed the Adjudicating Officer's order dated 02 August 2023 on grounds of lack of jurisdiction. It nonetheless directly granted relief to the allottee, directing the Promoter to pay delay interest at MCLR+1% per month on the deposited amount for the period of delay from 27 August 2015 to 31 August 2017, within 45 days of the order being uploaded to the RERA portal. The Tribunal further directed the release of the amount deposited by the Promoter under Section 43(5) of the Act in favour of the allottee, subject to verification that the impugned order had not yet been executed.

## Conclusion

This judgment constitutes a significant affirmation of homebuyer's rights under the RERA framework. By holding that acceptance of possession cannot operate as a waiver of the right to delay interest, and that the promoter's obligation is self-executing, the Tribunal has closed a potential avenue by which developers might otherwise escape their statutory liability. Legal practitioners advising promoters and allottees alike must now reckon with the principle that delay interest is a mathematical and mandatory entitlement, not a discretionary concession.

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