

Bench No. 1
Reserved Judgment

Appeal No. 48 of 2020

M/s Mist Direct Sales Pvt. Ltd.

Versus

U.P. Real Estate Regulatory Authority & Another

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Rajiv Misra, Administrative Member.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. The present appeal has been filed by M/s Mist Direct Sales Private Ltd., New Delhi (hereinafter referred to as 'appellant') against the order dated 07.12.2019 passed by U.P. Real Estate Regulatory Authority (hereinafter referred to as the "Regulatory Authority") through which the Regulatory Authority has de-registered the Project of the appellant company, namely, Festival City, Phase 1, NOIDA (U.P.) as well as frozen the account of the appellant company, bearing Account No. 001661900001330, IFS Code-YESB0000016 with Yes Bank, D-12 South Extension-II, New Delhi.
2. The facts and grounds of appeal of appellant company raised before the Tribunal are as follows:-
 - 2.1. The appellant company is the developer and Promoter of the Project Festival City, Phase 1, NOIDA, U.P. in collaboration with M/s Anand Infoedge Pvt. Ltd. which is also the parent company of the appellant company. The appellant company undertook to develop a Project namely, "Festival City" (hereinafter referred to as the "Project") on Plot no. 1 Sector 143-B, NOIDA, Uttar Pradesh. Earlier, M/s Mist Avenue Private Limited, the erstwhile developer of

the Project, and M/s Anand Infoedge Private Limited (lessee of the project land from NOIDA) entered into a Collaboration Agreement on 28.07.2014 having the retrospective effect from 26.10.2012.

- 2.2 Thereafter, certain dispute arose between the erstwhile developer and M/s Anand Infoedge Private Limited with respect to development of the said Project. M/s Anand Infoedge Private Limited cancelled the development rights executed in favour of erstwhile developer and the Collaboration Agreement was cancelled vide Cancellation Deed executed on 27.07.2017. Subsequent to the cancellation of the above, M/s Anand Infoedge Private Limited had appointed its wholly owned subsidiary company M/s Mist Direct Sales Private Limited i.e. (appellant) to develop the said Project and new Collaboration Deed was executed on 27.07.2017 between M/s Anand Infoedge Private Limited and M/s Mist Direct Sales Limited in which erstwhile developer (M/s Mist Avenue Pvt. Ltd.) was also a “confirming party”. The appellant also informed all the parties including allottees involved in the said Project with respect to the cancellation of development rights in favour of M/s Mist Avenue Limited and transfer of the same to the appellant company as new developer of the said Project. Thereafter, in compliance of provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as ‘Act of 2016’) the appellant had applied for registration of the said Project and had proposed 11.07.2022 as the date of completion of construction of the said Project.
- 2.3 On examining the details submitted by the appellant company including the date of completion as 11.7.2022, the respondent no. 1 has consciously approved the application for registration and

extended as well as revised the date for completion of the said Project to 11.07.2022. The allottees of the Projects were requested by M/s Mist Direct Sales Pvt. Ltd. (the appellant) on several occasions to sign the agreement with the appellant, however the allottees have failed to do so. Some of the allottees have totally refused to execute the agreement on the ground of no privity with the appellant.

2.4 The appellant also submitted that the complaint filed by some allottees without executing the agreement with the appellant cannot be agitated before the Regulatory Authority.

2.5. It has been emphasized by the appellant that due to incomplete handing over of the land by the New Okhla Industrial Development Authority (NOIDA)/respondent no.2, the appellant company is facing a lot of issues in completing the Project. M/s Anand Infoedge Pvt. Ltd. has also approached the Hon'ble Allahabad High court against NOIDA Authority by means of Writ Petition No. 15503 of 2019 wherein, the M/s Anand Infoedge Pvt. Ltd. has sought possession of the full land leased out for the said Project from the NOIDA Authority. Though the prayer was for claim of Rs. 21.51 crores or any other charges towards compensation to be given to State and Center Government employees Housing Development Samiti Ltd. or to compensate M/s Anand Infoedge Pvt. Ltd. for the loss incurred by it due to inaction of NOIDA for not handing over unencumbered land measuring 100980 sq. mtrs. The Hon'ble Allahabad High court issued notices to NOIDA and Greater NOIDA Authorities. It is further submitted that despite admission on the part of the Authorities, no compensation has been provided to the land

holding Society, which still holds its name in the revenue record, the authorities have failed to provide complete legal possession of the land to M/s Anand Infoedge Pvt. Ltd.

- 2.6. Further submission is that the respondent Authority (RERA) has failed to consider the reply made by the appellant before it from time to time, pursuant to the various show-cause notices and orders passed by the respondent authority. In pursuance of the show-cause notice dated 08.03.2019 issued by the respondent authority, the appellant had submitted an Engineer's Certificate from the approved Government Valuer, namely, M/s K.S. Agarwal & Associates, wherein the approved Valuer, vide its report dated 18.03.2019 had clearly and unambiguously declared that the Project is complete by more than 42 % in terms of estimated cost. The appellant company has also shown full intention to complete the Project as per time frame provided in the Registration No. UP RERA PRJ 2873.
- 2.7. Appellant has also alleged that the findings given by the respondent authority in the impugned order dated 07.12.2019 with respect to status of the construction are not factual. On one hand Technical Advisor of the Regulatory Authority in its inspection report dated 26 February, 2019 has stated that construction activity on the Project is in progress and labour is working and basement & G+26 floors structure is ready, however, on the other hand, it is mentioned that construction of the Project is not possible. The appellant company has also stated that as on 31.08.2019, the appellant has spent an amount of Rs. 170.99 Crores on the construction of the Project and Rs. 103.35 crores on purchase of land. Thus the total expenditure on

behalf of appellant company on this Project is Rs. 274.34 crores. The appellant has received an amount of Rs. 252.93 crores from the allottees as advances and appellant company has spent about Rs. 21.41 crores from its own pocket in this Project. The appellant has also not borrowed any amount from any bank or financial institution to fund the construction of the Project.

- 2.8. As per conciliation report dated 11.09.2019 of meeting dated 09.09.2019 presided by the Conciliator of Respondent No. 1, the investors/allottees on whose behalf the proceeding of revocation was initiated under Section 7 of the Act and the impugned order has been passed were also not in favour of the cancellation/revocation of the registration of the Project and they only wanted that authority should impose some condition on the promoter to complete the Project as per its guideline. The progress of the construction has suffered a lot due to ban imposed on construction activity for 2-3 months around Diwali in 2019 by National Green Tribunal, New Delhi.
- 2.9. The Regulatory Authority (Respondent No.1) has chosen to cancel the RERA registration of the appellant company instead of imposing penalty as provided under the provisions of Act, 2016. The Regulatory Authority has failed to appreciate the fact that appellant company is ready to adjust delayed interest of allottees in future payments. It is further emphasized that Section 7 of the Act under which show-cause notice was given by the Regulatory Authority has never been adopted by State of UP and this is apparent from the show-cause notice dated 08.03.2019 issued by Regulatory Authority itself. The impugned order fails to consider explanation tendered by

the appellant dated 04.04.2019 and supplementary reply of the appellant as per direction of the Regulatory Authority dated 03.05.2019.

- 2.10. The Regulatory Authority failed to consider that dispute with regard to the title of land on which Project of appellant is standing, is under active consideration of Hon'ble Allahabad High court.
- 2.11. The impugned order is "nonest" as it has been passed in the absence of jurisdiction. The Secretary of Regulatory Authority was not the competent authority to pass the impugned order.
- 2.12. While passing the impugned order respondent authority has failed to consider the past history and reputation of the promoter and the fact that promoter has completed various Projects and has a sound financial status.
- 2.13. Learned counsel for the appellant submitted that in view of the facts and grounds as set up in the memo of appeal, the impugned order dated 07.12.2019 passed by the Secretary, U.P. Real Estate Regulatory Authority, Gautam Budh Nagar, whereby he has cancelled the UP RERA Registration No. UP RERA PRJ 2873 of the appellant company be set aside, and pass such orders or further order as Tribunal may deem fit and proper in the facts and circumstances of the present case.
3. The summary of reply of the respondent no. 1, the Regulatory Authority is as follows:
 - 3.1 It is submitted by the respondent that the order dated 07.12.2019 passed by the Regulatory Authority is perfectly just, legal and equitable as well as is in line with the provisions of the Act of 2016.

Further the order dated 07.12.2019 has been passed by Regulatory Authority and not by the Secretary, Regulatory Authority as is tried to be portrayed by the appellant. The order dated 07.12.2019 is expression of the decision taken by Regulatory Authority communicated to the appellant by the Secretary of respondent no. 1. It is stated in the order dated 07.12.2019 itself that “*pradhikaran dwara baithak mein sampurn vastu sthiti par samyak vicharuprant nimnvat nishkarsh grahan kiya gaya “uparyukt vivechana tatha nishkarshon ke drishtigat pradhikaran dwara nimnvat aadesh parit kiya gaya.”* (The decision was taken in the meeting of Regulatory Authority after detailed and appropriate discussion and order was passed considering all the facts and circumstances of the case).

- 3.2. Thus, the expression given by the appellant is highly misplaced and there is no illegality or irregularities in the impugned order dated 07.12.2019. The appellant company has not approached this Hon’ble Tribunal with clean hands and certain very vital documents are not placed before this Tribunal, specially the order dated 11.07.2019 sent by respondent no. 1 has not been brought on record. The letter of the appellant dated 25.11.2019 addressed to Chairman of Respondent No. 1, whereby it had expressed its inability to complete the Project within time has neither been discussed in the appeal nor the same has been filed as Annexure in the appeal. It has further been stated that each and every aspect of the matter, including the replies submitted by the appellant had been taken into consideration while passing the impugned order dated 07.12.2019.
- 3.3. It is submitted that the decision dated 07.12.2019 is in line with Section 7 of the Act of 2016 which empowers the Regulatory

Authority to revoke the registration, on being satisfied over the issues mentioned in Section 7. The revocation of registration is done in the instant case taking into consideration the existence of extreme compelling circumstances. It is further stated that the inter-se dispute between the appellant and its associates has nothing to do with the instant issue/dispute, in as much as the appellant has committed grave and serious defaults towards the compliance of Act of 2016 and the rules made there under.

- 3.4. The appellant had declared 11.07.2022 as date of completion of Project on the website of RERA and the same was accepted by the Regulatory Authority. However, the promoter was under obligation to discharge its responsibilities under sections 4 and 11 of the Act of 2016 read with Rules 3 and 4 of the U.P. Real Estate (Regulation and Development) Rules, 2016 (hereinafter referred to as 'Rules 2016'). Further as per Section 4 (2) of the Act it is mandatory for the promoter to enclose the specified documents along with the application for registration of the Project as referred under section 4(1) the Act of 2016. It is also duty of the promoter/appellant to strictly abide by the provisions of the Act and the Rules in this regard and in case the promoter defaults in complying with the said provisions, the registration of the Project under question is liable to be revoked as per the provisions of section 7(1) of the Act of 2016.
- 3.5. The promoter was time and again directed through various letters, directions and orders including general direction dated 07.05.2018, 06.07.2018 & 27.11.2018 and specific orders/letters to M/s Mist Direct Sales Pvt. Ltd. (the appellant) on 26.06.2018, 10.07.2018 & 14.12.2018 by the Regulatory Authority (Respondent No. 1) to edit

and update the details regarding its Project and also to update the quarterly reports of the Project on the web portal of the Regulatory Authority (Respondent No.1). It is further submitted that the promoter had violated the provisions of the Act and Rules and there were sufficient grounds to revoke the registration of the Project as per the provisions of Section 7 of the Act. The promoter is bound by the terms and conditions of the agreement executed and entered into by it with the allottees. The date of completion of Project declared by it in Regulatory Authority do not rewrite the Clause of completion or handing over the possession in agreement for sale as laid down by Hon'ble Bombay High court vide its judgment dated 06.12.2017 in Writ Petition No. 2737/2017 (Neelkamal Realtors Suburban Pvt. Ltd. And Anr. Vs. Union of India Ors.).

- 3.6. The agreement executed between one complainant Shri Harish Arora and the promoter wherein the promised date of handing over the possession with grace period of 12 months was 12.08.2017. The Regulatory Authority while passing the order dated 07.12.2019 had to keep in mind such breaches of trust by the promoter.
- 3.7. The Respondent No.1 has further stated that taking note of assurance given by the appellant through letter dated 04.04.2019 submitted on 08.04.2019 and representations made before the officials of Regulatory Authority on 03.05.2019, 17.05.2019 & 20.05.2019, the Regulatory Authority vide its order dated 11.07.2019 kept the final decision on show cause notice dated 08.03.2019 on hold for a period of four months, keeping in view the interest of allottees in mind as provided under Section 7(3) of the Act. However, the appellant belied all the confidence reposed in it

and did not abide by any of the terms and conditions and directions of the Regulatory Authority as specified in order dated 11-7-2019.

3.8. The promoter/appellant through its undated letter apparently received on 25.11.2019, also informed the Regulatory Authority that due to defective title of the land given by NOIDA authority, they are facing difficulty in raising funds. In this regard, they have approached the Hon'ble Allahabad High Court against NOIDA Authority and filed Writ Petition No. 15503/2019, Greater Noida Authority has also been made party in the writ petition and Hon'ble Allahabad High Court issued notices to NOIDA and Greater Noida Authority. The Promoter/appellant has requested the Regulatory Authority (Respondent No. 1) to intervene in the matter and push NOIDA Authority to resolve the matter as the completion of Project is getting hampered, and if this matter remains unresolved, the completion of Project will further get delayed. The learned counsel for the Respondent No. 1 emphasized that the interest of investors was also getting jeopardized and looking into the progress of the project and its conduct, the appellant could not be legally trusted to complete the Project within the stipulated time period.

3.9. The applicant had undertaken to complete the Project by 31.03.2020 vide letter dated 04.04.2019 (submitted on 08.04.2019) and also in the meeting presided by Conciliator of Regulatory Authority on 09.09.2019, but the assurance of the appellant through various representations were contrary to actual ground realities relating to mobilization of finances and other resources and the work having actually been stopped at the site as clarified in the report of the Conciliation Consultant of Regulatory Authority (Respondent

No.1), whereas the appellant committed that it will complete and develop Phase-1 of the Project by March, 2020 with grace period of six months. Now appellant is trying to escape from its liability by taking shelter of its own dispute with other entities. The Project was launched in the year 2012 but the progress of the Project is abysmal. The work is at standstill therefore in the interest of allottees, Regulatory Authority (Respondent No. 1) was left with no option except to revoke the registration of the Project.

3.10. The promoter/appellant was given following directions during the meeting with officials of Regulatory Authority (Respondent No. 1) on 03.05.2019:

- (i) Promoter should contact NOIDA Authority for resolution of the land issues.
- (ii) To make available the financial details including the amount received from the sold units as well as from other sources.
- (iii) To make available the statement of expenditure comprising the amount spent on construction and amount paid to NOIDA Authority.
- (iv) To submit a detailed time bound action plan including arrangement of funds to complete the Project.

3.11. The Promoter/appellant through its supplementary undated reply addressed to the Chairman of Respondent No. 1 referring the meeting dated 10.05.2019, informed that the estimated cost to complete the Project is Rupees 373.83 crores against which it has spent Rupees 157.9 crores and it would arrange finances from banks financial institutions and after resolution of land title issues, it will arrange Rupees 45 crores by selling off its Plot in New Delhi and it will arrange finances by mobilisation of some other properties. The promoter also promised to invest Rupees 3 crores in the Project

immediately on 20.05.2019 and Rupees 165 crores from the sale proceeds of Plot number 2 Sector 143-B, NOIDA (U.P.) owned by its subsidiary company M/s Dhoom Khetu Builders and Developers Private Limited. The Regulatory Authority after considering the explanation and assurances of appellant kept final decision on notice dated 08.03.2019 on hold up to November 11, 2019. It is submitted that the promoter did not keep all the promises and consequently the Regulatory Authority had to de-register the Project.

4. The New Okhla Industrial Development Authority (in short "NOIDA") was also made respondent number 2 in the appeal. NOIDA submitted its reply/objection to the appeal which is summarized as below:-

- 4.1. NOIDA (Respondent No. 2) in its reply stated that order dated 07.12.2019 passed by the Respondent No. 1 is in accordance with law, hence it does not require any interference by this Hon'ble Tribunal. It is further submitted that NOIDA has allotted Plot number 3 in Sector 144 (NOIDA) measuring one lakh square metre on 28.03.2008 to M/s Anand Infoedge Private Limited for establishing of IT park. Subsequently, on the request of M/S Anand Infoedge Private Limited, in place of aforesaid Plot number 3 Sector 144 (NOIDA), another Plot number 1 Sector 143 (NOIDA) measuring 1,02,875.00 sq. mtr. was allotted on 05.04.2008 in favour of M/S Anand Infoedge private limited. According to site plan of Plot number 1 of Sector 143 (NOIDA) the actual area of Plot was 1,00,980 square metre instead of 1,02,875.00 sq. mtr and M/s

Anand Infoedge private limited was informed accordingly on 21.08.2008. The lease deed was executed in favour of allottee M/s Anand Infoedge Pvt. Ltd. on 21.08.2008 and the possession of the Plot was handed over on 29.08.2008. The Sector 143 (NOIDA) was renamed as Sector 143-B (NOIDA) and accordingly a correction deed was executed on 18.11.2013.

- 4.2. M/s Anand Infoedge private limited constituted the company in the name of M/S Mist Direct Sales private limited without the consent and permission of the NOIDA and in violation of the terms and conditions agreed between the parties as envisaged in the lease deed and other general condition of the lease. M/s Anand Infoedge private limited had also not taken permission/consent from NOIDA for executing collaboration with M/s Mist Direct Sales Private Limited. Thus, M/s Anand Infoedge Private Limited has flouted the terms and conditions as agreed between the parties. Several allottees have also made complaint in NOIDA in respect of the Project on which the NOIDA has asked M/s Anand Infoedge private limited repeatedly to solve the problem of allottees. M/S Anand Infoedge private limited approached Hon'ble Allahabad High court vide Writ Petition No. 15503/2019 which is still pending and has also filed an O.S. No. 662/2017 in the court of learned Civil Judge, Gautam Budh Nagar, wherein the Court has directed to maintain the status quo.
- 4.3. NOIDA (Respondent No. 2) has also submitted that a sum of Rs.136,04,36,128.00 was due on M/s Anand Infoedge private limited against Plot number 1 Sector 143-B (NOIDA) till 31.01.2020. The details of the dues are as follows:-

<i>Amount of due EMI (IV to XIII)</i>	<i>Rs. 49,76,95,070/-</i>
<i>Simple interest on EMIs</i>	<i>Rs. 15,05,52,765/-</i>
<i>Penal interest on EMIs</i>	<i>Rs. 56,44,77,881/-</i>
<i>Lease Rent (21.08.2013 to 2019/2000)</i>	<i>Rs. 10,19,20,200/-</i>
<i>Penal interest on lease rent</i>	<i>Rs. 4,57,90,412/-</i>

Apart from the above amount, a sum of Rs. 10,31,22,656/- is also due towards time extension charges. According to terms and condition of lease deed, the construction was to be completed within 5 years failing which allottee was liable to pay 4% p.a. of land premium. In the instant matter 5 years have passed, hence the appellant is liable to pay extension charges w.e.f. 23.09.2015 to 28.09.2020 which comes to Rs. 10,31,22,656/-.

- 4.4. NOIDA Authority further stated that in view of aforesaid fact, it is evident that appellant is not entitled for any relief. The appeal is misconceived and deserves to be dismissed with cost.
5. Learned counsel for intervener on behalf of Festival City Welfare Association also stated that the execution of the collaboration agreement by M/s Anand Infoedge Pvt. Ltd with both the companies i.e. Mist Avenue Pvt. Ltd. and M/s Mist Direct Sales Pvt. Ltd. and the transaction so effectuated in pursuance there to are capricious to the covenant of the lease deed dated 21.08.2008 as reading down of the Collaboration Agreement dated 27.07.2017 would suggest that no prior written consent was obtained from the NOIDA Authority before parting with the development and marketing rights of real estate Project to both the companies and by falsely misrepresenting the allottees, the money was collected by collaborating companies.

Even M/s Anand Infoedge Pvt. Ltd., the allottee/lessee/owner of land on which the Project is being developed ought to have been the party to the Builders Buyers Agreement (BBA). The application for registration of Project with the Regulatory Authority also ought to have been made by M/s Anand Infoedge Pvt. Ltd. being original lessee of the land.

- 5.1. It is further stated that at the time of registration an affidavit-cum-declaration of Mr. Aman Bhalla, duly authorized by the Promoter of the proposed Project vide authorisation dated 22.07.2017 was given, which states that the said land is free from all encumbrances and M/s Anand Infoedge Private Limited has legal title to the land on which the development of the proposed Project is carried out. Therefore in view of the undertaking given by Mr. Aman Bhalla the aforesaid land should have been free from all encumbrances and M/s Anand Infoedge private limited should have legal title on the land and agreement between the owner and promoter for development of the said Project should have been authenticated and valid.
6. The appellant through its rejoinder to the objection of NOIDA (Respondent No. 2) dated 11.08.2019 submitted that NOIDA leased out the land to the appellant which does not belong to it as much as title of the appellant on the land is defective and due to defective title of land and appellant was unable to procure financial assistance and faced a stiff resistance in advancement of the Project. The greater NOIDA authority has also been arrayed as respondent no. 2 in the Writ Petition no. 15509 of 2019 which is pending before the Hon'ble Allahabad High court and O.S. No. 662 of 2017 was also filed by

M/s Anand Infoedge Private Limited against NOIDA in which injunction order was passed by Civil Judge (senior division), Gautam Budh Nagar in favour of M/s Anand Infoedge Private Limited.

- 6.1. It is further stated that there is no requirement of taking any permission from NOIDA for executing collaboration agreement with M/s Mist Direct Sales Private Limited and more so from an entity which itself has no authority over leasehold land. NOIDA Authority had not taken any step to clear the dispute with regard to defective title of lease of land and found it convenient to appraise the Regulatory Authority that some allottees had approached it with a complaint with regard to the Project not being completed. This reflects the attitude of NOIDA of blowing hot and cold together and it is a kind of insensitivity towards investor and apathy to their plight.
- 6.2. The appellant also submitted that it is surprising to note that even while admitting the fact that NOIDA leased out a land of defective title to the appellant and the NOIDA still insisted to clear its so-called dues outstanding against the leasehold land without resolving the issue of defective title on its end.
7. The appellant through rejoinder dated 11.08.2020 to the objection filed by the U.P. RERA (Respondent No. 1) submitted that the impugned order dated 07.12.2019 is prima facie illegal as it is not stated in the order that the order has been passed by Regulatory Authority as constituted under Section 21 of Act of 2016. There is no provision of law whereby Secretary, U.P. RERA has been given the authority to sign on behalf of RERA Authority comprising of

Chairperson and two whole time Members. While passing the impugned order the authority was required to consider the provision of Section 7 of the Act in letter and spirit in view of the fact of the present case. The so called compelling circumstances, based upon which the impugned order was passed, are totally absent.

- 7.1. The appellant further stated that M/s Mist Avenue Private limited had withdrawn from the Collaboration Agreement entered into with M/s Anand Infoedge private limited due to the defective title of the land and claims there on by the private individuals & society. The stand of appellant in its letter dated 25.11.2019 only reflects the honesty and transparency on the part of the appellant who in view of the altered circumstances was not intending to give any false assurance about the date of completion of Project. The U.P. RERA (Respondent No. 1) was compelling the appellant to curtail the date of completion of Project from July 2022 to March 2020, otherwise in the given facts and circumstances of the case there was no occasion for the appellant to have a shorter deadline when the dispute with regard to the title of land was still at the forefront. The Hon'ble Allahabad High court has called upon the development authority i.e. NOIDA and Greater NOIDA Authorities to sit with the stakeholders and sort out the dispute and in pursuance to the oral direction of Hon'ble Allahabad High Court, the appellant has had several meetings with the development authorities wherein private society (seeking claim of leasehold land of the appellant) has also participated and deliberations have been held in the month of January, February and March 2020. Substantial progress has been made and efforts are

underway at the end of NOIDA to reach out an amicable solution and expected to settle within next four to six months.

8. We have examined the submissions of learned counsels of the parties, including learned counsels appearing on behalf of the intervener, the association of allottees and perused the record of RERA (Respondent No. 1) with respect to the registration of the Project of the appellant company and the record of subsequent compliance by the appellant with respect to various provisions of the Act of 2016 and Rules of 2016 and de-registration of the Project.

ISSUES RAISED BY THE LEARNED COUNSEL FOR THE APPELLANT

9. In the memo of appeal various grounds have been raised, but Shri Amarjeet Singh Rakhra, learned counsel for the appellant, during the course of hearing after taking us to the various paragraphs and documents enclosed with the memo of appeal, confined his whole argument for assailing the impugned order, principally on the following three grounds:
 - (i) The impugned order is nonest as it has been passed in the absence of jurisdiction by the Secretary of Regulatory Authority.
 - (ii) The Regulatory Authority ought to have given the benefit to the appellant due to the delay caused on account of the dispute of title of the Project land with NOIDA.
 - (iii) The revocation of registration was unwarranted, unreasoned and an extreme order, whereas the Regulatory Authority should have exercised powers taking into consideration the provisions of Section 7(3) of the Act of 2016.

10. We deem it proper to cull out the facts on the basis of documents annexed with the memo of appeal along with the objections of the respondents and the records produced by Respondent No. 1, before examining the issues/questions raised by the learned counsel for the appellant while challenging the impugned order passed by the Regulatory Authority, revoking the registration of the Project in question for proper appreciation of the issue involved in the present proceedings.

TITLE OF THE LAND OF THE PROJECT AND LEGAL STATUS OF PROMOTER/APPELLANT COMPANY.

11. M/s Anand Infoedge Private Limited which owns leasehold rights for Plot no. 1 Sector 143-B of NOIDA measuring 100980 square metres, allotted for the purpose of construction and setting up of IT Park vide allotment letter no. NOIDA/INSTT./2008/2260 dated 28.03.2008 and lease deed dated 21.08.2008 executed between the NOIDA and M/s Anand Infoedge Private Limited, through its director Mr. Ritesh Gupta son of Shri Suraj Gupta. Later on 26.10.2012, M/s Anand Infoedge Pvt. Ltd. has got the sanction letter from NOIDA for construction of institutional building on Plot no. 1 Sector 143-B, NOIDA.
12. The sanction was valid for five years and as per condition no. 19 of the sanction letter no. NOIDA/Mu. Va. Ni./V-743/103 dated 26.10.2012, it was stipulated that “allottee shall use 10% of FAR for residence of its regular employees and officers”.
13. The owner, M/s Anand Infoedge Private Limited, entered into a Collaboration Agreement on 28.07.2014 having retrospective effect

from 26.10.2012 with M/s Mist Avenue Pvt. Ltd. and later on 27.07.2017 after certain dispute with M/s Mist Avenue Pvt. Ltd. the owner simultaneously entered into one more Collaboration Agreement with M/s Mist Direct Sales Pvt. Ltd. and cancelled the earlier Collaboration Agreement.

14. We have also examined the records of registration of the appellant/promoter company with the Regulatory Authority regarding title of the land of the Project. The records indicate that at the time of registration of lease deed M/s Anand Infoedge private limited had claimed exemption of stamp duty, as per Clause 7 and 8 of lease deed:-

“The Government of U.P. vide G.O. No. KnO5-305/11-2005-500(136)2003 Dt. 19.01.2005, 3014/76-6-05/500(40)/2000 dated 19.12.2005, and 2168/78-2-2005/46 IT/2005 dated 30.12.2005 and as amended vide G.O. No. 702/77-6-07-15M-05 dt. 28.06.07 under the Industrial and Services Sector Investment Policy 2004 has granted exemption from payment of Stamp Duty and Registration Charges payable on execution of lease of land inter alia for setting up IT & ITES subject to compliance of the norms and standards set up by the concern department of Govt. of U.P. dealing with the Project of IT & Electronics;

The Department of IT & Electronics, Government of U.P., has issued on order No. KNO5—305/11-2005-500(136)2003 Dt. 19.01.2005, 3014/76-6-05/500(40)/2000 dt. 19.12.05 & 2168/78-2-05/46 IT/2005 dted 30.12.05 and as amended vide GO. No. 702/77-6.07-15M-05 dt. 28.06.07 and fixed the norms and standards for claiming exemption of Stamp Duty.”

15. As per Clause 11 of the lease-deed, M/S Anand Infoedge Pvt. Ltd. was given five years time to complete the construction and obtain occupancy certificate from the NOIDA within five years from the actual date of possession. The actual date of possession as per NOIDA Authority statement is 29.08.2008, which is not denied by the appellant.
16. As per Clause 14 of lease-deed, the lessee shall not be permitted to transfer the demised Plot before making the unit functional and building constructed thereupon. However, at the discretion of CEO the transfer may be permitted after making the unit functional and building constructed thereupon and laying transfer charges as prevailing at that time of transfer such transfer charges shall be paid to the lessor. The decision of Chairman/Chief Executive Officer for all purpose will be final and binding on the lessee. The lessee may be permitted to sub-lease the part built up space for the same Project in case of IT/ITES allotment of 20000 sq. mtr. or above after making the unit functional and completion of minimum of 75% of total permissible FAR subject to payment of prevailing pro-rata transfer charges and prior approval of lessor.
17. Further as per Clause 15 of the lease deed, the lessee may, with the previous permission of CEO mortgage the demised plot to any Government Organization or any Government recognized Institution for raising loans for purposes of construction of the building/functioning of the institution subject to such charges & terms and conditions as decided by the lessor at the time of granting the permission, the first charges shall be of the lessor on the property

and the lessee shall not be allowed to be rented out the allotted premises or any part thereof. The Plot cannot be transferred before making the unit functional and all such action done for transfer of the Plot will be deemed as null and void ab-initio.

18. As per Clauses 17 & 18 of the lease deed, the lessee shall use the demised Plot only for the construction for the I.T. Park according to the plan approved by the lessor and in accordance with the building regulations and directions formulated under the provisions of U.P. Industrial Area Development Act, 1976 and for no other purpose without the consent of the lessor and subject to such terms & conditions as the lessor may impose and the lessee will not do or suffer to be done on demised Plot or any part thereof anything which may create a nuisance, damage or cause annoyance or inconvenience to the lessor or the owner or occupier of the Plot in the neighborhood provided that the part of the building so constructed may be used by the lessee for the normal watch and ward staff, however that such accommodation shall be commensurate with need. The lessee will not assign, relinquish, sublet, transfer or part with the possession of any portion of the demised Plot and building thereon or cause any sub division thereof. The lessee will have in-house vehicle parking within the premises.
19. In terms of Clauses 19 & 20 of the lease deed, if permission is granted by the lessor for transfer, assignment, mortgage or subletting of the whole of the demised plot or building or both shall be subject to and the transferee, assignee or the sub lessee shall be bounded all covenants and conditions herein contained and be answerable to the

lessor in all respect thereof, and lessee or transferee or permitted assignee shall not relinquish, mortgage, sublet or transfer the demised Plot and building thereon without prior and written permission of the lessor and it will deliver at its own expense to the lessor or at the lessor's officer attested copy of the assignment, relinquishment, mortgage sub letting or transfer deed together with notice thereof within a month after the same shall have been duly registered under the Indian Registration Act or any other law relating to the such registration and for the time being in force.

20. Clause 21 of the lease deed provides that the lessee of 5 acres or more than 5 acres of land for establishing STP/IT Park would be allowed to use 10% area of total FAR for institutional facilities and rest 90% be allowed for usage of IT/ITES services. The lessee of STP/IT parks where the area is 10 acres and investment proposed is more than Rs. 50 Crores, in such cases 10% of FAR would be permitted for residential use of regular employees and officers of unit/organization along with regular allied services, guest house/Hostel watchward and staff quarters for chowkidars and peons subject to the condition that the institutional and residential facilities should not exceed more than 15% of FAR and rest 85% FAR would be primarily used for IT/ITES services. The lessee of 20 acres of above, in such proposals 75% area of total FAR would be permitted for IT/ITES and rest 25% would be permitted for Institutional Facilities/Residential/Commercial with the condition that not more than 10% of total FAR would be permitted for

residential use, and commercial use also would not be permitted more than 10% of total FAR.

21. As per Clause 24 of the lease deed if the lessee of IT/ITES usage set up IT/STP Park in their premises then in that event multiple renting may be permitted on payment of 10% of current premium for Ten Years. Number of tenants would be as per approval letter of STP/IT Park issued by Central Govt.
22. As per Clause 28 of the lease deed, the lessee shall complete the Project within stipulated period as mentioned in Clause No. 11 of the lease deed. In case the lessee fails to comply with the terms and condition of allotment letter, lease deed brochure or not make the Project functional within stipulated period as mentioned in Clause 9 to 11 of lease deed, action shall be taken as per rules and regulations of the Authority regarding cancellation.
23. It is further evident from the copy of lease deed that M/s Anand Infoedge private limited has paid stamp duty of Rs. 6,00,61,000/- on 05.06.2013 due to non implementation of the Project as per stamp duty exemption policy of the government.
24. M/s Anand Infoedge private limited had entered into collaboration agreement with M/s Mist Avenue private limited for development and construction on Plot no. 1 Sector 143-B (NOIDA) where M/s Anand Infoedge private limited was owner and M/s Mist Avenue private limited was developer. The agreement was entered into on 28th July 2014, however, it is mentioned in the agreement that the agreement is effective retrospectively from 26.10.2012. It is further

mentioned in the collaboration agreement annexed at page 30 of appeal that owner desired to develop the said land by constructing the building thereon for residential, commercial and software technology/non- technology purposes.

25. The said agreement at page 34 of appeal also describes revenue sharing ratio of owner and developer as 15% and 85% respectively. The said agreement was not even registered and there is no evidence on record which shows registration of this agreement or permission by NOIDA authority to enter into this agreement. Entering into this agreement without proper permission and registration is violation of terms and condition of lease deed executed between M/s Anand Infoedge private limited and NOIDA. The appellant accepted in para 5.5 of the appeal that due to dispute between the erstwhile developer (M/s Mist Avenue private limited) and M/s Anand Infoedge private limited, the above said collaboration agreement was cancelled and development rights were given to M/s Mist Direct Sales private limited, which is a subsidiary company of M/s Anand Infoedge private limited. The cancellation deed was executed on 27 July 2017 between M/s Anand Infoedge private limited and M/s Mist Avenue private limited and on the same day new collaboration agreement was signed between M/s Anand Infoedge private limited and M/s Mist Direct Sales private limited (the appellant). In new collaboration agreement M/s Mist Avenue Pvt. Ltd. was also a confirming party.

26. We could not find on record any evidence of informing of the above agreements to the NOIDA authority and details of registration of the agreement as well as permission from NOIDA as per various Clauses of lease deed (Clauses 14, 15, 17, 18, 19, 20, 21 etc.), before or after execution of above agreements on the basis of collaboration agreement entered on 27.07.2017 between M/s Mist Direct Sales private limited (the appellant) and M/s Anand Infoedge private limited. M/s Mist Direct Sales Private Limited (the appellant) registered the Project festival City Phase, 1, 2 and 3 with Regulatory Authority on 01.08.2017. The permission of changing the Promoter/Developer was also not obtained from the allottees as required under Section 15 of the Act. However, from the very beginning of Registration with Regulatory Authority, M/s Mist Direct Sales Pvt. Ltd. was presented as promoter. There is no mention of land owner M/s Anand Infoedge Pvt. Ltd. as Promoter in the Registration Record of the Project "Festival City Phase-I" with the Regulatory Authority.
27. We also perused Form-B as per Rule 3(4) of the Rules 2016. The affidavit-cum-declaration was signed by Mr. Aman Bhalla who claimed himself to have been the authorized by the Promoter of the proposed Project. The affidavit-cum-declaration states that M/s Anand Infoedge Private Limited has a legal title to the land on which the development is to be carried out and also claimed to have a legally valid authentication of the title of such land. A copy of the

agreement between such owner and the Promoter for development of the Real Estate Project was also annexed therewith.

28. On the basis of records it seems that the Company M/S Mist Direct Sales Private Limited (the appellant), which is claiming itself to be the Promoter of the Project, has no valid title of the land or any authentic agreement with owner of the land on the date of registration of the said Project with the Regulatory Authority. Moreover, Plot no. 1, Sector 143-B, NOIDA on which the Project in question is situated was allotted to M/S Anand Infoedge Private Limited for establishment of I.T. Park. As per Clause 14(a) and 14(b) of the lease deed, executed between M/S Anand Infoedge Private Limited and the NOIDA dated 21.08.2008, the above mentioned Plot was not permitted to be transferred to any one before making the unit functional and the building constructed thereupon. However, on the discretion of the CEO of the NOIDA the transfer could have been permitted only after making the unit functional and the building constructed thereupon. The lessee M/S Anand Infoedge Private Limited could be permitted to sub-lease the part built up space for the same Project in case of I.T./I.T.E.S. allotment of 20000 sq. mtrs. or above after making the unit functional and completion of minimum 75% of total permissible FAR subject to payment of prevailing pro rata transfer charges and prior approval of lessor i.e. NOIDA. As per Clause 18 of the lease deed, the lessee was not allowed to assign, relinquish, sub-let or part with possession of any portion of the said Plot No. 1 of Sector 143-B of NOIDA or cause any sub-division thereof. As per Clause 20 of lease deed, the lessee

or transfer or permitted assignee, relinquish, mortgage, sublet or transfer the demised plot and building thereon as whole the said terms after prior and written permission of the lessor and it will deliver at its own expense to the lessor or at the lessor's officer attested copy of the assignment, relinquishment, mortgage subletting or transfer deed together with notice thereof within a month after the same shall have been duly registered under the Indian Registration Act or any other law relating to the such registration and or the time being in force. Entering into Collaboration Agreement with developers is assignment of lease hold rights which require written permission from NOIDA (lessor) and registration of Collaboration Agreement. As per Clause 21 of the lease deed the lessee i.e. M/s Anand Infoedge Private Limited was allowed to use 25% area of the total FAR for institutional facilities/residential/commercial use with the condition that not more than 10% of total FAR would be permitted for residential/commercial use.

29. As per Clause 27(B) of the lease deed, if the lessee does not abide by the terms and conditions of the Lease deed and the byelaws or any other rules framed or direction issued by the lessor then the lease may be cancelled by the lessor and the possession of the demised premises may be taken over by the lessor followed by forfeiture of deposits as per prevailing policy.
30. In the reply dated 24.07.2018 filed by the NOIDA in the Court of Civil Judge (Senior Division),Gautam Budh Nagar, in Original Suit No. 662/2017 (attached from page no. 277 to 300 of the appeal) the

NOIDA stated that M/S Anand Infoedge Private Limited (plaintiff in the suit) issued advertisement for marketing of the residential premises after sanctioning of the building plan by the NOIDA, which it proposed to construct on the land in question within the permissible limit of 10% of the floor area. The NOIDA further stated that M/s Anand Infoedge Private Limited illegally published the said advertisement for sale of units. As per terms and conditions of the allotment, the lease deed and sanctioned letter dated 26.10.2012, and also as per the provisions of building regulations, the above mentioned Plot is to be used specifically for I.T. purposes. In order to sustain the feasibility of the Project, 10% of total FAR is permitted for use of residential purposes. FAR permissible for residential purposes is to be used exclusively for regular staff/employees of the institute/company and can be used as hostel or guest house, etc. As per terms and conditions of the lease deed, M/s Anand Infoedge Private Limited cannot sell these residential properties to individuals for their residential/personal/or any other use. M/S Anand Infoedge Private Limited vide its letter dated 23.10.2015 and 11.12.2015 pleaded before the NOIDA to permit it to sell residential and commercial units equal to 25% of FAR in respect of Plot No.1, Sector 143-B, NOIDA. In this respect NOIDA stated that in 188th Board Meeting held on 14.03.2016 the matter pertaining to sale of residential and commercial units to individuals in respect of IT/ITES Plots having area of more than 20 acres was considered and 25% units were permitted to be sold with certain conditions and M/S Anand Infoedge Private Limited was informed vide letter of NOIDA dated 02.06.2016 about sale of residential and

commercial units to individuals subject to opening the Escrow Account (commercial account) jointly with NOIDA in respect of the subject in question. However, the condition of Escrow Account was challenged before the Hon'ble Allahabad High Court in Writ Petition (PIL) No. 31444 of 2016 (Shallesh Vs. Government of U.P. and others). In the said Writ Petition it was submitted by the NOIDA that it never permitted M/s Anand Infoedge Private Limited to sell residential and commercial units to individuals, rather it had informed about certain conditions which were to be complied in pursuance to 188th Board Meeting of NOIDA, and all the decisions were put on hold on account of the pendency of the PIL before the Hon'ble Allahabad High Court. M/s Anand Infoedge Private Limited obtained possession of the Plot 1 Sector 143-B on 29.08.2008. The building plan was sanctioned by the NOIDA on 26.10.2012. Despite providing sufficient opportunity, M/S Anand Infoedge Private Limited failed to complete construction within approved time frame. As per letter of Revenue Department dated 21.11.2017, the total area of demised Plot is 13.0636 hectare whereas total acquired and possessive land is 9.0927 hectare out of 13.0636 hectare. An area of 0.8253 hectare was recorded in the revenue records in the name of Gram Sabha and the same area has been pending for its re-acquisition with the State Government since 14.03.2007. It was further revealed from the said letter of Revenue Department that an area of 3.1356 hectare was recorded in the revenue record in the name of Greater NOIDA through Sri Alok Nath, Dy. Manager and Sale Agreement in respect of land of Greater NOIDA was executed on 19.01.2016. Since un-acquired Khasra

Nos. 826, 877, 822 and 888 of Village Shahadara which forms part and parcel of land allotted to M/s Anand Infoedge Pvt. Ltd. NOIDA vide its letter dated 05.10.2018 requested Greater Noida Authority to provide status about these Khasras of village-Shahadara. The Greater Noida Authority vide its letter dated 16.02.2018 informed to NOIDA to deposit Rs. 21.51 crores towards compensation to be given to State and Central Employees Housing Development Samiti Ltd. in lieu of land in question forming un-acquired khasra nos. 826, 877, 822 and 888 of Village Shahadara. The NOIDA is in process to verifying the said claim from Revenue Department.

31. Now, we examine whether M/s Anand Infoedge Pvt. Ltd. ought to become promoter of the Project and the applicant is a promoter or not, as per the provisions of the Act. Section 2(zk) of the Act defines “Promoter”, the same is extracted below :-

Section 2(zk)

"promoter" means ---

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a Project, whether or not the person also constructs structures on any of the Plots, for the purpose of selling to other persons all or some of the Plots in the said Project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or Plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or Plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.-- For the purposes of this Clause, where the person who constructs or converts a building into apartments or develops a Plot for sale and the persons who sells apartments or Plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made there under.

From the above definition, it is clear that if the land owner and the developer are different persons, both of them are deemed to be the promoters and are jointly liable for the functions and responsibilities under Act of 2016.

From an examination of the Development/Collaboration Agreement dated 27.07.2017, we find that owner of the land M/s. Anand Infoedge Pvt. Ltd. and developer M/s. Mist Direct Sales Pvt. Ltd. have entered into a Collaboration Agreement with Clauses for sharing the sale proceeds in a ratio of 15:85. As per Clause no. 1.9 of Collaboration Agreement dated 27.07.2017, there is a mention of General Power of Attorney (GPA) in favour of Developer, but no such GPA is available on record. The sub-lease of the said Project can only be executed with the permission and consent of NOIDA subject to all the terms and conditions of lease deed. The Sale Deeds/sub-lease deed of the units can only be registered in favour of allottees by the land owner as well as the possession of the units can be handed over by M/s Anand Infoedge Pvt. Ltd. (the lessee of the Project land) and M/s Mist Direct Sales Pvt. Ltd. should also sign the sub-lease deed as “Confirming Party”.

As per the provisions of Section 2(zk) of the Act of 2016, M/s Anand Infoedge Pvt. Ltd. and M/s Mist Direct Sales Pvt. Ltd. both became the promoters of the Project on Plot no. 1 Section 143-B, NOIDA.

Further, the title of the units cannot be transferred to the allottees without the land owner being a signatory to the sub-lease deed and it is for this reason that every page of the Builders Buyers Agreement (BBA) should have been signed by the owner M/s Anand Infoedge Pvt. Ltd. also.

32. It is further evident that M/s Anand Infoedge Private Limited had to pay huge amount of Rs. 146.35 crores up to 31.01.2020 as pending dues payable to NOIDA towards the Project, and till date the amount is not settled. There is a dispute of some portion of the land allotted by the NOIDA to M/s Anand Infoedge Private Limited. However, the allottee, M/S Anand Infoedge Private Limited has taken possession of the land on 29.08.2008. M/s Anand Infoedge Private Ltd. (the lessee) has filed a Writ Petition No. 15503/2019 in the Hon'ble Allahabad High Court for seeking direction against NOIDA to pay an amount of Rs. 21.51 crore or any other charges towards the compensation to be given to State & Central Employees Housing Development Samiti Ltd. in lieu of the acquisition of disputed land and hand over the unencumbered land to the petitioner, as well as an O.S. No. 662/2017 filed in the Court of Civil Judge (Senior Division) Gautam Budh Nagar, for declaration and permanent prohibitory injunction, which are still pending.
33. As per the provisions of Section 17 of the Act of 2016, a promoter is required to execute a registered conveyance deed in favour of the

allottee and hand over the physical possession of the Plot, apartment or building, as the case may be, to the allottees.

34. On the basis of available records submitted by promoters/appellant, it is not clear as to how a conveyance deed will be executed by the appellant/promoter when owner of lease hold land is not party to the builders buyers agreement (BBA). Moreover, in the instant case it will be a sub lease which is to be executed by the lessee, allottee along with the authorized signatory of the lessor (NOIDA), and specially when the project in question has been processed without the permission of the lessor (NOIDA), in violation of the terms of lease deed & sanction letter and further huge dues of the lessor are pending. Also, the owner (lessee) has not complied the terms and conditions of the lease deed, allotment letter, sanction letter, etc. imposed by the lessor i.e. NOIDA.

ANALYSIS OF THE INFORMATION SUBMITTED BY APPELLANT/PROMOTER TO THE REGULATORY AUTHORITY

35. We have perused the records of registration and subsequent records as submitted by M/S Mist Direct Sales Private Limited for the Project of Festival City, Phase-I and found that the Project cost is Rs.495 Crores and original start date is 26.10.2012; proposed start date is 12.01.2015; and proposed completion date is 11.07.2022. The land details for the aforesaid Project in the registration form are blank.
36. As per C. A. Certificate of M/S Borar & Company Chartered Accountant, 202A, Aman Chamber, 41/21-22 Old Rajinder Nagar,

Main Pusa Road, New Delhi 110060 dated 31.07.2018 submitted by the appellant, the total amount received from the allottees till 30.06.2018 was Rs.258.16 Crores and the Company had spent Rs.84.15 Crores which includes Rs. 84.11 Crores for construction and Rs. 0.04 crore for misc. expenditure. The percentage of completion of construction as per Project Engineer, based on construction cost was 17.73% and the percentage of proportionate cost towards completion of the Project incurred on the total estimated cost is 15.81%. The estimated cost of development was shown as Rs.474.53 Crores. The land cost was Rs.57.67 Crores against which “nil” amount was incurred, as per certificate issued by the Chartered Accountant on 31.07.2018. The C.A. Certificate also mentioned that 70% amount to be deposited in designated (escrow) account should have been Rs. 180.71 Crores and cumulative amount that can be withdrawn from the designated account should have been Rs. 84.11 Crores, which is the amount of actual expenditure incurred by the appellant. It is evident from the C.A. Certificate itself that the Company (appellant) had collected Rs.258.16 Crores from the customers and incurred only Rs.84.11 Crores till the date of certificate i.e. July, 2018 submitted with the Regulatory Authority (Respondent No. 1). Therefore, there was a deficit/diversion of funds to the tune of Rs.174 Crores. We could not find any document available in the record of registration submitted by the appellant to justify this deficit/diversion; except that applicant submitted one more Certificate of Architect Engineer and Chartered Accountant in reply to show cause notice of Regulatory Authority (Respondent No. 1) in April, 2019, the certificate given by the Chartered Accountant

(R.N.B. & Co.) dated 25.03.2019 is in respect of Phase-1. As per the said certificate, the land cost was Rs.57.67 Crores and total cost incurred till 15.03.2019 was Rs.158.31 Crores including construction expenditure of Rs. 158.13 crores and misc. expenditure Rs. 0.18 crore and percentage of completion on the basis of total cost incurred and estimated cost was 36.69%. The cost incurred under land column is shown as blank and total cost of Project including land cost was Rs.431.5 Crores. The certificates of Engineers M/s K.S. Agarwal and Associates and Architect M/s A.M.K. Architect were also given. The supporting details and records were not provided by the appellant to the Regulatory Authority.

37. The sanctioned map submitted by the appellant at the time of registration was valid upto 25.12.2017 along with sanction letter in the name of M/S Anand Infoedge Private Limited. There is a revised map sanctioned on 12.01.2015 in the name of M/S Anand Infoedge Private Limited. The sanction letter of revised map does not mention regarding validity of the sanctioned plan. Therefore, it can be assumed that the revised sanctioned plan would have lapsed on 25.12.2017.
38. We could not find any audited balance sheet in the details/reports uploaded by the Promoter/Appellant, from the record provided by the Regulatory Authority. The registration is for three Phases i.e. Phase-1, II & III are 38000 square metre, 21780 sq. mtr. & 41280 sq. mtr. respectively, however, we are concerned with Phase-1 of the Project.

39. M/S Mist Direct Sales Private Limited (appellant) in its reply to show cause notice of Regulatory Authority (Respondent No. 1) dated 08.03.2019 has submitted that M/S Bhasin Group has successfully completed the Project and delivered the possession to the allottees in Grand Venice Mall, Greater NOIDA and out of more than 1000 allottees in the present Project only 19 persons have given their complaints and most of the complaints are related to delay in possession, non-payment of assured return and change of name of complainant. The appellant (M/S Mist Direct Sales Private Limited) in its reply dated 04.04.2019 submitted on 08.04.2019 to the Secretary RERA (para 4) has categorically committed to complete and deliver the Project by March, 2020 with a grace period of 6 months. The appellant has submitted the certificates of Architect, Engineer and Chartered Accountant in respect of Phase-1, Phase-2 and Phase-3 of the Project. In respect of Phase-1 of the Project the appellant claimed that 42.85% work is complete and it has spent Rs.160.22 Crores in the Project. We perused the certificates of the Architect, Engineer and Chartered Accountant in respect of Phase-1 of the Project in question. The certificate of Architect (Studio AMK Architect) dated 20.03.2019 is in respect of Tower-1 and retail block of Phase-1. It states that excavation work is 90% complete; two numbers of basement and plinth are 43% complete; 35 numbers of slabs of super structure are 40% complete; stair cases, lift wells and lobbies at each floor level connecting stair cases and lifts, overhead and underground water tanks are 25% complete. Rest of the work, particularly with respect to internal and external development work had not started.
40. On the basis of record produced/annexed with the pleadings, we have drawn the information in tabular form in order to appreciate the financial and physical progress of the project in question.

Financial information about the Project	
	Amount Rs. In crore

	Total Project Cost	Land Cost	Total Cost of development	Development cost actually incurred by promoter till date of certificate	Land cost actually incurred by promoter till date of certificate	Amount collected from costumer till date of certificate	Amount to be deposited in designated Account	Amount of shortfall not deposited in designated Account	Difference between amount collected & Spent
C.A. certificate (Financial statement) submitted by promoter on 31-07-2018, based on information up to 30-06-2018	532.22	57.67	474.53	84.11 (total cost 84.15 including 0.04 misc.)	0	258.16	180.71, Actual amount deposited only 0.03	96.6	174.05
Engineer's certificate dated 07-07-2018			474.53, 373.65 building, 100.88 for internal & external development & common facilities	84.11					
C.A. certificate dated 25.03.2019, in response to reply to RERA submitted on 08-04-2019 based on information upto 15.03.2019	431.51	57.67	373.65	158.13 (total cost 158.31 including 0.18 misc.)	0	253.91	177.73	19.60	95.78
Engineer's certificate dated 18.03.2019, in response to reply to RERA submitted on 08-04-2019			474.53, 373.65 building, 100.88 for internal & external development & common facilities	158.37					

Physical progress as per Architect's certificate				
	Excavation	2(Two) number of Basement(s) and Plinth	35 number of Slabs of Super Structure	Staircases, Lift Wells and Lobbies at each floor level connecting Staircases and Lifts, Overhead and Underground Water Tanks
M/s Studio AMK Architect's certificate on 31-07-2018	90%	30%	30%	25%
M/s Studio AMK Architect's certificate on 20-03-2019	90%	43%	40%	25%
Progress between 31-07-2018 to 20-03-2019	0%	13%	10%	0%
There was "Nil" progress with respect to other heads of work including internal & external development work.				

41. We analyzed the financial and physical progress figures submitted by the appellant and also perused the earlier certificate given by the same Architect i.e. Studio AMK Architect dated 31.07.2018 and found that only 13% work with respect to two number of basements and plinth was completed and 10% work of 35 number of slabs of super structure was completed after 31.07.2018 and upto 20.03.2019, in terms of physical progress.
42. We also perused the certificate of March, 2019 of Engineers, M/S K.S. Agarwal Associates in respect of tower nos. 1 and 2 and retail block of Phase-1. As per certificate the estimated cost of completion of the Project was Rs.474.53 Crores and the cost incurred upto March 2019, based on actual cost as per record is Rs. 158.31 Crores.
43. If we assume the cost incurred as Rs. 160.22 Crores, the percentage of completion would be 33.76%. As per previous Engineer's (Piyush Kumar Gupta's) Certificate dated 07.07.2018 total expenditure incurred till 30.06.2018 was Rs. 84.11 Crores which is 17.73% of total estimated cost. M/s Anand Infoedge Pvt. Ltd. has also claimed in various representations before NOIDA, & Government of U.P. that it has spent Rs. 200 crores in the Project.
44. From the preceding analysis, it is evident that physical progress versus financial progress submitted through various certificates is not matching and there are differences in the figures produced before the Regulatory Authority (Respondent No. 1). It is also noticeable that the expenses incurred on construction from 2012 to 2018, in about 6 years, are Rs. 84.11 Crores and between July, 2018 to March

2019 (in less than 9 months' time) the additional amount spent on development and construction is Rs.74.02 Crores. Almost 47% of expenditure on the Project was incurred in between July 2018 to March 2019, for which no other supporting documents/details were found on the record except certificates submitted to Regulatory Authority in reply of show-cause notice dated 08.03.2019 submitted by applicant on 08.04.2019 dated 04.04.2019. Supporting documents of the expenditure and audited balance sheet etc. are not available on record.

45. It is evident from the perusal of the record of registration of Phase-1, Phase-2 and Phase-3 that in all the Phases, Bank Account No. 001661900001330 of YES Bank is mentioned in Project Bank details disclosed before the Regulatory Authority at the time of registration. Whereas, Bank Account No. 917020078349181 of Axis Bank Ltd. is mentioned as designated account of the Project as per C.A. Certificate dated 31.07.2018 in respect of Phase-1, Plot no. 1, Sector-143-B, NOIDA and the designated bank account (Escrow Account) number 917020078339524 of Axis Bank is mentioned as per C.A. Certificate dated 25.03.2019 submitted to Regulatory Authority (Respondent No.1) vide letter dated 04.04.2019. Hence, the designated bank accounts are different as per C.A. Certificate for the same Project. The account provided to the Regulatory Authority frozen by the Regulatory Authority through impugned order dated 07.12.2019 is YES Bank Account No. 001661900001330, which is apparently not the designated bank account of the Project. The appellant has also not uploaded REG-5 Form as prescribed by U.P.

RERA Regulations, 2019. Few more details relating to the Project are not mentioned in the registration documents like land details, contractor's name, brief of development work, etc.

46. Quarterly progress reports uploaded by the appellant are not complete and details provided therein are not matching with the certificates and the amount spent by the appellant in the Project. It is further evident that the land owner of Plot no. 1, Sector 143-B, NOIDA, namely, M/S Anand Infoedge Private Limited is not shown as promoter of the Project anywhere in the documents filed for registration.

ANALYSIS OF VIOLATIONS OF THE PROVISIONS OF ACT OF 2016 & RULES OF 2016 AS WELL AS TERMS AND CONDITIONS OF LEASE DEED.

47. There is no record available with respect to written consent of 2/3rd allottees as per the provisions of Section 15(1) of the Act for cancelling collaboration with the erstwhile promoter (M/S Mist Avenue Private Limited) and bringing new promoter, M/S Mist Direct Sales Private Limited. The record regarding the amount received from the customers is also not available from which it can be ascertained as to who has received the money from the customers and how this huge amount of approximately Rs.260 Crores was utilized. It appears that as on 30.06.2018 the amount spent was only about Rs. 84 crores, which has increased to about Rs. 158 Crores upto March 2019.
48. M/s Anand Infoedge Pvt. Ltd. submitted an application to NOIDA for allotment of land for Information Technology Park under the

category of institutional allotment, enclosed as Annexure-2 to the writ petition filed in the Hon'ble Allahabad High court, (page nos. 106 to 118 of the appeal) and there were specific stipulations in the application form regarding restrictions on division of Plot, transfer of Plot, renting out and allottee was to construct building of institution at its own cost, the building was to be constructed within five years of allotment and IT park was to be made functional within five years. Further the plot could not be transferred/rented out before making the unit functional and all such actions done for transfer of Plot before making the unit functional was to be treated as null and void ab initio. The allottee was required to abide by the terms and conditions of lease deed and sanction letter issued by lessor i.e. NOIDA.

49. As per Clauses 19 and 20 of map sanctioning letter dated 27.10.2012, (enclosed as Annexure-5, from pages 154 to 156 of the appeal), the allottee is to use 10% of the FAR for residential purposes of its employees/officers and institutional facilities can be used as per Clause 23 of the Lease Deed. However, there is a letter available on record (at page 160 of the appeal) written by one Sri Satendra Singh Bhasin to G.M. NOIDA Authority, Sector-6, dated 23.10.2013, requesting for no objection certificate to mortgage the developed built up units by the sub-lease and rectification of the lease deed. A reply to this letter by NOIDA Authority dated 07.02.2014 addressed to M/s Anand Infoedge Pvt. Ltd. is on record at page 161 of the appeal whereby no objection certificate for mortgage of the institutional Plot no. 1, Sector 143-B NOIDA was given and it was

stated that “NOIDA shall have no objection for mortgaging the Project to be built up/built up space on the above Plot, for providing loan facility to the prospective purchasers/buyers of the same Project, in favour of nationalized banks/financial institutions/Central/State Government of Public/Semi Public Sector/employer”. This permission was given subject to conditions that in the mortgage deed, following Clauses will be included:--

- 1. That the financial institution in whose favour mortgage permission is required should be recognized by the Reserve Bank of India/National Housing Bank.*
- 2. NOIDA shall have the first charge towards the pending payment in respect of Plot allotted/lease rent/taxes or any other charges as informed or levied by the Authority on the Plot and that banks/financial institutions/Central/State Government of Public/Semi Public Sector/employer shall have the second charge on the built up space of the Project thus being financed.*
- 3. The mortgage permission shall be effective on making full payment of permission & one time lease rent of Institutional Plot and after execution of sub-lease deed in favor of allottee of the built up space of the Project and the allottee/sub-lessee shall be governed by the terms & conditions of allotment/lease deed of Plot & sub-lease deed to be executed in favor of the allottee/sub-lessee. In the event of sale/transfer of built up space of the Project, transfer charges at the rate prevailing at the time of transfer, shall be payable to NOIDA.*
- 4. In the event of sale or foreclosure of the mortgaged/charged property the NOIDA shall be entitled to claim and recover such values of properties in respect of the market value of the said land as first charge, having priority over the said mortgage charge, the decision of the NOIDA, in respect of the market value of the said land shall be final and binding on all the parties concerned.*

5. *The NOIDA's right to the recovery of the unearned increase and the pre-emptive right to purchase the property as mentioned hereinbefore shall apply equally to involuntary sale or transfer, be it bid or through execution of decree of insolvency/court.*
 6. *All arrears due to the NOIDA would be recoverable as arrears of land revenue.*
 7. *Each allottee/sub-lessee of the built up space of the Project shall have to intimate NOIDA of the creation of the mortgage in favor of the bank/financial institution/employer/Central/State Government of Public/Semi Public Sector of the allottee/sub-lessee shall also keep NOIDA informed about the dwelling unit thus financed.*
50. One letter from M/S Anand Infoedge Private Limited to Chief Executive Officer, NOIDA dated 13.12.2016 is on record of the appeal (from page nos. 193 to 195) wherein hurdles and defects in Plot no. 1, Sector 143-B, NOIDA were highlighted and a request for removal thereof and for grant of extension to complete the Project and declaration of delayed period as 'zero period' was made. It was also mentioned that some part of land Khata No. 563, area about 3.75 hectare could not be acquired by NOIDA and the company has invested approximate Rs.200 Crores on the Project which is yet to be completed. Further by letter dated 29.03.2017 M/S Anand Infoedge Private Limited had requested NOIDA to provide legal possession of 3.75 hectare land which could not be acquired properly. In this letter M/S Anand Infoedge Private Limited also stated that about Rs.200 Crores have been invested in the Project and there are about 1500 units sold to the investors.
51. M/s Anand Infoedge Private Limited has filed O.S. No. 662/2017 in the Court of Civil Judge (Senior Division) Gautam Budh Nagar in

which an order was passed on 10.11.2017. In the said order the Court observed that the NOIDA Authority ought to have acquired 27000 square metre land which was part of the total land allotted to M/S Anand Infoedge Private Limited, in Plot no. 1, Sector 143-B, NOIDA. The un-acquired land is about 25% of the total land. M/S Anand Infoedge Private Limited has claimed that 10% of total FAR has been allowed by NOIDA to construct residential and commercial space and the allottee M/S Anand Infoedge Private Limited has to develop I.T. Park on the total area as per approved plan. The Court has noticed that it is apparent that the NOIDA has given possession of the entire land to M/S Anand Infoedge Private Limited and M/s Anand Infoedge has also opened Escrow Account in relation to the Project. The Court has directed NOIDA to maintain status quo on notice dated 25.05.2017, and as per letter dated 02.06.2016 with respect to opening the escrow account with further direction that if there is any order of Hon'ble High Court or any other competent court then this order shall stand ineffective.

52. In show cause notice dated 25.05.2017 NOIDA demanded Rs. 75.39 crores towards outstanding rent and plus Rs.7.02 crores towards interest, totaling Rs. 82.41 crores and mentioned that company M/s Anand Infoedge Pvt. Ltd. has failed to complete the Project on lease land within time schedule as per terms and conditions of lease-deed, explanations were called, and failing which lease may be cancelled.
53. It is surprising that when lessee M/s Anand Infoedge Pvt. Ltd. or developing companies M/s Mist Avenues Pvt. Ltd. and M/s Mist Direct Sales Pvt. Ltd. were advertising and taking/accepting money

from the customers and promising assured return against sale of residential/commercial/IT Units without complying the provisions of lease deed or without amendment of the lease deed of Plot no. 1 Sector 143-B, NOIDA, no firm/strong action has been taken by NOIDA against lessee/developing companies.

54. Further both the companies i.e. M/s Mist Avenue Private Limited and Mist Direct Sales Private Limited have received an amount of about Rs.260 Crores from the customers, and there is nothing on record to show the details of the amount collected by both the companies from customers and also no record regarding ownership of the land in the name of Promoter/Appellant or a legally valid registered collaboration agreement or registered power of attorney on behalf of owner of lease hold Plot no. 1 Sector 143-B, NOIDA. Further, as per lease deed executed between NOIDA and owner of lease hold right M/s Anand Infoedge Pvt. Ltd there are specific terms and conditions of lease deed which are not complied by the owner company and developing companies. Therefore, the entire activity is against the provisions of lease deed and receiving the money by the appellant from prospective buyers on the basis of unregistered and unauthorized deed with M/s Anand Infoedge Pvt. Ltd. (lessee) may also attract the provisions of Section 2(8) and Section 2 (9) of the Prohibition of Benami Property Transaction Act, 1988 as amended by Benami Transaction (Prohibition) Amendment Act, 2016 and Banning of Unregulated Deposit Scheme Act, 2019. However, since the violation of the provisions of the aforesaid Acts does not fall in

the domain of this Tribunal, therefore, we restrain ourselves from examining the issue in depth.

REVOCAION OF REGISTRATION OF THE PROJECT OF THE APPELLANT COMPANY BY REGULATORY AUTHORITY

55. The appellant has not provided the information required for registration as per Section 4 of the Act, 2016 and Rules 3, 4 & 14 of U.P. Real Estate (Regulation and Development) Rules, 2016. The appellant has also not provided sufficient reasons for not providing the relevant information like the list of allottees and amount received from them. The quarterly progress reports were also not updated on Regulatory Authority's website by appellant. The appellant has also not given satisfactory replies to Regulatory Authority on show-cause notice and various other letters issued by Regulatory authority. In this regard, we examined the provisions of Real Estate (Regulatory and Development) Act, 2016 and U.P. Real Estate (Regulation and Development) Rules, 2016.
56. As per Section 4(2) of the Act, 2016 read with Rules 3, 4 & 14 of U.P. Real Estate (Regulation and Development) Rules, 2016, a promoter is required to enclose the following documents along with the application referred to in sub-section 4(1) of the Act of 2016, namely:-
- (a) *A brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoters, ''*
 - (b) *A brief detail of the Projects launched by him, in the past five years, whether already completed or being developed, as the case may be,*

including the current status of the said Projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

- (c) An authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with laws as may be applicable for the real estate Project mentioned in the laws as may be applicable for the real estate Project mentioned in the application, and where the Project is proposed to be developed in Phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such Phases;*
- (d) The sanctioned plan, layout plan and specifications of the proposed Project or the Phase thereof, and the whole Project as sanctioned by the competent authority;*
- (e) The plan of development works to be executed in the proposed Project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;*
- (f) The location details of the Project, with its boundaries including the latitude and longitude of the end points of the Project;*
- (g) Proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;*
- (h) The number, type and the carpet area of apartment for sale in the Project along with the area of apartments for sale in the Project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;*
- (i) The number and area of garage for sale in the Project;*
- (j) The names and addresses of his real estate agents, if any, for the proposed Project;*
- (k) The names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with development of the proposed Project;*
- (l) A declaration, supported by an affidavit, which shall be signed by the promoter or any person authorized by the promoter, stating:-*

- (A) *That he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;*
- (B) *That the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;*
- (C) *The time period within which he undertakes to complete the Project or Phase thereof, as the case may be;*
- (D) *That seventy per cent. of the amounts realized for the real estate Project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for the purpose:*

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the Project, in proportion to the percentage of completion of the Project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an Engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the Project:

Provided also that the promoter shall get his accounts audited Within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular Project have been Utilized for that Project and the withdrawal has been in compliance with the proportion to the percentage of completion of the Project.

Explanation- For the purpose of this Clause, the term “scheduled bank” means a bank included in the second schedule to the Reserve Bank of India Act, 1934 (2 of 1934):

- (E) *That he shall take all the pending approvals on time, from the competent authorities;*
- (F) *That he has furnished such other documents as may be prescribed by the rules or regulations made under this Act;*
And

(m) *Such other information and documents as may be prescribed.*

57. In compliance of the provisions of Section 34(b) of the Act of 2016 read with Rule 14 of the Rules 2016, a promoter/developer is required to upload exhaustive details on the Website of the Respondent No. 1 (RERA) and on examination of the record we find that majority of the details have not been furnished/uploaded by the appellant.

58. The provisions for revocation of registration are contained in Section 7 of the Act and the same reads as under:-

1. *The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that-*

(a). *The promoter makes default in doing anything required by or under this Act or the rules or the regulations made there under;*

(b) *The promoter violates any of the terms or conditions of the approval given by the competent authority;*

(c) *The promoter is involved in any kind of unfair practice or irregularities.*

Explanation- *For the purpose of this Clause, the term “unfair practice means” a practice which, for the purpose of promoting the sale or development of any real estate Project adopts any unfair method or unfair or deceptive practice including the following practices, namely:-*

(A) *The practice of making any statement , whether in writing or by visible representation which,-*

(i) *falsely represents that the services are of a particular standard or grade;*

(ii) *represents that the promoters has approval or affiliation which such promoter does not have;*

(iii) *makes a false or misleading representation concerning the services;*

(B) *the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;*

(d) *the promoter indulges in any fraudulent practices.*

2. *The registration granted to the promoter under Section 5 shall Not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds in which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.*
 3. *The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.*
 4. *The Authority, upon the revocation of the registration,-*
 - (a) *shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;*
 - (b) *shall facilitate the remaining development works to be carried out in accordance with the provisions of Section 8;*
 - (c) *shall direct the bank holding the project bank account, specified under sub Clause (D) of Clause (i) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions , including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of Section 8 ;*
 - (d) *may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.*
59. The examination of the provisions of Act 2016 & Rules 2016, it is evident that the prime objective of the Act is to protect the interest of the consumers in the Real Estate Sector and also to provide information in a transparent manner, which enable a house buyer to take decision regarding purchase of his/her dream house.

The Act also provides that at least 70% of the amount received from allottees should be utilized towards the cost of construction &

land cost, and the amount so collected should be deposited in a separate account to be withdrawn only with a certificate of Architect Engineer & Chartered Accountant, and balance 30% amount can be utilized for Marketing cost & Administrative expenses etc.

The Act further casts duty upon the promoters to submit audited accounts within six months after the end of every financial year, to ensure above compliance.

60. As per C.A. Certificate (M/s Borar & Company) dated 31.07.2018, the appellant has collected Rs.258 crores from customers. The 70% of this amount is about Rs.180 crores, which should have been spent on construction and land, or deposited in designated Escrow Account as per the provisions of Act of 2016 and Rules of 2016. As per another certificate of CA (M/s RBN & Company) dated 25.03.2019 the amount spent is about Rs. 158 crore by March, 2019 in construction and development activities and thus the amount of about Rs. 84 crores which was spent till June 2018 has suddenly gone upto about Rs. 158 crores in March 2019. Further there seems to be a huge difference between the amount collected from customers and expenditure incurred on Project upto March 2019.
61. The appellant drew our attention towards para 5.17 of the memo of appeal wherein it is stated that as on 31.08.2019 appellant spent an amount to the tune of Rs. 170.99 crores on the construction of the Project and Rs. 103.35 crores on purchase of land. Thus, a total expenditure incurred by the appellant on the Project is Rs. 274.34 crores and the appellant received an amount of Rs. 252.93 crores as customer advances from the allottees of the Project and invested an amount of Rs. 21.41 crores from its own pocket without borrowing any amount from

bank or financial institutions. The aforesaid claim of promoter/appellant is neither supported by the document filed by the appellant nor from the records of appellant/promoter produced by the appellant to Regulatory Authority. The records reveal that on 08.04.2019, the appellant submitted a letter dated 04.04.2019 along with C.A. Certificate of M/s RBN & Company dated 25.03.2019 in support of its reply mentioning therein that appellant spent an amount of Rs. 158.31 crores and collected Rs. 253.91 crores from customers upto 15.03.2019. Therefore, the appellant/promoter has collected Rs. 95.6 crores more than the amount of expenditure on the Project. Appellant had submitted another C.A. Certificate of M/s Borar & Company dated 31.07.2018 wherein the amount collected from the customers upto 30.06.2018 was shown as Rs. 256.16 crores and amount spent on the project was Rs. 84.15 crores, therefore, upto 30.06.2018 the appellant/promoter had collected about Rs.174 crores more than the amount of expenditure on the Project. As per C.A. Certificate dated 31.07.2018 the amount spent on land was nil and designated Account No. 917020078349181 of Axis Bank of the Project had a balance of Rs. 3,67,956/- and as per C.A. Certificate dated 25.03.2019, the amount spent on land was shown as blank and amount in another designated bank Account No. 917020078339524 of Axis Bank of the Project was also shown as blank. The Regulatory Authority has frozen the Account No. 001661900001330 of YES Bank, which is apparently not the designated account of the Project. There are dues of NOIDA approximately Rs.146.32 crores upto 31.01.2020 on lessee (M/s Anand Infoedge Pvt. Ltd.). Further if the detail of account submitted by the appellant vide C.A. Certificate dated 25.03.2019 is taken as correct then as per the said Certificate of C.A. an amount of

about Rs. 95.6 crores should have been reflected in the designated account of the appellant, whereas in the C.A. Certificate no amount has been shown in the designated account. Moreover, at the time of registration of the Project with Regulatory Authority as per C.A. Certificate dated 31.07.2018 the unspent amount of about Rs.174 crores should have been reflected in the designated account of the appellant and the amount shown as per C.A. Certificate dated 31.07.2018 in another designated Account No. 917020078349181 of Axis Bank was only about Rs. 0.036 crore.

M/s Anand Infoedge Pvt. Ltd. got possession of the entire land on 29.08.2008 for Plot No. 1 Sector 143-B, NOIDA, measuring 100980 sq. mtrs. and the title issue with NOIDA came up only in the year 2016. There is no evidence/document available on record which shows that appellant/owner was not having physical possession of the land. Appellant/owner of land had opportunity to complete the Project and spend the amount on construction.

62. Now we proceed to examine the issues raised by Shri Amarjeet Singh Rakhra, learned counsel for the appellant in the light of the aforesaid analysis of the pleadings and record narrated herein and above. Shri Amarjeet Singh Rakhra, learned counsel for the appellant in support of issue no. 1 submitted that under Section 21 of the Act of 2016, the Authority shall consist of a Chairperson and not less than two whole time Members, to be appointed by the Government. Further, powers under Section 7 are to be exercised by the Regulatory Authority itself and there is no authorization and delegation in favour of the Secretary to pass the impugned order, therefore impugned order passed by the

Secretary of the Regulatory Authority, is without jurisdiction and beyond his competence, hence the same is non-est and deserves to be set aside.

63. We have examined the submission of learned counsel for the appellant and gone through the provisions of the Act of 2016. Section 21 of the Act of 2016 provides for the composition of Regulatory Authority which will consist of a Chairperson and not less than two whole time members, to be appointed by the appropriate Government. Section 81 of Act of 2016 empowers the Authority to delegate such of its powers and functions under the Act to any Member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order. Section 85 of the Act of 2016 empowers the Regulatory Authority to make regulations to carry out the purposes of the Act.
64. The Regulatory Authority in exercise of power conferred under the provisions of Section 85 of the Act of 2016 framed U.P. Real Estate Regulatory Authority (General) Regulations, 2019 (hereinafter referred to as the 'Regulations 2019') on 27.02.2019. The regulation 13(a) of the Regulations 2019 provides that Secretary and Finance Controller will be appointed by the Government and all other officers and staff shall be appointed by the Authority. The regulation 14(a) and (b) of the Regulations 2019 provides that the Secretary shall be the Principal Executive Officer of the Authority and shall exercise his powers and perform his duties under the superintendence, direction and control of the Chairman, and the Regulatory Authority, in the discharge of its functions under the Act, may take such assistance from the Secretary as it may deem appropriate. The regulation 28 of the Regulations 2019

further provides that all orders and decisions issued by the Authority shall be communicated in a manner laid down by the Authority, as expeditiously as possible from the date of passing thereof to all parties in the proceeding.

65. We have also examined the record of the proceedings under Section 7 of the Act of 2016 against the appellant and from the perusal of the same, we found that the Regulatory Authority has initiated proceedings against the appellant *suo motu* after receiving the complaints from the allottees and information from other sources. A show-cause notice was issued on 08.03.2019 to the appellant under the signature of Secretary after approval of the Chairman. After receipt of reply dated 04.04.2019, representation dated 03.05.2019 and supplementary explanation dated 20.05.2019, the Regulatory Authority examined the issue vide Agenda Item No. 3 in its 16th Meeting on 05.07.2019 and decided to defer the action for four months on the show-cause notice dated 08.03.2019 subject to fulfillment of certain conditions and while approving the draft order, it was also decided that the order be issued by the Secretary of Regulatory Authority and accordingly order dated 11.07.2019 was issued by the Secretary. The issue was again examined by the Regulatory Authority vide Agenda Item No. 28.05 in its 28th Meeting on 29.11.2019 and while taking a decision for revocation of registration of the appellant, the Secretary/RERA was directed to issue order after approval of the Chairman. In compliance of the decision of the Regulatory Authority, impugned order dated 07.12.2019 was issued by the Secretary/RERA.

66. In view of the above, we do not find any force in the submissions and the same are rejected as the decision has been taken by the Regulatory Authority in its 28th Meeting dated 29.11.2019 and the impugned order has been issued in pursuance to authorization of the Regulatory Authority by Secretary, being a Principal Executive Officer of the Regulatory Authority.
67. The second issue raised by the learned counsel for the appellant is regarding invoking force majeure clauses taking into consideration the dispute regarding title of the land with NOIDA. Learned counsel for the appellant took us to the various paragraphs of Writ Petition No. 15503/2019 filed by M/s Anand Infoedge Pvt. Ltd. (the lessee of the Project land from NOIDA) before the Hon'ble Allahabad High Court, seeking direction against NOIDA to pay an amount of Rs. 21.51 crores or any other charges and compensation to be given to State and Central Employees Housing Development Samiti Ltd. in view of acquisition of disputed land and handover the unencumbered land to the petitioner as well as pleadings of O.S. No. 662/2017 filed in the Court of Civil Judge (S.D.), Gautam Budh Nagar for declaration of permanent prohibitory injunction, challenging the Notice dated 27.05.2017 of NOIDA whereby the plaintiff was called upon to pay outstanding dues on account of lease premium and order dated 02.06.2016 of NOIDA whereby plaintiff was directed to open an Escrow Account in the joint name of plaintiff and NOIDA. Learned counsel for the appellant submitted that on account of defective title of the land, the appellant had to face difficulty in raising funds and on account of the same the Project got delayed. The Regulatory Authority ought to have examined the

issue and treat the delay on account of force majeure, but Regulatory Authority without appreciating the issue in correct perspective passed the impugned order thereby revoking the registration of the Project of the appellant in an illegal and arbitrary manner.

68. On examination of the pleadings and record, it is evident that M/s Anand Infoedge Pvt. Ltd. was allotted Plot No. 1, Sector 143-B, NOIDA measuring 100980 sq. mtrs. for construction and setting up of I.T. Park vide Allotment Letter No. NOIDA/INSTT./2008/2260 dated 28.03.2008 and the lease deed was executed between NOIDA and M/s Anand Infoedge Pvt. Ltd. on 21.08.2008. As per record, the possession of the entire land was given to the lessee on 29.08.2008. The issue of ownership of a small parcel of land, i.e. approximately 27000 sq. mtrs., came to light sometime in the year 2016, and issue was raised before NOIDA for the first time on 13.12.2016. Lessee filed a suit for declaration of permanent prohibitory injunction, challenging the Notice dated 27.05.2017 of NOIDA whereby the plaintiff was called upon to pay outstanding dues on account of lease premium and order dated 02.06.2016 of NOIDA whereby plaintiff was directed to open an Escrow Account in the joint name of plaintiff and NOIDA, wherein the order of status quo has been passed by learned Civil Judge (S.D.) Gautam Budh Nagar on 10.11.2017. As per lease agreement dated 21.08.2008 the Project was to be completed within five years from the date of possession. There is nothing on record which shows that the lessee was not having possession of the entire land leased out to it from the date of its possession i.e. 29.08.2008. It is relevant to mention here that para 12 & 13 of the pleadings of Original Suit filed by M/s Anand

Infoedge Pvt. Ltd. (page 254 of the appeal) indicates that after sanction of Building Plan by NOIDA vide order dated 26.10.2012, plaintiff issued Advertisement for the residential premises and NOIDA vide Notice dated 24.11.2012 raised objections to the Advertisement being misleading & in violation of terms of the lease deed followed by several reminders. Thus apparently, the process of collecting money from the prospective buyers started way back in the year 2012 itself. The claim of the appellant seeking to invoke force majeure clause for extension of time is unsustainable in view of the provisions of Section 6 of the Act of 2016, which explain that for the purposes of this Section, expression force majeure shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of the real estate project. Learned counsel for the appellant failed to demonstrate any such calamity which hampered the progress of the Project and, therefore, in our considered view the issue raised by the learned counsel for the appellant for invoking force majeure clause as provided in Section 6 of the Act of 2016 in favour of the appellant is misconceived, and accordingly rejected.

69. Learned counsel for the appellant in order to press third issue drew our attention to the provisions of Section 7(3) of the Act of 2016 and submitted that the Authority instead of revoking the registration under Sub-Section (1) of Section 7 ought to have permitted the appellant on such terms and conditions as it think fit in the interest of allottees and revocation of registration is grossly inappropriate to the perceived violations and default at the end of appellant and the same was wholly unwarranted. Learned counsel for the appellant in order to show its bona

fide drew our attention towards reply submitted to the show-cause notice as well as also drew our attention on the certificates of C.A., as well as Engineer regarding progress of the Project.

70. We have examined the submission of learned counsel for the appellant and on the basis of our analysis under the various heads, we found that the physical and financial progress submitted by the appellant through various certificates before the Regulatory Authority is not matching. Apart from that there is not only violation of the provisions of Section 4 and 15(1) of Act of 2016 read with Rules 3,4 & 14 of Rule of 2016, but also the violation of the Clauses 11A, 14, 15, 17, 18, 19, 20, 21(c) of lease-deed dated 21.08.2008 and conditions 12 & 19 of the Sanction Letter dated 26.10.2012. The Regulatory Authority taking note of the assurance given by the appellant through letter dated 04.04.2019 and representations made before the officials of the Regulatory Authority on 03.05.2019, 17.05.2019 and 20.05.2019, kept the final decision on the show-cause notice on hold vide order dated 11.07.2019 for the period of four months, keeping in view the interest of allottees in mind as provided under Section 7(3) of the Act of 2016. Since the appellant failed to abide by the terms and conditions and directions of the Regulatory Authority specified in the order dated 11.07.2019, the Regulatory Authority passed the impugned order in order to protect the interest of the investors.
71. The examination of the order dated 07.12.2019 passed by the Regulatory Authority, as well as the records of the Regulatory Authority relevant to this case, and having heard the learned counsels of both the parties & the intervener, we are of the considered view that

the said order is well reasoned and due procedure has been followed as well as ample opportunity has been given to the appellant before passing the said order. We do not find any illegality, infirmity or perversity in the impugned order. Accordingly, the **appeal is dismissed.**

72. Before parting, in order to protect the interest of allottees, who have lost their hard earned money on the assurance of getting their dream house/unit based on mis-information and mis-representation by the appellant, we deem it appropriate to direct the Regulatory Authority to take up the issue with NOIDA Authority to resolve the land issue; and in case the issues relating to land title and its usage are not resolved, then the Regulatory Authority would take appropriate steps for refund of the hard earned money of the allottees. Further looking into the background of this case, in order to protect the interest of prospective buyers/allottees, we deem it proper to direct the Regulatory Authority to ensure the compliance of Section 16 of the Act of 2016 by the promoters at the time of registration of the real estate projects, which cast obligation on the promoter regarding insurance of the real estate project.

Let the record of the Regulatory Authority be returned.

Dated: 29.09.2020

Tanveer/-

(K.K. Jain)

(Rajiv Misra)

(D.K. Arora)