

Government of UP

Industrial Development Department; Section -4

No. ~~5907~~/77-4-25 /46 Appeal/25

Lucknow: Dated 25.11.2025

M/s Omaxe Buildhome Ltd. Revisionist

Vs

NOIDA Authority Respondent

1. The instant revision petition has been filed u/s 41(3) of Uttar Pradesh Urban Planning & Development Act, 1973 and Section 12 of the Uttar Pradesh Industrial Area Development Act, 1976 challenging the validity, legality and propriety of the impugned demand notice dated 03-05-2025 of the Respondent Authority with a prayer to quash the impugned demand notices (declare the period from 06-05-2015 till 29-05-2025 as Zero Period on account of stays granted by various courts) and allow such other consequential benefits.
2. Brief facts of the case are summarized as under. The Revisionist/allottee M/s Omaxe Buildhome Ltd were allotted Group Housing Plot No GH 01, 02 & 03 Sector 93 Noida admeasuring 119,020.12 sq.m. vide allotment letter dated 03-10-2006. The lease deed for the same was executed between the two parties on 29-12-2006. As per the then applicable building by-laws a maximum Floor Area Ratio (FAR) of 1.5 was permitted for these plots. Accordingly building plans were submitted and the requisite approval was obtained from the Respondent Authority vide letter dated 08-04-2008. The Revisionist completed the construction to the extent of 85% of the sanctioned FAR by 2011; within the time limit stipulated by the lease deed. This comprised towers T1 to T22. On application on behalf of the revisionist/ allottee, the respondents issued a partial Completion Certificate (CC) on 12-07-2011.
3. Even as this process was apace, the Respondent Authority came up with a new building by-law superseding the existing by-law (Building By-laws 2010). Among other revisions, the 2010 by-law raised the ceiling of the permissible FAR for group housing projects from 1.5 to 2.75. This additional FAR over and above 1.5 was on a purchasable basis. The Revisionist decided to avail of the benefits of the new policy and purchased an additional FAR of 0.5 over & above the basic FAR permissible. In view of additional FAR purchased, the Revisionist submitted a revised building plan to the Respondent Authority which was duly sanctioned by the Respondent Authority on 23-09-2013. This additional FAR was sought to be utilized by the allottee by constructing new towers T 23, 24 & 25 as well as the hitherto unconstructed towers T26- & T 27.
4. However, the policy of Respondent Authority of permitting additional FAR was the subject of multiple litigations filed by aggrieved residents challenging the revised building plan sanctioned by the Respondent authority pursuant to the newly introduced policy of additional purchasable FAR. As a result of interim restraining orders of judicial authorities in these litigations, the construction and other commercial activities (like sale or handing over possession to the home owners) was adversely impacted the flow of development for the Revisionist. A table summarizing the various litigations and details of the interim orders that restrained the Revisionist is summarized in the table below:

Sr No.	Case No.	Nature of the Interim order	Date of the Interim Order	Date of vacation of the Interim Order
1	Writ C No 47832 of 2011 Prakash PVS Vs Noida Authority (Allahabad High Court)	Stay on the construction as per Revised Map submitted on 31/05/2011	30-08-2011	25-11-2024
2	Writ C No- 55956 of 2012 Manish Gupta Vs State of UP (Allahabad High Court)	Stay on the construction of basement area as per Revised Map submitted on 31/05/2011	12-12-2012	25-11-2024
3	NCDRC Case 269/2013 Rohit Ahuja Vs Noida Authority	To maintain Status Quo on the Project	24-09-2013	31-03-2015
4	Writ C No 24860 of 2015, Dipesh Jain Vs Noida (Allahabad High Court)	Stay on the construction of Towers T-26 & T-27	06-05-2015	24-04-2024
5	Writ C No 10854 of 2018, Tarun Kapoor Vs Noida (Allahabad High Court)	No Occupancy/ Completion Certificates to be issued in respect of Towers (T-23, T-24 & T-25)	23-03-2018	29-05-2025
6	SLP-C No 32570 of 2024 Dipesh Jain Vs Noida (Supreme Court)	Stoppage in Construction of Towers T-26 & T-27	2024	20-09-2024
7	Review Petition No- 2336 of 2024, Dipesh Jain Vs Noida (Allahabad High Court)	Stoppage in Construction of Towers T-26 & T-27	2024	07-01-2025
8	Noida's office order Dt 26-03-2018	Stoppage of construction on site and restrained from hand over of residential units to home buyers.	26-03-2018	Has not been withdrawn; but the Authority has permitted transfer / handover of homes

5. It now transpires that all the litigations have finally been settled and the policy under challenge has been upheld. There is no dispute between the parties on the facts laid out in the preceding paragraphs. In fact, the Respondent Authority while passing the impugned demand notice dated 03-05-2025 has already granted zero period for Towers T-26 & T-27. The only dispute that now remains between the two parties is the duration of Zero Period that needs to be granted and the portion of the project that the said Zero-Period will be applicable on. The Revisionist argues that in view of the interim stay orders restraining his construction and marketing activities affecting more than 30% of the usable area of the project; he is entitled to the zero period for the entire project over the period 30.08.2011 till 29.05.2025. On the other hand, the Respondent Authority has contended that only that period and only that proportion of the project should be granted the benefit of Zero-period during which construction activities could not be carried out by the Revisionist as a result of the operation of interim stay order passed by the adjudicating authorities. In view of the above, the following issues were framed for

determination and both the Revisionist as well as the Respondent Authority were directed to furnish their respective submissions on the same: -

- 1) Whether zero period can be granted to an allottee when stay order on construction is operative by a court of law?
 - 2) Should there be a consideration as to whether the stay order is due to a deficiency on the part of the allottee?
 - 3) In case where substantial completion has been achieved, whether exemption from penal charges/ time extension charges/ interest charges should be on a proportionate basis (i.e. proportionate to the uncompleted portion of the project) or should it be on the entire project?
 - 4) Lastly, in view of the considerations laid down by the Revisional Authority in the case of Express Builders in Revision No 5774/77-4-23/64 Appeal/22 it may be submitted as to what are the similarities and dissimilarities in the two cases? If there is a difference in the treatment of the two projects, the points of difference may clearly be outlined.
6. Both parties submitted their responses on the issues framed above. Their submissions were taken on record. Heard Mr Rakesh Kumar Srivastava on behalf of Revisionist and his advocate Mr Akshay Mohiley, both present in person. Ms Vandana Tripathi, ACEO NOIDA Authority is present through VC. As regards issue number 1, both parties are in agreement that the benefits of zero period can be extended to an allottee during the currency of stay order restraining activity on the part of the developer. In respect of issue number 3 also, both parties are in concurrence that it is open to the Authority to grant Zero Period waiver fully or on a proportionate basis on the uncompleted portion of the project, as per the facts of the case. Respondent Authority in its response has clearly stated that office order dated 28-03-2016 permits the same.
7. With respect to issue No. 2: the contention of Respondent Authority is that the Civil Writ Petition No 10854/2018 (*Tarun Kapoor case*) the stay order against issue of occupancy certificate/ completion certificate was mainly on account of non-payment of dues of the Authority on the part of Revisionist. Therefore, there is a deficiency on the part of Revisionist/ allottee. In regard to the other cases, the Respondent Authority is in agreement with Revisionist that those cases could not be attributed to any fault on the part of the Revisionist/allottee. The contention on behalf of the revisionist is that the default in payment is also due to non-settlement of the Zero -Period Issue by the Respondent Authority as per law. It has been argued on behalf of the Revisionist that they have paid a total sum amounting to Rs 415 Crore to the Respondent Authority, against a premium of Rs 268 crores. This has not been refuted by the Respondents. The dues remaining, if any, arises out of the differing perception among the parties in how the balance dues are being calculated, which in turn is predicated on whether or not the zero period waiver being claimed by the Revisionist company is allowable in full or in part, as has been allowed by the Respondents. To bring finality to the project, the Revisionist has applied for benefits of a one-time settlement offered under the Government order dated 20.12.2023 and has deposited 25% of the outstanding balance, as calculated by the Respondent Authority, amounting to Rs 93 crore. It is thus clear that the argument of financial default on part of the Revisionist does not stand scrutiny; and therefore, there is no case made out in favour of default on the part of Revisionist in payment of Authority dues.
8. The only issue that needs to be settled is the duration of Zero period and the consequential benefits that is to be granted to the Revisionist, particularly in the light of the precedents of existing judgements of the Revisional Authority, as have been placed on record. In the Writ Petition no 3072 of 2025, Hon'ble High Court vide its order dated 21.10.2025 has observed as under:

"The petitioner and respondents will be at liberty to place reliance on any precedent they may deem fit. The petitioner would also be entitled to place any judgement which have dealt with a similar issue, by the revisional authority"

In this regard two precedents of orders passed by this revisional authority have been submitted on behalf of the revisionist, namely, *Great Value Private Ltd* dated 24.07.23 and *Express Builders and promoters Pvt Ltd* dated 21.09.2023 have been submitted for consideration.

9. Let us now proceed to settle the issue of Zero Period. The first contention of the Revisionist is that since over 30% of the project has been impacted by Court orders, the Zero period should be considered for the entire project; not for a part of the project as per the ratio laid down in the *Great Value* case (supra). However, on reading the said judgement, I find that the two cases are not identical. In the *Great Value* case the developer had not received possession of a large chunk of land due to litigations on account of land acquisition issues. In the instant case, the revisionist enjoyed the possession of the entire parcel of land from the date of possession, as such his reliance on the *Great Value* case is misplaced. It is clear from the records that **that they were able to complete the first portion of the project, that is towers T1 to T22 by 2011** and the Respondent Authority issued the part Occupancy Certificate in respect of these Towers on 12.07.2011. By definition, zero period is granted if and only if the developer is unable to undertake construction/ sale on the project on account of default on part of the Respondent Authority or circumstances that are beyond control of parties to the lease deed. Hence if at all Zero-Period is to be granted, **it can only be with respect to balance portion of the project**, that is, towers- T 23 through 27 **on proportionate basis** as per the conclusion arrived in paragraph 6 of this judgement

10. Next, we consider the duration of Zero -period that should be made available to the Revisionist in light of the principles laid down in the *Express Builders and promoters Pvt Ltd* case (supra). Respondent Authority has already granted Zero period with respect to the two unconstructed towers (T -26 and T- 27), in effect admitting that their construction was adversely impacted due to litigation against their policy of granting additional purchasable FAR for no fault on part of the Revisionist. The reason why the Respondent has denied Zero -period for towers T-23 to T25 is that despite the Court orders, the Revisionist managed to proceed with the construction of these towers, presumably because the said injunctions were limited in scope and did not bar the entire construction as a whole. It has been admitted in the submission of the Revisionist at paragraph 23, that they applied for Occupancy certificate in respect of these towers on 06.04.2016 but was not decided by the Respondents in time. It is however amply clear that after the order dated **23.03.18** passed by the Hon'ble High Court in WP no 10854/2018 (*Tarun Kapoor v NOIDA*), there was a complete injunction on issue of Completion Certificates (CCs) for units in these towers. The order is reproduced for convenience as under:

"In the meanwhile, we direct respondents -Development Authority not to issue occupation/ completion certificates in respect of remaining towers, if any, in the project in question and also in other projects within their jurisdiction"

Further, the Chief Town Planner NOIDA issued an order in compliance of the above referred Court order not only restricting the issue of CCs but also prohibited further construction. This order has still not withdrawn by the Respondent despite of the fact that the stay has been vacated by the Court on **19.05.2025**. **Not permitting the sale of residential units would also be covered under the description of restraint on account of litigation.** Thus, the contention of the Authority that construction was going on in the towers in question making it ineligible for zero period cannot be accepted since the fruits of construction, that is, **the sale of the said residential units was denied to the Revisionist.** Hence, in our view the stand taken by the Respondent Authority of an absolute denial of Zero period in respect of Towers T-23,24 & 25 is not correct. As pointed out earlier in this judgement, the denial of CCs on account of dues remaining arose only on account of differing perception among the parties in how the balance dues are being calculated, which in turn is predicated on whether or not the zero period waiver being claimed is allowed.

11. Another issue that has been raised on behalf of the revisionist is the stay in the *Dipesh Jain* case (Writ C- no. 24860 of 2015). In the said case, the Hon'ble High Court was pleased to grant an interim stay vide order dated 06.05.2015 as under:

"For all the reasons we deem it appropriate to restrain the respondent number 4 from raising any constructions as per revised sanction.

We accordingly direct that till the next date of listing respondent number 4 is restrained from raising any construction with regard to the two additional towers no 26 & 27 as per the revised plan, filed as Annexure -4 to the Writ petition" (emphasis supplied)

This stay was finally vacated when the court finally disposed of this case vide its order Dated 19.9.16. However, the petitioner did not let the matter rest and approached the Hon'ble Supreme Court in Special Appeal no 2446/2017 whereby vide order dated 23.2.2017, he was permitted to file a review against the High Court Order dated 19.9.16. The Review [121252/ 2017] so filed was also decided in favour of the revisionist on 23.3.2018. The order passed by the High Court in review was also challenged in the Supreme Court, where it attained finality on 07.01.25 in favour of the Revisionist/ allottee. It would be observed that the dispute in *Dipesh Jain* case was with respect to Towers 26 & 27 and not with respect to Towers 23, 24 & 25. This is also clear from the language of the interim order. This has been acknowledged by the Respondent authority which has granted zero -period with respect to Towers 26 & 27 for the period between 06.05.15 to 19.9.2016. Given that the Respondent Authority vide their letter dated **26.03.2018** had imposed a complete stay on any further construction which included all the towers 23-27. Therefore, it is clear that the claim of the revisionist for Zero Period in respect of Towers 23-27 between 23.03.2018 and 19.05.25 is reasonably well established on account of *Tarun Kapoor* case. Also, the claim of Zero Period in respect of Towers 26 & 27 between the period 06.05.15 to 19.9.2016 is also settled. Although the *Dipesh Jain* litigation has moved between High Court and Supreme Court, it is not entirely clear to me on the basis of the documents filed as to whether the construction on Towers 26 & 27 was actually stayed in the period between 19.9.2016 to 26.03.2018. Moreover, the revisionist claims for Zero period in respect of Towers 23-25 for the period between 06.05.15 to 23.03.2018 on account of restraining order in *Dipesh Jain* case is not justified and hence is liable to be rejected. The fact that the construction of towers 23-25 was not impeded

much on account of the restraining orders of the Courts as the Revisionist was able to file the completion certificate to the respondent Authority in April 2016, well within the 5-year time period he was allowed to complete the construction.

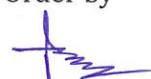
12. In passing, one is also constrained to observe that the quality of decision making in the Respondent Authority needs to be improved. Had the request for a decision on completion certificate for Towers 23-25 been disposed of within time, the stay granted on Towers 23-25 would not have applied and at least that portion of the project would not have been in dispute. However, by not taking a decision on the grant of Zero period during the operation of NGT Saty orders – which was finally corrected by the Government in its revisional order dated 11.06.2024; the Respondent Authority unnecessarily allowed the dispute to fester leading to the present situation. This is all the more galling since the matter under challenge was essentially the policy of the Respondent Authority requiring a cooperative attitude on their part rather than the adversarial approach that appears to be on display in this case.

13. In view of the discussions above, the Revision succeeds partially. The impugned demand notice dated 03-05-2025 of the Respondent Authority is hereby set aside. The Respondent Authority is directed to recalculate the dues of the Revisionist after factoring in the Zero period on Towers T -23, 24, 25, 26 and 27 from the period 23.03.2018 to 19.05.25 **on a proportionate basis** for the incomplete portion of the project on account of the stay granted in the *Tarun Kapoor* case. This may be done within 4 weeks of the date of this order. The Respondent Authority may also consider whether Zero period is to be granted on Towers T 26 and 27 for the period between 19.9.2016 to 26.03.2018 on factual grounds since it is observed that while the construction of the said towers was mired in court cases right up till 2025, but I cannot find any stay order in operation beyond 19.09.2016 in the *Dipesh Jain* case. It is clarified that this order would not preclude the Respondent Authority to grant benefits due to the revisionist under the Legacy stalled projects Government Order dated 23.12.2021. Revision disposed of accordingly.

Sd/-
(Alok Kumar)
Additional Chief Secretary

Letter No. 5907/ 77-4-25 /46 Appeal/25 Dated:

1. Chief Executive Officer, Noida
2. M/s Omaxe Buildhome Ltd.
3. Guard File.

Order by

(Jaivir Singh)
Joint Secretary