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Reserved on : 05.09.2024

Delivered on : 01.10.2024

Court No. - 29

Case :- WRIT - C No. - 16616 of 2024

Petitioner :- Larsen & Toubro Limited
Respondent :- State of U.P. and others
Counsel for Petitioner :- Raghuvansh Misra, Sr. Advocate
Counsel for Respondent :- C.S.C., Mohd. Afzal, Rahul Agarwal

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard Sri Shashi Nandan, learned Senior Counsel assisted by Sri Raghuvansh Misra, Sri Shivang, Ms. Saloni Kapadia, Sri Devansh Misra, Sri Anup Shukla, Sri Asvani Tripathi and Sri Shubam Yadav, Advocates appearing on behalf of the petitioner, Sri Anil Tiwari, learned Senior Counsel assisted by Sri Mohd. Afzal and Sri Rahul Agarwal, Advocates appearing on behalf of respondent nos.2 and 3-Uttar Pradesh Real Estate Regulatory Authority[1] and Sri R.M. Upadhyay, Ms. Uttara Bahuguna, Sri Ambrish Shukla, learned Additional Chief Standing Counsel and Sri Fuzail Ahmad Ansari, learned Standing Counsel for State-respondent.

FACTUAL MATRIX

2. Yamuna Expressway Industrial Development Authority[2] had granted a concession in favour of Jaiprakash Industries Limited vide Concession Agreement on 07.02.2003 whereby YEIDA has agreed to transfer land admeasuring 2,50,00,000 square metres to Jaiprakash Industries Limited, for commercial, amusement, industrial, institutional

1 UPRERA
2 YEIDA

and residential development, at five(5) or more locations alongside the Yamuna Expressway. In furtherance of the same, YEIDA executed various lease deeds in favour of Jaiprakash Industries Limited for a period of ninety(90) years spread out in various sectors of Noida/Greater Noida ("Lease Deeds–I"). The said lease deeds covered land measuring 248.6704 hectares (614.00 acres) in Sectors 128, 131 and 133 at Noida thereon.

3. This Concession Agreement also conferred rights in favour of the allottee/Jaiprakash Industries Limited to transfer the whole or any part of the said land, whether developed or undeveloped, by way of plots or constructed properties, or otherwise dispose of its interest in the said land or part thereof to any person in any manner whatsoever without requiring any consent or approval of YEIDA or of any other relevant authority.

4. Subsequent to the execution of the Concession Agreement, Jaiprakash Industries Limited got merged with Jaypee Cement Limited by virtue of a scheme of amalgamation and merger, which was sanctioned by this Court vide order dated March 10, 2004. Further, on March 11, 2004 the name of Jaypee Cement Limited got changed to Jaiprakash Associates Limited (JAL). By virtue of the same, all rights, interest, entitlement, benefits and obligations of Jaiprakash Industries Limited under the Concession Agreement and the Lease Deeds-I came to be vested with JAL.

5. Thereafter, in terms of the Concession Agreement, JAL incorporated a Special Purpose Company (SPC)/Special Purpose Vehicle, namely Jaypee Infratech Limited[3] for the implementation of the

3 JIL

Expressway project. All the rights and obligations of JAL, under the Concession Agreement and the Lease Deed-1 were transferred/assigned to this SPC(JIL).

6. JIL prepared a layout plan including the land use plan, road network plan, landscape plan and area charts for the development of 453 acres situated in Sectors 128, 129, 131, 133, and 134 at Noida. The same was initially sanctioned on 31.10.2007. Subsequently, the said layout plans were revised and the amended plan was sanctioned on 23.03.2011. Yet again, these layout plans were revised on 20.02.2015. The project now is known as “Jaypee Greens Wish Town”.

7. Thereafter, a registered Assignment Agreement was entered on 31.07.2017 between JIL/JAL and the petitioner as the developer, wherein the petitioner took over the development rights in respect of the Floor Area Ratio[4] ("FAR") over a portion of the Development Lands. JIL/JAL after receiving ₹487.5 crores from the petitioner, had executed an "Assignment Agreement" on 31.07.2017.

8. In furtherance of the Assignment Agreements, an irrevocable General Power of Attorney[5], was executed on 31.07.2017 by JIL in favour of the petitioner.

9. On this land, the petitioner intended to develop a project in the name of Green Reserve, which comprises of 4 Towers, Towers 1 & 2 were to be built on a plot of 12,394 square metres land bearing Group Housing Pocket No.B-24A and Towers 3 & 4 were to be built on plot of 12,311 square metres land bearing Group Housing Pocket No..B-22B.

10. In order to develop the project on 02.06.2023, the petitioner made an application under Section 4 of the Real Estate (Regulation and

4 FAR
5 GPA

Development), Act, 2016[6] before the UPRERA for registration of Towers 1 & 2 on the Development Land. (Application No.1)

11. On 07.06.2023, UPRERA issued a letter asking the petitioner to include JIL as a 'Promoter' for the project, since the approved map and layout for the Developments Land was in the name of JIL. Again on 08.06.2023, UPRERA asked the petitioner to get a letter from the Suraksha Consortium clarifying that the Project Land do not form part of the resolution plan of Suraksha Realtors Pvt. Limited and Lakshdeep Investments and Finance Private Limited, approved by the Hon'ble National Company Law Tribunal[7] in the corporate insolvency resolution process of JIL.

12. On 12.06.2023, the petitioner responded that they had legal, valid and marketable rights in respect of the project through the registered GPAs and Assignments Deeds. It was submitted that the petitioner (Larsen & Toubro Ltd.) has the right to advertise, offer, book, sell, dispose, assign, transfer, in any manner whatsoever, the units of the Project along with the sub-lease of proportionate undivided interest in the Development Land, in favour of the allottees, without the prior consent of JIL/JAL, and for such purposes sign and execute booking application form, booking confirmation-cum-allotment letter, agreement for sale, sale deed to transfer title and all necessary assurances, writings, letters, agreements etc. (without the requirement of JIL personally executing such documents), and receive in its name all revenues, receivables and consideration thereof. It was further stated that the petitioner was not required to add JIL as a 'Promoter' in the project.

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6 RERA Act
7 NCLT

13. In response thereto, UPRERA called upon the petitioner to appear before it on 23.06.2023 and provide clarifications with respect to the queries raised vide letter dated 08.06.2023. The petitioner appeared before UPRERA on 23.06.2023 and provided the requisite clarifications/ responses to the queries raised by them, and also filed a letter issued by the Implementation and Monitoring Committee of JIL.

14. UPRERA, on technical grounds, rejected the first application of the petitioner on 06.07.2023 giving right to the petitioner to re-apply for registration of Towers 1 & 2 inter alia by providing the following:

> *i. A copy of the Concession Agreement,*
> *ii. A confirmation on which party will sign and execute the deed and which party will be the confirming party in the deed along-with the promoter to be executed in favour of the homebuyer, and*
> *iii. A confirmation on which party will bear/pay the Farmer's additional compensation as demanded by YEIDA.*

15. On the request of the petitioner, the Implementation and Monitoring Committee of JIL issued another letter dated **20.07.2023** to UPRERA inter alia making the following submissions:

> *(a) As per the various conditions of the Assignment Agreements, the Petitioner is entitled to develop the Project, sale booking, allotment of the units and flats in the Project.*
>
> *(b) Further in terms of RERA Act and the Assignment Agreements,* ***the Petitioner shall always be the promoter/developer of the Project*** *as all rights to develop the said land, selling, marketing, and advertising are of the Petitioner only.*
>
> *(c)* ***The responsibility with respect to construction, quality and all promises made to the allottees/home-buyer shall be of the Petitioner only.***
>
> *(d) JIL is only responsible to execute sub-lease in favour of allottees/homebuyers to whom the unit have been sold by the Petitioner as developer/promoter for their impartible and undivided share/rights in the Project as per Clause 10.5 of the Assignment Agreements.*
>
> *(e) It is confirmed that in terms of the agreements JIL's role and responsibility shall only be of executing the Sub-Lease Deed in favour of the*

allottees of the Project for which JIL has also executed the GPAs separately to enable the Petitioner to execute Sub-Lease Deed as provided in Clause 10.5 of the Assignment Agreements.

(f) A sub-lease deed executed by JIL in a similar case to an allottee of M/s. Genx Estate LLP was enclosed. It was also submitted that the said project named Golf Street Hub was assigned to M/s. Genx Estate LLP and the project is registered with RERA vide registration No. UP RERA/ PRJ439474 ("Genx Estate LLP Project").

(g) It was also submitted that the additional compensation with respect to the Development Lands has already been paid by the Petitioner to the Noida Authority directly.

16. The petitioner re-applied for the registration of Towers 1 & 2 with UPRERA on 21.07.2023 and which was uploaded on the portal of UPRERA on 31.07.2023("Application 3"), wherein the petitioner provided all the clarifications sought by UPRERA in the Rejection Letter and also submitted the Assignment Agreements and GPAs, and provided a copy of the Conveyance Deed.

17. UPRERA, on 22.08.2023, once again sought the same clarifications from the petitioner as were sought earlier vide letters 07.06.2023 and 08.06.2023. Yet again, the petitioner gave the same response to the queries put forth by UPRERA and stated that the said rights, interest, and obligations of the petitioner are derived from clauses 2.1, 2.4, 2.6, 2.7, 3.3, 10.4, and 10.5 of the Assignment Agreements, and clauses 24, 26, and 27 of the GPAs.

18. UPRERA raised its objection on 22.08.2023 for Towers 1 & 2 and had noted following defects in the application :

"1. The project land and the approved map are not under the ownership of the promoter M/s Larsen & Toubro Limited-Add the land and map owner as the promoter of the project.

2. The promoter should provide a letter from M/s Suraksha Realtors Pvt. Ltd. And M/s Lakshadeep Investment and Finance Pvt. Ltd mentioning that the project land B-24A, Jaypee wishtown Sector-128

Noida do not come under the Resolution Plan accepted by Hon'ble NCLT and should upload the same on the UPRERA project registration portal."

19. Thereafter, the petitioner applied for the registration of Towers 3 & 4 with UPRERA vide an application on the portal of UPRERA dated 23.08.2023.

20. Thereafter, further notices were sent by UPRERA to the petitioner on 02.09.2023 and 11.09.2023 qua Towers 1 & 2 asking the petitioner to appear before the UPRERA and to submit response inter alia as to why JIL has not been added as a 'Promoter' for Towers 1 & 2. In response to it, the petitioner appeared before UPRERA and submitted the same response which was submitted earlier that JIL need not be a promoter and all its rights have been assigned over to the petitioner. UPRERA still not being satisfied did not grant the registration to the petitioner.

21. Petitioner issued a letter on 25.04.2024 stating that the applications filed on 31.07.2023 and 23.08.2023 were pending for more than 30 days, hence, as per Section 5(1) and 5(2) of the RERA Act, they are deemed to have been approved. The applications are deemed to have been registered on 30.08.2023 and 22.09.2023. Hence, the registration numbers including a login Id and password should have been provided to the promoter/petitioner by 06.09.2023 for Towers 1 and 2 and by 29.09.2023 for Towers 3 & 4 for accessing the website of the Authority and to create its web page and to fill therein the details of the proposed project.

22. It appears that some advertisement was placed by a third person for the project of the petitioner have a notice dated 08.05.2024 was issued by UPRERA stating that the petitioner has violated Section 3 of the RERA Act by advertising its Project on the website

'www.gaurnewyorkcityghaziabad.com', while the Project was not registered and the petitioner was called upon to provide an explanation to UPRERA by May 23, 2024, failing which action would be taken against the petitioner under the RERA Act.

23. This notice dated 08.05.2024 has been assailed by the petitioner by means of the instant petition seeking inter alia the following reliefs:-

> *"(i) issue writ, order or direction in the nature of Certiorari, to call for the records and proceedings pertaining to the notice dated May 8, 2024 bearing no. 6687/Technical Cell- Media/2024-25 and upon perusing the same, quash and set aside the notice dated May 8, 2024 bearing no. 6687/Technical Cell- Media/ 2024-25 (Annexure No. 1 to this petition) issued by the Uttar Pradesh Real Estate Regulatory Authority to Larsen & Toubro Limited;*
>
> *(ii) issue writ, order or direction in the nature of Mandamus declaring that the project of Larsen & Toubro Limited ie. Green Reserve Towers 1, 2, 3, and 4 on land admeasuring 12,311 square meters, bearing Group Housing Pocket No. B-22B and land admeasuring 12,394 square meters or thereabouts bearing Group Housing Pocket No. B-24A are deemed to be registered under Section 5(2) of the Real Estate (Regulation and Development) Act, 2016;*
>
> *(iii) issue writ, order or direction in the nature of mandamus directing the Uttar Pradesh Real Estate Regulatory Authority to provide the respective registration numbers for the project of Larsen & Toubro Limited Green Reserve Towers 1, 2, 3, and 4 on land admeasuring 12,311 square meters, bearing Group Housing Pocket No. B-22B; and land admeasuring 12,394 square meters or thereabouts bearing Group Housing Pocket No.B-24A under Section 5(2) of the Real Estate (Regulation and Development) Act, 2016;"*

24. On 17.05.2024, this Court has passed the following order :-

> *"1. Heard Sri Shashi Nandan and Sri Anurag Khanna, learned senior advocates assisted by Sri Raghuvansh Misra and Ms. Saloni Kapadia, learned counsels for the petitioner, Sri R.M. Upadhayay, learned Additional Chief Standing Counsel for the State respondents and Sri Rahul Agrawal and Sri Mohd. Afzal, learned counsels for the contesting respondent Nos.2 and 3 - Uttar Pradesh Real Estate Reguatory Authority (UPRERA).*

2. Sri Rahul Agrawal, learned counsel for the contesting respondent Nos.2 and 3 - Uttar Pradesh Real Estate Reguatory Authority (UPRERA) prays for an adjourned on behalf of Sri Anil Tiwari, learned Senior Advocate as he is ill and admitted in P.G.I., Lucknow.

3. Matter is adjourned.

4. Put up this matter again as fresh on 29.05.2024.

5. It is informed that two simultaneous proceedings under Section 3/59 and Section 4 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) are ongoing against the petitioner. So far as the proceeding under Section 3/59 of the RERA Act is concerned, the same entails imprisonment and penalty and in case it is finalized on the next date fixed, i.e. 23.05.2024, the petitioner would suffer irreparable loss and injury even though on the ground of medical exigency the matter is adjourned. Suffice to indicate, on the next date, the parties shall appear in response to the impugned notice but no final decision shall be taken till 29.05.2024."

25. UPRERA filed a counter affidavit on 28.05.2024, which was sworn on 27.05.2024, wherein it was stated that the respondent has a preliminary objection regarding maintainability of the present writ petition on the ground that there exists an equally efficacious alternative remedy under Section 43(5) read with Section 44 of the RERA Act, which provides that any aggrieved person by any order or decision or direction of the Authority or Adjudicating Officer, may prefer an appeal to the Appellate Tribunal. Apart from it no other ground was taken.

26. Thereafter, on 29.05.2024 this Court passed the following order :-

"1. Counter affidavit filed by Sri Rahul Agarwal and Mr. Mohd. Afzal on behalf of respondent nos. 2 and 3 is taken on record.

2. Heard Sri Shashi Nandan and Sri Anurag Khanna, learned Senior Counsels assisted by Sri Raghuvansh Misra, learned counsel on behalf of the petitioner, Mr. Mohd. Afzal, learned counsel for the respondent nos. 2 and 3 and Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel assisted by Mr. Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents.

3. On the request of learned counsel for the petitioner, the matter is passed over.

4. Put up this matter on 31.05.2024 as fresh.

5. Interim order, if any, is extended."

27. During pendency of case, the application of the petitioner was rejected in UPRERA's 147th Meeting on 16.05.2024, which was communicated to the petitioner on 29.06.2024.

28. It was then the petitioner preferred an amendment application on 05.07.2024, which was allowed. By means of the amendment, following prayers were made in the amended writ petition :-

"(i) issue writ, order or direction in the nature of Certiorari, to call for the records and proceedings pertaining to the notice dated May 8, 2024 bearing no. 6687/Technical Cell- Media/ 2024-25 and upon perusing the same, quash and set aside the notice dated May 8, 2024 bearing no. 6687/Technical Cell- Media/ 2024-25 (Annexure No. 1 to this petition) issued by the Uttar Pradesh Real Estate Regulatory Authority to Larsen & Toubro Limited;

(ii) issue writ, order or direction in the nature of Mandamus declaring that the project of Larsen & Toubro Limited ie. Green Reserve Towers 1, 2, 3, and 4 on land admeasuring 12,311 square meters, bearing Group Housing Pocket No. B-22B and land admeasuring 12,394 square meters or thereabouts bearing Group Housing Pocket No. B-24A are deemed to be registered under Section 5(2) of the Real Estate (Regulation and Development) Act, 2016;

(ii.1) issue writ, order or direction in the nature of Certiorari, to call for the records and proceedings pertaining to the rejection letter dated June 29, 2024 bearing no. 9073/UPRERA/Projreg/2024-25 and upon perusing the same, quash and set aside the rejection letter dated June 29, 2024 bearing 9073/UPRERA/Projreg/2024-25 (Annexure No.39 to the present writ petition) issued by the Uttar Pradesh Real Estate Regulatory Authority to Larsen & Toubro Limited;

(ii.2) issue writ, order or direction in the nature of Certiorari, to call for the records and proceedings pertaining to the rejection letter dated June 29, 2024 bearing no. 9053/UPRERA/Projreg/2124-25 and upon perusing the same, quash and set aside the rejection letter

dated June 29. 2024 bearing 9053/UPRERA/Projreg/2024-25 (Annexure No. 40 to the present writ petition) issued by the Uttar Pradesh Real Estate Regulatory Authority to Larsen & Toubro Limited;

(iii) issue writ, order or direction in the nature of Mandamus directing the Uttar Pradesh Real Estate Regulatory Authority to provide the respective registration numbers for the project of Larsen & Toubro Limited Green Reserve Towers 1, 2, 3, and 4 on land admeasuring 12,311 square meters, bearing Group Housing Pocket No. B-22B; and land admeasuring 12,394 square meters or thereabouts bearing Group Housing Pocket No. B-24A under Section 5(2) of the Real Estate (Regulation and Development) Act, 2016;"

PRELIMINARY OBJECTION OF RESPONDENTS

29. During the course of hearing a preliminary objection was raised by learned Senior Counsel appearing for respondent nos.2 and 3-UPRERA on the ground of availability of alternative remedy. He has cited a judgment of Hon'ble Supreme Court passed in the matter of **Assistant Commissioner Sales Tax and others vs. Commercial Steel Ltd.**[8] wherein the Hon'ble Apex Court has held as follows:-

"11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justices;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation."

8 2021 SCC Online SC 884

30. In addition, in the case of **M/s Singh Brother, Kanpur Nagar through, Partner & 7 others versus UPRERA, Lko. & 3 others in Writ-C No.2928 of 2024,** the Lucknow Bench of this Hon'ble Court has held that writ petition is not maintainable in cases where there exists an alternative remedy.

31. It was submitted that, moreover, the petitioner does not fall within the ambit of the exceptions carved out by the Apex Court in cases where an alternative remedy is available and hence, the writ petition is liable to be dismissed on this ground alone. He further submitted that since the authority has passed the rejection order in exercise of its jurisdiction and not in excess of jurisdiction thus the petitioner fails to satisfy the requirement of law as laid down by the Hon'ble Apex Court and the remedy is, therefore, before the appellate tribunal.

32. In response to it, learned counsel for the petitioner submitted that in the instant matter, UPRERA has passed an order of rejection, when the application of the petitioner has been deemed to have been allowed. He submitted that after deeming provision has come into play, UPRERA had no jurisdiction to pass any such order, hence, it is a case of an "excess of jurisdiction". Since it is a case of an "excess of jurisdiction", it definitely falls within the third category of the judgment cited by learned counsel for the respondent. As such, the instant writ petition cannot be dismissed on the ground of alternative remedy. To buttress his argument, he has relied on judgments passed by Hon'ble Supreme Court in the matter of **State of West Bengal and others vs. Gitashree Dutta**

(Dey)[9] and **Uttar Pradesh Power Transmission Corporation Ltd. and another vs. CG Power and Industrial Solutions Limited and another**[10]**.**

CONSIDERATION ON PRELIMINARY OF OBJECTION

33. After hearing the parties at length for couple of days, specially, the parties have argued and advanced all the legal issues, and specially in the light of paragraph no.11 (iii) of the judgement of Hon'ble Apex Court passed in the matter of **Assistant Commissioner Sales Tax and others** (supra), which provides that a writ petition can be entertained in exceptional circumstances where there is an excess of jurisdiction, therefore, it will be a futile exercise to relegate the matter to the appellate authority.

34. Therefore, we are of the considered opinion that the instant writ petition cannot be dismissed on the ground of alternative remedy, and it has to be adjudicated on merits.

ARGUMENTS ON BEHALF OF THE PETITIONER

35. Sri Shashi Nandan, Senior Advocate assisted by Sri Raghuvansh Misra, Sri Shivang, Ms. Saloni Kapadia, Sri Devansh Misra, Sri Anup Shukla, Sri Asvani Tripathi and Sri Shubam Yadav, Advocates appearing on behalf of the petitioner advanced his arguments. The argument of the petitioner is on the following points:-

OBJECTS OF THE REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016

36. Sri Shashi Nandan, learned Senior Counsel for the petitioner submitted that the statement and objects of the RERA Act was primarily

9 2022 SCC OnLine SC 691
10 (2021) 6 Supreme Court Cases 15

to protect the interest of the flat buyers/addressees. For ready reference relevant provision of the statement of objects and reasons of RERA Act is being quoted below:-

> *"The Real Estate (Regulation and Development) Bill, 2013, inter alia, provides for the following, namely:-*
>
> > *"(a) to impose an obligation upon the promoter not to book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project without registering the real estate project with the Authority;*
> >
> > ……..
> >
> > *(d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;*
> >
> > *(e) to establish an Authority to be known as the Real Estate Regulatory Authority by the appropriate Government, to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation;*
> >
> > *(f) the functions of the Authority shall, inter alia, include-(i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed; (iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation;*
> >
> > ……..
> >
> > *(1) to make provision for punishment and penalties for contravention of the provisions of the proposed legislation and for non-compliance of orders of Authority or Appellate Tribunal;*
> >
> > …….

37. In Clause (d) of the statement of objects and reasons, it is specifically mentioned that UPRERA is established to impose liability on the promoter to pay compensation to the allottees, in case, if he fails to discharge its obligations imposed on him under the RERA Act. He further submitted that at best UPRERA while registering the project has only to see whether the developer has clear title, free from all encumbrances and whatever he does, has to be transparently shown on

the website of the Authority. The Authority can only ensure timely development of the project and in case the same is not done, the promoter can be penalised for the same.

PROMOTER

38. The counsel for the petitioner emphasized that the petitioner is a "Promoter" as per the definition provided under Section 2(zk) of the RERA Act. Section 2(zk) is being reproduced hereunder for ready reference:-

> *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 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 person who sells apartments or plots are different person, 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 thereunder;"*

39. Section 2(zk) of the RERA Act, which defines 'promoter', states that a person who has been assigned development rights in respect of a project for the purpose of selling the apartments, a power of attorney holder, or a person who develops land as a project for the purpose of selling (all being petitioner in this case), would qualify as being a 'promoter'. In this backdrop, he submits that the RERA Act does not mandate, landowner to be a promoter, as the definition of 'promoter' does not include 'owner'.

40. The learned Senior Counsel elaborated that as per the definition, a promoter is a person, who constructs 'OR' causes to be constructed. Here, the definition uses the words "OR" and not "AND" while defining promoter and hence, an owner can be a 'Promoter' if he is developing himself or anyone who is building on his land after a proper agreement can be a 'Promoter'.

41. He next submitted that JIL does not fall under the provisions of Section 2(zk) of the RERA Act. Respondent has failed to identify a single provision under the RERA Act or the Rules and Regulations thereunder for justifying their action to include JIL as a promoter for the Project. UPRERA is seeking to expand the scope of a clear and

unambiguous section 2(zk), which is impermissible. In the event, the intention is to include landowners then appropriate amendments will have to be brought in the RERA Act.

42. The learned Senior Counsel vehemently submitted that it is settled that merely being the owner of a land would not make the party a promoter and ought not to suffer the consequences of being a promoter, and further it is not correct to say that a land owner ought to be a promoter on the premise that he is providing his land for the project. It is clarified that only the promoter is one, who is responsible for constructing the project or can cause it to be constructed. He has placed reliance on **Rajasthan RERA Notification No. F.1(152)RJ/RERA/LAND/2020/1202 dated June 30, 2020, Vaidehi Akash Housing (P) Ltd. v. New D.N. Nagar Co-op. Housing Society Union Ltd.**[11]**, Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and Others**[12]**.**

43. He further submitted that Rule 3(1)(f) of the U.P. Real Estate(Regulation and Development) Rules, 2016[13] is as follows:

> *"**3.(1)(f)** where the promoter is not the owner of the land on which development is proposed details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed."*

44. With reference to Rule 3(1)(f) learned Senior Advocate specifically stated that where the promoter is not the owner of the land which is being developed, the consent of the owner should be included

11 2014 SCC OnLine Bom 5068
12 2019 SCC OnLine Bom 3274
13 RERA Rules

when applying for registration. The forms annexed to The Uttar Pradesh Real Estate (Regulation and Development) (Agreement For Sale/Lease) Rules, 2018[14] and Circular dated 16.03.2024 of UPRERA also contemplate a situation where the promoter is not the landowner. Hence, the Act and Rules framed thereunder clearly contemplates, both, the one who owns the land and construct, and the other, who constructs on someone else's and sells the apartments after executing a proper agreement by the owner, both of them would independently be the promoter.

45. He further raised objection that without prejudice to the above, it is admitted that it is YEIDA and not JIL which is the owner of the land and UPRERA has never insisted on making YEIDA a promoter and hence it cannot insist on making JIL a promoter.

46. He lastly relied on the letters dated June 9, 2023, July 20, 2023 and October 18, 2024 issued by the JIL wherein it has been stated that all rights in the Project are with the petitioner, who is the sole promoter and are in a position to meet all the obligations of the promoter. Hence, the objection of UPRERA is illegal and misplaced.

SECTION 4 OF RERA ACT (APPLICATION BY THE PROMOTER)

47. The counsel for the petitioner further submitted that Section 4 of RERA Act deals with application for registration of real estate projects. For ready reference Section 4 of RERA Act is reproduced herein:-

> *(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 promoter;*

14 Rules, 2018

(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;ll or some of the apartments to other persons and includes his assignees

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with 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 clear demarcation of land dedicated for the project along 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 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 the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised 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 realised 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 that 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 utilised 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;

(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.

48. He further submitted that the petitioner had made an application under Section 4 of the RERA Act and enclosed all the relevant documents as has been specified under Section 4(2) of the Act, and had furnished all the documents as prescribed under the Rules and Regulations framed under the Act and had applied in requisite form as has been presented under the Act & Rules.

49. As per Section 4(2)(l), the Promoter has to make a declaration, supported by an affidavit, which has to be signed by the promoter under which he has to make certain statements. When the petitioner applied under Section 4(1) of the RERA Act, he has complied with all the provisions of Section 4(2) of the Act. Once all the compliance was done, there was no reason for the respondent authority to hold back the project or reject the same.

DEEMING PROVISION

50. He further submitted that Section 5 of the RERA Act deals with registration. Section 5(1) lays down that on receipt of application under Section 4(1), the authority shall within a period of thirty days grant registration and provide registration number including login Id and password to the applicant for accessing the website of the authority and to create his web page and fill therein the details of the proposed project, or reject the application for the reasons to be recorded in writing, if such application is not in confirmation to the provisions of the Act and the Rules. Section 5(2) of the Act clearly lays that if the authority fails to grant registration or rejects the application within the stipulated time, the project shall be **'deemed'** to have been registered and the authority shall within a period of seven days of the expiry of said period of thirty days as specified under section 5(1), shall provide the registration

number, login Id and password to the promoter for accessing the website of the Authority and to create its web page and to fill therein the details of the proposed project.

51. It is the argument of the petitioner that the Act, specifically provides the deeming clause if the application is not rejected, hence, in the present case invocation of deeming clause is imperative. In support of the aforesaid argument, learned counsel for the petitioner has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others**[15] in which in paragraph 42 it has been held as under :

> *"42. We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequences for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative."*

52. He has further placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Sharif-Ud-Din vs. Abdul Gani Lone**[16]**,** wherein it has been held that whenever a Statute prescribes that a particular Act has to be dealt with in a particular manner and also lays down that if failure to comply with the said requirement, would lead to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

53. Learned Senior Counsel submitted that a deeming fiction is indicative of the framers of the law that they expect compliance of the requirements of the provision, in a prescribed time frame, and in case of failure to dispose of an application within the statutory time limit, the application for registration shall be deemed to have been registered and

15 (2003) 2 Supreme Court Cases 111
16 (1980) 1 Supreme Court Cases 403

failure of the authority to communicate the decision of refusal within the prescribed period entitles the applicant to claim deemed acceptance. (**Ref:Chandrakant Kolavale vs. Government of Maharashtra and others[17]).**

54. He further elaborated that when a public functionary is required to do a certain act within a specified time period, the same is ordinarily directory, however, when the consequence for inaction on the part of the said functionary within such specified time is expressly provided (as in the present case under Section 5(2) of the RERA Act), it must be held to be mandatory.[**Bhavnagar University (supra), State of Bihar and others vs. Bihar Rajya Bhumi Vikas Bank Samti[18], Sharif-Ud-Din vs. Abdul Gani(supra), Vyas Narain Singh and others vs. The B.R. Ambedkar Bihar University[19], Commissioner Income Tax vs. Muzaffar Nagar Authority[20] upheld in Commissioner of Income Tax vs. Raghuraji Devi Foundation Trust[21]**.

55. He argued that correspondence after the deemed registration of the Project under the RERA Act would not act as an estoppel against the petitioner claiming deemed registration as there can be no estoppel against a Statute/law and if law requires something to be done in a particular manner, it must be done in that manner, and if not done in that manner, it has no existence in the eyes of law at all. **[Tata Chemicals Ltd. v. Commr. Of Customs[22]; State of W.B. vs. Gitashree Dutta (Dey) (supra) and Uttar Pradesh Power Transmission Corporation Ltd (supra)].**

17 2003 SCC OnLine Bom 34
18 (2018)9 SCC 472
19 (2006) SCC OnLine Pat 461
20 AIR 2015 All 76 (FB)
21 2022 SCC OnLine All 1295
22 (2015) 11 SCC 628

56. The Senior Counsel next submitted that the deeming fiction in Section 5(2) of the RERA Act interpreted with the aid of the scheme of the RERA Act (including the purpose of the RERA Act as provided in the Frequently Asked Questions issued by the Ministry of Housing & Urban Poverty Alleviation, Government of India) and the preamble shows that the same has been incorporated by the Legislature to counter inter alia the delays and laches in compliance processes.

57. In this backdrop he submitted that the petitioner had initially made an application for Towers 1 & 2 on 02.06.2023, which was rejected by UPRERA on 16.07.2023 with the right to the petitioner to re-apply for registration. Accordingly, the petitioner had made a fresh application on 31.07.2023 along with all the relevant documents, Assignment Agreement, GPAs, which were sought for while rejecting the earlier application. An objection was raised on 22.08.2023, which was duly answered by the petitioner.

Thereafter, the petitioner made another application for Towers 3 & 4 on 23.08.2023 and the same was pending before the Authority. Neither the application was rejected nor any order was passed thereon. Hence, as per Section 5(1) of the Act, if the application is deemed to have been allowed. Section 5 of RERA Act is reproduced hereunder for ready reference:-

> *"(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be* ***deemed to have been registered,*** *and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project."*

58. He further submitted that after completion of statutory period of thirty days, the deeming provision comes into play and the application alternatively stands allowed. Once the application is allowed, the Authority has no right to reject the same as they are denuded of the power to reject the application, which is deemed to have been allowed. He submitted that once deeming provision has come into effect, the respondents has no authority to reject the application, otherwise the deeming clause will itself become redundant. Since, the application was deemed to have been allowed, thereafter, the Authority had no jurisdiction to reject the same.

ASSIGNMENT AGREEMENT

59. The learned Senior Counsel invited our attention to the relevant clauses of the Assignment Agreements dated 31.07.2017 entered into by JIL/JAL and the petitioner, which are as follows:

> *Clause 2.4:*
>
> *"The Developer shall be entitled to develop the Group Housing Project on the Development Land by utilizing the FAR Area and Additional Area2 which includes development of Common Areas and Facilities, parking spaces, services, amenities, fittings, fixtures and enjoy all rights, privileges and benefits arising there from, including but not limited to exclusive right to/ for:*
>
> *...*
>
> *(v) sale, booking, allotment, renting, license, transfer, nomination, substitution etc., of the units/flats in the Group Housing Project and enter into agreements, contracts etc., with third parties for the same and receive in its name all revenues, receivables and consideration for the same and other facilities and amenities over the Development Land.* ***JIL and JAL shall have no right/claim of any nature whatsoever in such revenues, receivables and consideration and same shall accrue to the sole benefit of the Developer;***
>
> *(vi) to cause JIL to execute sub-lease of impartible and undivided share/rights in the Development Land, as per Clause 10.5;*
>
> *...*

(viii) to enter into tri-partite agreements with financial institution and apartment buyers for housing loans for which NOC(s) will be issued by JIL and/or JAL to the Developer;

…

(x) to decide on the pricing of the units and other facilities and amenities developed by the Developer over the Development Land;….."

Clause 2.6:
"The Developer shall have all rights to deal with the Development Rights including but not ***limited to right to sell, enter into any arrangement with any third parties, to allot and enter into arrangement for sub-lease, renting, license of units /residential apartments to be constructed on the Development Land and receive consideration and all other amounts for*** *booking, allotment, sub-lease, renting, license and maintenance of areas in the Group Housing Project, as per terms of this Agreement."*

Clause 2.7:
"This Agreement shall not be construed in any manner as conveying ***sub-lease/ownership rights in the Development Land to the Developer. However, the Developer shall have the right to cause JIL to execute sub-lease of impartible and undivided share/rights in the Development Land beneath the building(s)/tower(s) thereon,*** *as per Clause 10.5. It is hereby clarified that the* ***structure developed by the Developer over the Development Land shall always belong to the Developer unless same has been conveyed/ sub-leased to unit owners."***

Clause 3.3:
"The Developer shall have the right to develop and to offer or advertise, sale of apartments or accept any booking amount from apartment buyers in respect of whole or port of the development in the Development Land, from the execution hereof."

Clause 10.4:
"Subject to the Developer not being in breach of the conditions of this Agreement, the Developer shall, on execution hereof, ***be entitled to offer, market, book, allot and advertise the proposed residential Group Housing Project on the Development Land to third parties without prior consent of JIL & JAL.*** *However, for this purpose, all the documents shall be finalized by the Developer and the Developer shall keep JIL/JAL informed, in this regard."*

Clause 10.5:
"After completion of the building(s)/tower(s) in the Development Land and the ***Developer obtaining occupancy/completion certificate thereof, JIL and***

> ***JAL along with the Developer shall execute the conveyance deeds in the form of sub-lease of land sale of super structure in favour of the allottees****/customers of the Developer. JIL and JAL shall grant such allottees/customers impartible and undivided sub-lease rights up to the period expiring on 27.02.2093 i.e. for the remaining period of lease deed expiring first out of the Lease Deeds of which the Development Land is a part, in the Development Land and such right shall be proportionate to the super area of his/her unit to the total super area of the said building/tower. JIL and JAL shall execute such authorities/Power of Attorney in favour of the Developer to transfer/convey the rights and title, in the superstructure of the said units and/or in respect of the Development Land, to the association and/or the body/organization of the allottees/customers.* ***The sub-lease in favour of allottees/customers shall be executed by JIL/JAL, subject to Developer obtaining requisite NOC(s) from the Bank****/Financial Institution from whom the Developer has raised funds for executing Group Housing Project on the Development Land."*

60. Learned Senior Counsel for the petitioner submitted that Assignment Agreement dated 31.07.2017 was executed between JIL/JAL and the petitioner. In its Clause 1c, “Common Areas & Facilities” and in Clause 1f, “Shared Areas and Facilities” had been defined. Clause 4 mentions Assignment of Development Rights. Clause 2.4 (vi) allows the petitioner to execute sub-lease of impartible and undivided share/rights in the Development Land, as per Clause 10.5. Clause 2.6 gave the petitioner all rights to deal with the development rights including but not limited to right to sell, enter into any arrangement with any third parties, to allot and enter into arrangement for sub-lease, renting, license of units in the project land. Clause 2.7 makes it clear that by this Assignment Agreement, JIL/JAL is not executing any sub-lease or the ownership rights. However, the Developer have the right to cause JIL and execute sub-lease of impartible and undivided share in the development land. As per Clause 8.1, JIL/JAL is obliged to make necessary arrangement of electricity supply, water supply, sewage system and drainage system as a part of

Shared Areas and Facilities similar to those made available to other sub-projects/plots in Jaypee Greens, Wish Town, Noida. Clause 8.2 also gave right to way to the roads adjoining the development land and was entitled to enter upon such roads for the purpose of accessing the project land. As per Clause 10.5 of the Assignment Agreement after completion of the project, the Developer would get occupancy/completion certificate thereof, JIL/JAL along with the Developer shall execute conveyance deed in the form of sub-lease of land sale of super structure in favour of the allottees/customers of the Developer. JIL/JAL would further provide impartible and undivided sub-lease rights to the customers/owners of the flats. It was further clarified that the flat owners would have proportionate share in the undivided land on which the building and the towers were constructed and for this JIL/JAL executed a power of attorney in favour of the Developer to transfer the conveyance right and title to the Association/body or Association of allottees/customers.

POWER OF ATTORNEY

61. While referring to the Power of Attorney, the Senior Counsel submitted that JIL has authorized the petitioner to undertake certain acts by way of General Power of Attorney. As per Clause 24 of the Power of Attorney, the petitioner had right to sell, dispose, assign, transfer the premises in the project to third parties or intended purchasers and for this he can sign and execute Booking Application, agreement to sale, sale deed and all other necessary agreements and get the sale registered before the proper registration authority and to carry on all the acts and deeds in relation to the sale of premises, as may be necessary for the registration. As per Clause 26 of the Power of Attorney, the petitioner is

entitled to receive sale consideration from the sale of said premises and to refund the money to the purchasers in the event of cancellation. As per Clause 27, the petitioner was authorized to represent before regulatory authorities and any other third parties in connection with the sale of premises in the project and to take all necessary incidental steps for the sale of premises.

SIMILARLY SITUATED DEVELOPERS GRANTED APPROVAL

62. Learned Senior Counsel vehemently submitted that there are four identically situated companies, who had applied with UPRERA and their applications were allowed placing reliance on the verbatim identical Assignment Deeds/Agreements and Power of Attorneys, as were entered into between the petitioner and JIL/JAL. He raised serious objection by submitting that the respondent authority is adopting "pick and choose" policy as they have rejected the application of the petitioner, and had granted registration to these projects in Jaypee Greens Wish Town, which are as follows:-

(i) Mahagum Manorialle (Registration granted on 27.07.2017)
(ii) Kalpatru Vista (Registration granted on 22.01.2018)
(iii) Genx Estate LLP Project (Registration granted on 17.08.2019)

63. He submitted that apart from these three, another identically situated company, namely, M/s Golf Lake LLP for their Trecento Residents-A which has also been built on the land owned by JIL/JAL, RERA granted registration in October, 2023 wherein no such restriction of making JIL/JAL as a co-promoter was raised by UPRERA. The letter given by JAL in favour of M/s Golf Lake LLP clearly shows that lease

holder was JAL and the map/building plan was sanctioned in the name of J.P. Greens wherein all the development, maintenance and execution of sub-lease deed would be the sole responsibility of M/s Golf Lake LLP. This registration certificate was issued much after rejection of the application of the petitioner. It clearly shows that UPRERA herein is adopting a 'pick and choose' policy wherein they have earlier granted permission to identically situated companies, i.e. Mahagun India Pvt. Ltd., Kalpataru Urban Space L.L.P. and M/s GenX Estate L.L.P., whereas refused to register the Project of the petitioner.

CONDUCT OF UPRERA

64. With regard to conduct of RERA, the learned Senior Counsel submitted that the application was filed on 31.07.2023 and after expiry of the period of thirty days, it is deemed to have been allowed, since it was not rejected till that time, and since the password has not been issued, which was to be issued within a period of seven days of the deeming provision, and RERA had initiated proceedings against the petitioner under Section 3 of the Act because of some advertisement given by some unknown third party, the petitioner was left with no option but to file the instant writ petition. During pendency of the writ petition, on the ground of illness of Sri Anil Tiwari (learned Senior Advocate appearing on behalf of UPRERA), the matter was adjourned. However, this Court vide order dated 17.05.2024 has categorically directed that the Authority will not take any decision till 29.05.2024. On the next date of listing i.e. 29.05.2024, the matter was adjourned till 31.05.2024, and the interim order, granted earlier, was extended. In spite of clear direction that no orders will be passed by the respondent-

Authority on 28.05.2024, UPRERA rejected the application preferred by the petitioner under Section 4 of the RERA Act. Such conduct of UPRERA is nothing but an endeavour to just overreach the order of this Court.

65. He further submitted that an affidavit was filed by respondents on 28.05.2024, which was sworn on 27.05.2024, wherein there was not an iota of suggestion that the rejection has already taken place on 16.05.2024. When the rejection order was passed on 16.05.2024, it ought to have been brought to the notice of the Court in the said affidavit. It was only on 29.06.2024 it was communicated to the petitioner that the application stands rejected vide decision taken in a meeting, which was held on 16.05.2024. This entire exercise seems to be a back dated exercise, just to overreach the orders of this Court. In spite of a clear direction by this Court, the application of the petitioner was rejected and to ensure no adverse order is passed against the Authority, on the next date of hearing, which was barely two days away.

66. Section 38 of the RERA Act provides for principles of natural justice to be followed, which has not been done. The rejection orders were passed without giving the petitioner an opportunity of being heard and despite information given by the petitioner to UPRERA by its letter dated 16.05.2024 that the matter was subjudice before the Court and any hearing before UPRERA could only be done, after the writ petition is heard.

67. He further submitted with vehemence that once a matter is subjudice and a question of law is pending consideration before a court of law, the Authority ought not have acted with undue haste and interfere in the adjudication process of court, and any attempt of the

authority to decide the same matter, which is pending before the court, would be an overreach. To buttress this proposition he had relied on the judgement passed by Hon'ble Supreme Court in the matter of **[M/s Siemens Aktiengeselischaft and Siemens Limited vs. Delhi Metro Rail Corporation Ltd. and others[23], Sarku Engineering Services and others vs. Union of India and others[24]]**

MISCELLANEOUS

68. Learned Senior Counsel for the petitioner further raised its submissions qua Uttar Pradesh Real Estate Regulatory Authority, Rules, 2016 wherein Chapter II Rule 3 lays down the details of the documents which has to be furnished by the promoter for registration of the project. Rule 3(d) states that only a copy of the title deed of the promoter of the land has to be supplied by the promoter if the land is owned by them. Rule 3(e) lays down that the details of encumbrances on the land on which the development is to be carried out has to be mentioned and Rule 3(f) postulates the possibility when the developer does not own the title of the land but he is only developing, in that case the promoter needs to submit the consent of the owner of the land along with the copy of collaboration agreement/development agreement or any other agreement as the case may be and also copy of the title of the document. He further submitted that in this case the promoter is not the owner of the land. He falls under the category of Rule 3 (f) and Rule 14 (I) (e) (vi) (E), which specifically states that, if the promoter is not the owner of the land, all he has to produce is an agreement, development agreement or any other agreement by which he is carrying on the development and also copy of the title deed.

23 (2014) 11 SCC 288
24 AIR 2017 (NOC) 49 (BOM)

69. He further submitted that as per Rule 3(4) of these Rules a declaration has to be submitted under Clause 1 of sub-section 2 of Section 4 in the form B. Form B along with the Rules specifically in the first clause clarifies that the promoter who owns the land can develop the land or anybody else on behalf of the promoter can develop the land. Accordingly, the petitioner had filled up Form B as per the Rules. He further submitted that even the Form A which is made as per Rule 3(2), which is nothing but an application for registration of the project, also recognizes that if promoter is not the owner of the land on which the development is to be carried out, the consent of the owner of the land along with the copy of the collaboration agreement, development agreement or any other agreement entered between them and the copy of the title has to be furnished. The same has been furnished. He next submitted that as per clause 9 and 10 of Form A the project proponent has to give the boundary wall and the locations of the project and also a proforma of allotment letter, agreement for sale and conveyance deed proposed to be signed with the allottees. All these things had been carried out by the petitioner. He further submitted that Rule 1 of U.P. Real Estate(Regulation and Development)(Agreement for sale/lease) Rules, 2018[25], sets out a proforma for agreement of sale. Even in that proforma the Statute recognizes that if the project proponent is not the owner of the land, all he has to mention is about the development agreement/any other agreement which should be registered in the office of Registrar.

70. In this backdrop, he argued that all these documents have been furnished and in spite of completing all the formalities as laid down

25 Rules, 2018

under Rule 3 of Rules, 2016 yet the respondent have illegally held back the registration.

71. The learned Senior Counsel submitted that as per RERA Act and Rules, 2016, there is no provision for the owner of the land to be made co-promoter. The RERA Act as well as Rules, 2016 itself recognize a party who is developing a project on somebody's land as a promoter. He submitted that there is no clause, section or rule in the RERA Act or Rules framed under the Act which makes it mandatory for the owner of the land to be a co-promoter in case it is being developed by someone else.

72. Learned Senior Counsel for the petitioner further submitted that as per the Assignment Agreement JIL does not have the power to construct or sell. The power of constructing and selling is with the petitioner, and therefore, JIL does not fall in the definition of the promoter. To be a promoter, the two cardinal conditions are that he should have the power to construct and to sell and both of them are lacking from the obligations of JIL. Therefore, Uttar Pradesh Real Estate Regulatory Authority cannot ask them to sign the application as a co-promoter. UPRERA cannot create any other person as promoter who is not covered under Section 2(zk) of the RERA Act.

73. He submitted that even Section 11 of the RERA Act lays down the obligation of the promoter. Section 11 (4) (a) specifically states that the promoter shall be responsible for all obligation, responsibilities and function till the conveyance of the apartments, plots or the building, as the case may be is executed in favour of the allottees, and the common areas in favour of the Association of allottees. Here, the petitioner is in a position to execute the conveyance deed of apartment and is in a

position to hand over the common areas to the Association of allottees as per the Assignment Agreement and also as per the General Power of Attorney executed by JIL/JAL in favour of the petitioner. He further submitted that as per Clause 11(4)(f), the petitioner is in a position to execute a registered conveyance deed of the apartment/plot in favour of the allottees along with undivided proportionate share in the common area to the Association of the allottees.

74. He further submitted, that the only power which UPRERA can exercise is under Section 18, 32, 38 and 40 of RERA Act. Section 18 specifically mentions return of the amount and compensation, if the promoter fails to complete the project or is not able to give possession of the flats in accordance with the terms of the agreement or discontinuance of his business. Section 32 lays down functions of Authority for promotion of real estate sector, Section 38 gives power to UPRERA to impose penalty or interest if there is any contravention of obligations cast upon the promoter. Section 40 lays down recovery of interest or penalty or compensation and enforcement of the orders in case where a penalty has been imposed on the promoter and he is not paying. Apart from these four sections, UPRERA has no authority to check the obligations of the builders. UPRERA cannot pass any order except under these four sections, and that is how they protect the interest of the allottees, and in this case the interest of the allottees can very well be protected under these four sections.

75. Sri Nandan, Senior Advocate further submitted that under the RERA Act, the owner has no role to play. It is only the promoter who is liable for each and everything and even the RERA Act recognizes both the categories, firstly, the promoter as the owner of the land secondly,

and the promoter, who has the development agreement or any other agreement with the owner of the land. All that UPRERA can see is whether the owner of land has a valid title and is free from all encumbrances.

76. Learned Senior Advocate further submitted that the power of UPRERA starts from conceptualizing of the project and ends up once the completion certificate is given and the possession is handed over to the Association of allottees(AOA), thereafter, the provisions of Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010[26] (For Brevity Act of 2010) comes into play. Section 3(d) defines "apartment owner", Section 3(i) defines of Act 2010 "common areas and facilities" and Section 3(w) defines "promoter". The definition of the "promoter" in the Apartment Act is quite different from the definition of "promoter" in the RERA Act. Under the Apartment Act, promoter is one who constructs. Keeping this in mind, in Clause 7.3 of the Assignment Agreement it has been specifically stated that the developer (petitioner) shall abide by the provisions of RERA Act and also the Apartment Act. Section 9 of the Apartment Act lays down certain rights, and it is only because of this Section that Clause 10.5 was incorporated in the Assignment Agreement.

77. The argument is thus raised by Senior Advocate that the obligation of the promoter to ensure the project is completed as per the specifications and time line given while applying for registration of RERA Act and get the occupancy certificate. If he fails to fulfil his obligation, RERA can direct the Promoter to hand over the possession

26 Apartment Act

of the apartment or return the money along with interest. In this case, the petitioner is solely responsible for constructing and selling the apartments and, hence, he is responsible for completing the project. Hence, even on this ground there is no need to include JIL as a promoter in the Project as including JIL in no manner protects the interest of the allottees in any manner. Further, in the present case JIL has just come out of the corporate insolvency resolution process with a huge debt still outstanding and hence, no allottee would invest if JIL is included as a promoter for the Project.

78. Learned Senior Advocate concluded his arguments by lastly submitting that a reading of the RERA Act and the Rules thereunder makes it clear that the statutory obligation cast upon UPRERA is to protect the interest and investment of the allottee. This protection must be assessed on a case-to-case basis. In the present case, the investment of the allottees as well as their interest is well protected as the petitioner is far better equipped to ensure compliance of all obligations of a promoter under the RERA Act and Rules thereunder to protect the investment of the investors than JIL. On the other hand, JIL itself has stated that it does not fall under the ambit of a promoter and hence does not want to be included as a promoter in the Project as they are not developing and selling the apartments, and hence rightly they can not shoulder the liability of the Developer, as that is the sole domain of the petitioner.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

79. Per contra, Sri Anil Tiwari, learned Senior Counsel assisted by Sri Mohd. Afzal and Sri Rahul Agarwal, Advocates appearing on behalf of

respondent nos.2 and 3-Uttar Pradesh Real Estate Regulatory Authority and opposed the petition. His contentions are summarized as follows:-

RERA ACT AND ITS OBJECT

80. Learned Senior Counsel for the respondents submitted that the objects of RERA Act are as follows:-

> *"for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."*

81. He further submitted that the objects of the Act clearly suggests that the Act has been made to established an authority to regulate, promote the real estate sector and to ensure that the apartments are sold in transparent manner. As per the objects of the Act, it is the duty of UPRERA to ensure that the interest of flat buyers/customers are well taken care of. Keeping the objects in mind UPRERA has passed the impugned order as per the objects of the RERA Act. The authority is not against the petitioner per se and has only asked to make JIL/JAL as co-promoter.

APPLICATION MADE UNDER SECTION 4 OF RERA ACT

82. Sri Anil Tiwari, learned Senior Advocate stated that the application of the petitioner was not as per Section 4 of the RERA Act. He submits that the petitioner has not disclosed anything in the affidavit enclosed with the application for registration, hence, it is contrary to Section 4(l) of the RERA Act. He submitted that the documents filed by

the petitioner does not show that the petitioner has got right to transfer the title of the land to the allottees. He submitted that the petitioner was given absolute right to sell the residential apartment in favour of the allottee and there is no dispute about it, but so far as common area of the apartment is concerned, the right is given to JAL/JIL and the petitioner jointly. He further submitted that undivided share of the land can only be transferred by JIL and not by the petitioner. In support of his submission, he has placed reliance on Section 5 and 17 of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010[27].

83. He has further placed reliance on Rule 10 of Rules, 2018, which provides that the promoter, on receipt of total price of the apartment/plot as per Para 1.2 under the Agreement from the Allottee, shall execute a conveyance deed and convey the title of the apartment/plot together with proportionate indivisible share in the common areas within three months from the date of issuance of the completion certificate to the allottee. He has placed reliance on Clauses 2.4(vi), 2.7 and 10.5 of the Assignment Agreement, which specifically stated that the Developer after obtaining occupancy/completion certificate thereof, JIL and JAL along with the Developer shall execute the conveyance deeds in the form of sub-lease of land sale of super structure in favour of the allottees/customers of the Developer. JIL and JAL shall grant such allottees/customers impartible and undivided sub-lease rights up to the period expiring on 27.02.2093 i.e. for the remaining period of lease deed.

27 Apartment Act

DEEMED PROVISION

84. Learned Senior Counsel, appearing on behalf of respondent authority stated that the petitioner cannot seek benefit of Section 5(2) of the RERA Act as his first application had already been rejected on merits after providing ample opportunity of hearing within thirty days. Since, the petitioner had again applied for registration of the same project without removing deficiencies, hence, it cannot get benefit of Section 5(2) of the RERA Act. The petitioner was directed by the answering respondent vide order dated 06.07.2023 to make fresh application in prescribed Form D within three months after clarifying on the queries raised by UPRERA supported by requisite documents. The rejection order dated 06.07.2023 was never challenged by the petitioner before any Court of Law, and has attained finality. However, the petitioner without removing serious legal deficiencies directed by the authority vide order dated 06.07.2023, an application (2nd Application ID-809171) for registration of its Tower 1 & 2 on 31.07.2023. This application on 31.07.2023 was not a fresh application but was an extended application, which was filed earlier. Since the second application was not accompanied by mandatory fees under Section 4 of RERA Act, hence, it cannot be said that the second application was a fresh application. He submitted that all applications have to be filed along with mandatory documents as per the provisions laid down under Section 4 of the RERA Act, but all the mandatory documents were not filed and the affidavit filed along with the document was false. Hence, the authority had rightly rejected the application filed by the petitioner.

85. He submitted that the application dated 31.07.2023 was uploaded on RERA website without resolving shortcoming as was previously

reported on 06.07.2023. Respondent on 31.10.2023 granted an opportunity of hearing to the Petitioner. But, no satisfactory reply was provided with respect to the first query raised i.e. the map owner and the lease owner (JIL) was not added as a promoter of the project. The petitioner cannot seek benefit of section 5 (2) of the Real Estate (Regulation and Development) Act 2016 as his first application had already been rejected on merits after 30 days. Since, the Petitioner had again applied for registration of the same project without removing deficiencies the case of the Project is not protected by Section 5(2) of the Real Estate (Regulation and Development) Act 2016.

86. He submitted that from the documents filed by the petitioner in the amended petition, it is clearly evident that application dated 21.07.2023 had been uploaded on 31.07.2023. The date for counting thirty days would start from the date of uploading. Since, the objections were raised by UPRERA on 22.08.2023, which were not rectified, hence, it cannot be said that the mandatory period of thirty days has elapsed. Hence, the petitioner is not entitled for the benefits of deeming provision as provided under section 5(2) of the RERA Act.

87. He submitted that the petitioner has never been serious in removing/rectifying the shortcoming in the application, and this fact is evident from the own conduct of the petitioner as when the matter was scheduled on 13.03.2024 before the UPRERA for hearing, the petitioner himself filed an application dated 12.03.2024 seeking two weeks further time for hearing. Despite, being afforded numerous opportunities to the petitioner, the petitioner till date had failed to rectify the deficiencies and have now approached this Hon’ble Court. If the petitioner was

desirous of claiming benefit of deemed approval then he would not have been seeking time for curing the deficiencies.

88. He submitted that keeping in view of the principle of natural justice, an opportunity of hearing was once again provided to the petitioner on 10.01.2024 to answer/reply/clarify on the following points:-

> *a. The Project Land and Approved Map are not under the ownership of the petitioner but it is owned by JIL. Thus, it was advised to add the land and the map owner as the Promoter of the Project.*
> *b. According to clause 2.7 and 10.5 of assignment agreement by whom the conveyance deed will be executed in favour of the allottees. Moreover, it was even not clarified as to who amongst JIL or Suraksha Realtors Pvt. Ltd. or Lakshdeep Investment & Finance Ltd. Will handover title in lieu of the title conveyance deed and who will be confirming party while the execution of the sub-lease agreement along with the petitioner.*
>
> *c. Who amongst JIL or Suraksha Realtors Pvt. Ltd. or Lakshdeep Investment & Finance Ltd. will bear the additional compensation of farmers as demanded by YEIDA paying the additional compensation to the farmers is also necessary.*

89. He further submitted that Section 5(2) of the RERA Act nowhere contemplates that even if there are serious shortcomings in the registration application of the Promoter then also, if thirty days are elapsed, and in the meantime if the deficiencies are not rectified, the project will be deemed to be allowed and registered. The issue of deemed registration is well settled and there is no dispute about it. But the instant case is not a case of deemed registration, because several conditions precedent pertaining to concept of deemed registration is not there.

90. Sri Tiwari, Senior Advocate further submitted that the provision of the deeming clause cannot be interpreted and given effect in a way which will defeat the very object and purpose of the Act. If the

contention is allowed then the interest of the allottee would be compromised in getting the valid title in the land which is mandatory requirement under Section 11 & 17 of the Act.

PROMOTER

91. Learned Senior Counsel for the respondent submitted that the petitioner cannot independently file application under section 4 of the RERA Act without mentioning JIL/JAL as Promoter/Co-promoter, since JIL/JAL falls within the ambit of Section 2(zk)(1), hence, it is imperative to make JIL/JAL as a promoter. He submitted that a plain reading of Section 2(zk) of the RERA Act, which defines the word "promoter", clearly shows that JIL is a promoter, and necessarily has to sign an application before the same is considered by UPRERA. It is only after adding JIL as a Promoter the application of the petitioner will be in consonance of the Act.

92. To buttress his argument he submitted that by making land owner as a promoter, the promoter can be forced to execute sub-lease deed in favour of the allottees to discharge the duties and functions of the promoter as per Section 11(4)(f) and perfect titles can be transferred to the allottees as per Section 17 of the RERA Act, so that the rights and interest of allottees can be protected, but if he does not sign as a promoter, it will be very difficult to safeguard the interest of the allottees.

TRANSFER OF TITLE

93. Sri Tiwari, learned Senior Counsel, further submitted that as per the provision of RERA Act, at the time of purchase of a

plot/apartment/flat by the allottee, the transfer of title has to be ensured at the level of the promoter, as per the provisions of Section 17 of RERA Act, it is the promoter, who shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building to the allottees and the common areas to the association of the allottees and the other title documents pertaining thereto within three months from the date of issue of occupancy certificate.

94. He submitted that it is thus clear that no person other than the legal owner of the property has a right to transfer the title in that property. Hence, if JIL is made a promoter to the project, then if required, action against them under Sections 34(f), 11(4)(f), 17 and 37 of the RERA Act can be initiated in case of non-compliance with the provisions of the Act.

95. He submitted that it is well settled principle of law that a person can transfer only those rights which are vested with oneself. In the present matter, the petitioner cannot transfer this right to the allottees unless that title has been transferred by way of a sub-lease deed in favour of the petitioner. If sub-lease is not executed in favour of the petitioner then the transfer of title to the allottees is possible only when JIL/JAL become promoters because undisputedly, title of land as well as the map are in the name of JIL/JAL.

96. In this background the argued that therefore, the claims made by the petitioner that JIL has provided them with absolute, unfettered and unqualified rights to transfer the sub-lease deed and title in favour of the

allottees under section 17 of the Real Estate (Regulation & Development) Act, 2016, are false and it is not acceptable.

ASSIGNMENT AGREEMENT & GENERAL POWER OF ATTORNEY

97. Learned Senior Counsel for respondent-UPRERA has further drawn attention of the Court towards definition of word "common area" given in Rule 2(d) of RERA Rules, which reads as follows:-

> *2(d) "Common area" means:-*
> *(i) the entire land for the real estate project, or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*
>
> *(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
>
> *(iii) the common basements, terraces, parks, play ground, open parking areas and common storage spaces;*
>
> *(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*
>
> *(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
>
> *(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*
>
> *(vii) all community and commercial facilities as provided in the real estate project;*
>
> *Explanation:- community & commercial facilities shall include only those facilities which have been provided as common areas in the real estate project.*
>
> *(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;*

He submitted that as per the Assignment Deed/Agreement the petitioner has not been given any specific right over the common area rather the petitioner has specifically been excluded from it.

98. He submitted that the Assignment Agreement dated 31.07.2017 relied by learned counsel for the petitioner are also against them. He submitted that in clause 24 of the Assignment Agreement whereby Power of Attorney was executed in favour of the petitioner it has clearly been mentioned that, the petitioner has right to sell, dispose, assign, transfer, in an manner whatsoever, the newly constructed premises in the project to third parties/intended purchasers and for that purpose to sign and execute booking application form, booking confirmation cum allotment letter, agreement for sale, sale deed and all necessary assurances, writings, letters, agreements etc. as was set out in the assignment agreement dated 19.10.2007. He submitted that even this Assignment Agreement dated 31.07.2017 does not give right to the petitioner to transfer the title of land to the allottees.

99. Relying upon Clause 10.5 of the Assignment Agreement learned Senior Counsel submitted that after completion of building(s)/tower(s) in the project land, the developer/petitioner would get the occupancy/completion certificate. Thereafter, JIL/JAL is supposed to grant the allottees/customers the impartible and undivided sub-lease rights for the remaining period of lease.

100. Learned Senior Counsel while referring to Clause 10.5 of the Assignment Agreement submitted that it is specifically mentioned that the Developer shall be transferring/conveying the right, title in the superstructure of the said unit to the allottee/customer. Further, it says that the sub-lease in favour of allottees/customers shall be executed by JIL/JAL, subject to Developer obtaining requisite NOC(s) from the Bank/Financial Institution from whom the Developer has raised funds for executing Group Housing Project on the Development Land. Thus, it

is clear from the provisions of the assignment agreement that transferring/conveying of the rights by the developer is not independent of the rights of the JIL to execute the sub-lease deed in favour of the allottees as transferring of rights and execution of sub-lease deed have been given two different connotations and sub-lease deed is to be executed only with the JIL being the confirming party.

101. He submitted that a bare perusal of both clauses of the Assignment Agreement does not construe in any manner as conveying sub-lease/ownership rights in the Development Land to the Developer. Even as per Assignment Agreement, the petitioner has to approach JIL to execute sub-lease of impartible and undivided share/rights in the Development Land beneath the building thereon.

102. Refuting the submission of the petitioner that Clause 24 of the General Revocable Power of Attorney dated 31.07.2017 gives full right to transfer ownership and sell the constructed premise to third parties he submitted that Clause 24 of the General Revocable Power of Attorney has to be tested on the anvil of clause 2.7 and 10.5 of Assignment Agreement, as to whether clause 24 of the General Revocable Power of Attorney supersedes clause 2.7 and 10.5 of Assignment Agreement or not. It is noteworthy that both the Assignment Agreement and the General Revocable Power of Attorney were executed on 31.07.2017. Therefore, it to be seen as to who overrides whom in case of conflict between the two. Learned Senior Counsel vehemently submitted that the provisions of fully stamped and registered assignment agreement will supersede the general irrevocable power of attorney.

103. He next submitted that from a bare perusal of the abovementioned clauses it becomes clear that only development and marketing rights

have been transferred by JIL to the petitioner and all the other rights such as right to acquire title and execute sub-lease has been reserved by JIL itself. Therefore, the petitioner cannot be sole promoter in this development project as they are not legally entitled to execute the sub-lease in favour of the allottees.

104. He submitted that even in the Assignment Agreement, JIL/JAL has not assigned the petitioner the right to execute such agreement with the allottees for undivided share of the land for that project. If JIL/JAL are not made the co-promoters and for some reason they refuse to execute the transfer deed of the undivided share of land in favour of the allottees then it would be very difficult task for UPRERA to ensure that the interest of flat buyers is secured.

105. At this juncture, it is vehemently argued that any right or title, which was not conferred by the Assignment Agreement, now cannot be confirmed through a confirmation letter. Further, in reality the General Revocable Power of Attorney has not given any rights to the petitioner other than the rights mentioned by the Assignment Agreement.

LAUNCHING PROBLEMS

106. Sri Anil Tiwari, learned Senior Counsel submitted that the RERA Act was enacted in 2016 and was enforced with effect from 01.05.2016. Under Section 84 of the RERA Act power has been accorded to appropriate Government to make rules, and accordingly, Uttar Pradesh Real Estate Regulatory Authority Rules, 2016 were made which came into effect on 27.10.2016 and immediately thereafter, U.P. Real Estate Regulatory Authority was constituted and its web portal was launched on 26.07.2017. Thereafter, all the Developers were asked to register

their respective projects within three months from the date of commencement of the RERA Act. In the initial days, the registration was granted by UPRERA on the basis of self certification by the Promoters due to shortage of manpower. Since, all the on going projects were to be registered, the projects were registered on the basis of self certification by the Promoters. There was some technical glitch in the website of UPRERA during initial period, which was revamped in May, 2018 by putting minimum validation check to minimize the errors in the registration on the basis of self certification.

SIMILARLY SITUATE COMPANIES

107. Learned Senior Counsel further submitted that, immediately after launch of website of UPRERA, one Mahagun India Pvt. Ltd. applied on the basis of self certification and the registration for the project was accorded automatically. Another company, Kalpataru Urban Space L.L.P. also applied on the web portal and registration was automatically generated on 22.01.2018 without any proper scrutiny of the application. Another company, M/s GenX Estate L.L.P. also applied for its project Golf Street Hub on 10.05.2019 and same was also registered on 17.08.2019. Undoubtedly, those few identically placed companies got registered on the basis of self certification. In the interregnum period, they have launched the project and booked number of apartments with the prospective customers.

108. In this backdrop, he submitted that now in case their registration is tampered with, the interest of a number of flat buyers/allottees/customers would be put in jeopardy, and as such, in consonance with its main objective to safeguard the interest of flat

buyers/allottees/customers, UPRERA cannot proceed to cancel their registration. Hence, request of the petitioner asking for negative parity cannot be entertained by UPRERA. To buttress his argument, he placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Doiwala Sehkari Shram Samvida Samiti Ltd. vs. State of Uttaranchal and others**[28] has observed as under:-

> *"This Court in Union of India & Anr. vs. International Trading Company & Anr.[29] has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Art. 14 cannot be pressed into service in such cases. But the concept of equal treatment pre-supposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs at par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."*

109. He further placed reliance on another judgment passed by Hon'ble Supreme Court in **Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore vs. President, Indore Development**[30], has held as under :

> *"So far as the allotment to non-eligible societies is concerned even if it is accepted, though specifically denied by the Authority, to be true that does not confer any right on the appellants. Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no*

28 (2007) 11 SCC 641
29 (2003) 5 SCC 437
30 (2006) 2 SCC 604

> *discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality."*

110. He submitted that on perusal of the aforesaid judgments of Hon'ble Supreme Court, it is quite apparent that the Court has clearly laid down that, two wrongs will not make a right. A party cannot claim advantage for something wrong, which has been done in the past.

111. Learned Senior Counsel for the respondents further submitted that permission was granted to M/s Golf Lake LLP for their Trecento Residents-A project, in this facts are different, as the applicant company had bought the property in auction and has become the owner. Hence, case of Golf Lake LLP is completely different from that of the petitioner, as the petitioner is not the owner of the development land and hence the petitioner cannot claim a parity with the registration granted to M/s Golf Lake LLP.

MISCELLANEOUS

112. He further submitted that in the assignment agreement it has been mentioned that the map of the project was approved in the name of JIL. This has to be read in the light of township policy prevalent in the Industrial Development Authority. Hence, the occupancy certificates will also be issued in the name of JIL. In future if, because of any reason the project is not completed, and the occupancy certificate is not issued, then no direction could be issued against JIL. Since, the project map has been approved in favour of JIL and the occupancy certificate

has to be issued in favour of JIL/JAL, as such it becomes mandatory to incorporate/add JIL as a promoter.

113. Referring to Rule 10 of UPRERA Rules, 2018 he submitted that the promoter, on receipt of total price of the apartment/plot as per paragraph 1.2 under the agreement from the allottee, shall execute a conveyance deed and convey the title of the apartment/plot together with proportionate indivisible share in common area within three months from the date of issuance of the completion certificate and the certificate as the case may be, to the allottee. However, in this case the applicant/petitioner had no right to execute the conveyance deed, on the land on which the project is made, for the indivisible share in the common area.

114. He further submitted that the impugned order passed by the Authority is a well considered order and all the possible facts have been taken into consideration while passing the order, hence, there is no reason for this Court to interfere in the matter and the instant writ petition is liable to be dismissed.

115. Learned Senior Counsel for respondent nos.2 and 3-UPRERA further submitted that the interest of the allottees/customers would be put in jeopardy if JIL/JAL do not come up as a promoter along with the petitioner. He further submitted that there is an apprehension that JIL/JAL after execution of the project might not sign or assign the undivided share in that building to the customers/Association of Apartment Owners/Association of allottees. He submitted that what if the road access, sewage system, water supply, electricity supply in the project, which is provided by JIL/JAL, is interrupted and if JIL/JAL is

not a promoter before UPRERA and if the authority find JIL/JAL liable for the interruption and cannot proceed against them.

REJOINDER BY PETITIONER

116. In rejoinder, the Senior Counsel for the petitioner submitted that UPRERA is reading clause 10.5 in piecemeal,- under clause 10.5 of RERA Act, it has been expressly stated that JIL will execute power of attorneys in favour of the petitioner to transfer and convey the rights and title in the Project (units and land) Recital J and clause 30 of the GPA state the same, and same are being reproduced below for ready reference:-

> *"Recital J. The Developer shall construct a group housing/residential project on the Development Land, which will include the sale and transfer of the premises/apartments constructed thereon, to the prospective purchasers/buyers("Project").* ***Upon construction of the entire Project, the Developer shall transfer the Development Land to the association of the apartment purchasers by executing a Deed of Conveyance/Sub-Lease."***
>
> *"Clause 30. To prepare and execute, for and on our behalf, the deed of conveyance/sub-lease and any other necessary deed or document or writing for the transfer of the Development Land in favour of the society/organization."*

117. From clauses 2.6 and 3.3 of the agreement it is evident that the right to sell includes the right to execute Agreements in favour of the allottees which necessarily caries the right to the land as well and clause 10.5 must be read harmoniously with other clauses.

118. Further, he submitted that the rights of the allottees under the RERA Act including Section 19 can be claimed against the petitioner as per the terms of the contract between the parties. Under Section 34(f) of the RERA Act, UPRERA is required to ensure compliance by the

promoter of its obligations, which obligations have been undertaken by the petitioner.

119. He submitted that even Section 11(4) of the RERA Act lays down the obligation of the promoter. Section 4(a) specifically states that the promoter shall be responsible for all obligation, responsibilities and function till the conveyance of the apartments, plots or the building, as the case may be, to the allottees and the common areas to the Association of allottees. Here, the petitioner is in a position to execute the conveyance deed of apartment and is in a position to hand over the common areas to the Association of allottees as per Clause 2.7, 10.5 of the Assignment Agreement and also as per the General Power of Attorney executed by JIL/JAL in favour of the petitioner. He further submitted that as per Section 11(4)(f) of RERA Act, the petitioner is in a position to execute a registered conveyance deed of the apartment/plot in favour of the allottees along with undivided proportionate share in the common area to the Association of the allottees.

120. He further submitted that UPRERA today is acting like a court, empowering itself with granting specific performance of a contract and on the basis of far-fetched future contingencies seeking to pass orders as opposed to limiting itself to the mandate of the RERA Act. As per the Act, JIL does not fall within the definition of a “promoter”. To buttress his argument, he has placed reliance on an order passed by Rajasthan RERA (vide notification No.F.1 (152) RJ/RERA/LAND/2020/1202 dated 30.06.2020) wherein they have notified that a landowner shall not be named or treated as a promoter and this Notification squarely applies to the present matter.

121. Learned Senior Counsel submitted, without prejudice, that UPRERA during its oral arguments has made various submissions for including JIL as a promoter which do not form a part of the Reply or Supplemental Reply or even the Rejection Orders and on this ground alone the oral submissions of UPRERA should be rejected. It is settled law that the Court must limit its judgment to the pleadings **[Mohd. Abdul Wahid vs. Nilopher and another[31]; Bachhaj Nahar vs. Nilima Mandal and another[32]]**

122. He further submitted that all the apprehensions raised by learned Senior Counsel appearing for respondent nos.2 and 3-UPRERA, that the interest of the allottees/customers would be in jeopardy if JIL/JAL do not come up as a promoter along with the petitioner, does not have any valid ground as the Assignment Agreement when read with Power of Attorney clearly indicates that JIL/JAL had allowed the Developer to develop the towers and after getting completion certificate it would execute sub-lease deed in favour of the customer and the same would be done by the Developer and by JIL/JAL and for this JIL/JAL had already given Power of Attorney to the Developer to execute the deed on their behalf.

123. He submitted that the other apprehension of learned counsel for respondent nos.2 and 3 that JIL/JAL after execution of the project might not sign or assign the undivided share in that building to the customers/ Association of Apartment Owners/Association of allottees, is also misconceived as the petitioner in the Assignment Agreement as well as Power of Attorney has the right to transfer the undivided share of the

31 (2024) 2 SCC 144
32 (2008)17 SCC 491

land on behalf of JIL/JAL in favour of such allottees/Association of Apartment Owners/Association of allottees.

124. With regard to the apprehension raised by learned counsel for the respondents that what if the road access, sewage system, water supply, electricity supply in the project, which is provided by JIL/JAL, is interrupted and if JIL/JAL is not a Promoter before UPRERA and if the authority find JIL/JAL liable for the breach and cannot proceed against them. He submitted that it is also without any basis as the Assignment Letter read with Power of Attorney makes it clear that this right of providing road access, sewage system, electricity supply, water supply and other such basis amenities has already been assigned to the petitioner by means of Assignment Agreement and Power of Attorney.

125. Learned Senior Counsel for the petitioner further submitted that Section 18 of RERA Act provides for return of amount and compensation. If the petitioner/promoter fails to complete or in unable to give possession of an apartment as per terms of the agreement for sale, he shall be liable to compensate the allottee to any loss caused to him due to defective title of the land, and the project is not being developed as provided under this Act, and for any reason if the Promoter fails to discharge any obligation imposed on him under the Act or the Rules/Regulations made therein, he shall be liable to pay such compensation to the allottees in the manner as provided under the Act. He submitted that with this provision the interest of the allottees are completely secured and it is open for the UPRERA to proceed against the petitioner in case he defaults or his unable to meet his obligations.

126. The learned Senior Counsel refuting the argument of counsel for UPRERA vehemently submitted that UPRERA by not granting/rejecting

the application of the petitioner has acted in benefit of the allottees, as the petitioner completely falls in the ambit of Section 2(zk) of the RERA Act, which defines "Promoter". In all aforesaid three identically situated companies, who were granted registration, the agreement executed by JIL/JAL were identical. The reason given for this by learned Senior Counsel appearing for respondent-Authority in its reply is that these permissions were automatically granted as the website set up was in initial stage and all the permissions were granted on the basis of self certification. The agreement of the respondent that they would not like to continue with this wrong practice as they have realized their mistake. It was also argued on behalf of the Authority that they are not recalling their registrations as significant third party right has been created and if the registration is recalled then the interest of the flat buyers/customers/allottees might be adversely affected. If that be so, then how can the application of the petitioner was rejected on 06.07.2023 and permission was not accorded to the petitioners in the second and third application and they were made to run from pillar to post, while at the same time on 09.10.2023, they granted registration to yet another company namely, M/s Golf Lake LLP., which had come with the project of Trecento Residents-A.

127. Learned counsel for the petitioner, in reply to the apprehensions raised by UPRERA that, if JIL/JAL decided not to sign, what will happen to the allottees, in response he further submitted that the respondents have not read properly the clauses of the Assignment Agreement as well as the General Power of Attorney executed between them, which specifically allows the petitioner to execute the deed in favour of the allottees, and Association of allottees on behalf of JIL and

JAL. When the petitioner takes the full responsibility to complete all the functions, responsibilities and obligations of the promoter there is no reason for UPRERA to force the petitioner to ask JIL/JAL to sign the said deed and come up as a co-promoter. He further submitted that the object of UPRERA is only to ensure timely completion of the project and to watch the interest of the allottees and as per RERA Act, in case the builder fails to deliver the project or fails to complete his obligation, in that case UPRERA at best can impose refund of money along with the penalty.

ANALYSIS BY THE COURT

HISTORY OF THE ACT

128. Before proceeding with the matter, the Court would like to delve deep into the objects and statement of the RERA Act, followed by the provisions of the Act and the Rules framed thereunder.

129. The erstwhile Ministry of Housing & Urban Poverty Alleviation (now Ministry of Housing & Urban Affairs) in consonance with the Ministry of Law & Justice, Government of India enacted the Real Estate (Regulation and Development Bill). After approval of the Union Cabinet on 4.6.2013, said Bill was introduced in Rajya Sabha on 14.8.2013. Thereafter on 23.9.2013 this Bill was referred to the Standing Committee of Urban Development for examination. The Standing Committee sought public opinion and analysed the memoranda/suggestions received from various stake holders/experts, developer associations such as Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Real Estate Developers' Association of India (CREDAI), National Real Estate Development Council (NAREDCO)

and other associations working in the field of real estate, on various provisions of the Bill. The Standing Committee also had the briefing of the representatives of the erstwhile Ministry of Housing & Urban Poverty Alleviation (now Ministry of Housing & Urban Affairs), Ministry of Finance, Reserve Bank of India, National Housing Bank, Ministry of Consumer Affairs, Ministry of Law and Justice (Department of Legal Affairs and Legislative Department), State Bank of India and other banks. The Committee also heard views of NGOs working in the field of real estate and sought clarifications on various issues and thereafter the RERA Act was enacted.

130. Initially, the real estate sector was largely unregulated and the professional and standardization was completely absent and lacking. To bring in the standardization and professionalism in the real estate sector, so there was a need to set up a Real Estate Regulatory Authority to ensure that development was carried out in an efficient and transparent manner and also to protect the interest of consumers in real estate sector and to establish an Appellate Authority to hear the appeals from the decisions of UPRERA. To achieve this object, a bill was introduced known as The Real Estate(Regulation and Development) Bill, 2013 to ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction cost. The statement of objects and reasons of RERA Act reads as under:-

> "The Real Estate (Regulation and Development) Bill, 2013, inter alia, provides for the following, namely:-
>
> *"(a) to impose an obligation upon the promoter not to book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project without registering the real estate project with the Authority;*

(b) to make the registration of real estate project compulsory in case where the area of land proposed to be developed exceed one thousand square meters or number of apartments proposed to be developed exceed twelve;
(c) to impose an obligation upon the real estate agent not to facilitate sale or purchase of any plot, apartment or building, as the case may be, without registering himself with the Authority;
(d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;
(e) to establish an Authority to be known as the Real Estate Regulatory Authority by the appropriate Government, to exercise the powers conferred on it and to perform the functions assigned to it under the proposed legislation;
(f) the functions of the Authority shall, inter alia, include-(i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed; (iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation;
(g) to establish an Advisory Council by the Central Government to advice and recommend the Central Government on-(i) matters concerning the implementation of the proposed legislation; (ii) major questions of policy; (iii) protection of consumer interest; (iv) growth and development of the real estate sector;
(h) to establish the Real Estate Appellate Tribunal by the appropriate Government to hear appeals from the direction, decision or order of the Authority or the adjudicating officer;
(i) to appoint an adjudicating officer by the Authority for adjudging compensation under sections 12, 14 and 16 of the proposed legislation,
(1) to make provision for punishment and penalties for contravention of the provisions of the proposed legislation and for non-compliance of orders of Authority or Appellate Tribunal;

> *(k) to empower the appropriate Government to supersede the Authority on certain circumstances specified in the proposed legislation;*
> *(1) to empower the appropriate Government to issue directions to the Authority and obtain reports and returns from it."*

131. In the bill, there was an attempt to balance the interests of consumers as well as promoters and also to impose certain responsibilities on both of them. In this bill, it was imperative that the promoter cannot sell or offer to sale, or invite people to purchase any plot, building without proper registration with UPRERA. It was also to impose liability upon the promoter to pay such compensation to the allottees in the manner as provided under the proposed legislation, in case, he fails to discharge his obligation imposed on him under the proposed legislation. The other object was to establish an Authority, Advisory Council and Appellate Tribunal. This bill later on after getting the assent of the President became the Real Estate (Regulation and Development) Act, 2016.

132. The object and scheme of the Real Estate (Regulation and Development) Act, 2016 was to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

133. It is evidently clear that UPRERA has only to assure that the land on which the development was to be carried out has clear title, and is free from all encumbrances while registering a project, and whatever the promoter does, has to be transparently shown on the website of the Authority. The Authority has to ensure timely development of the project and in case the same is not done, the promoter can be penalised for the same.

134. RERA Act was introduced with sole intention of improving the eco-system to ensure consumer protection, transparency and fair and ethical business practices in matters of sale and purchase of properties in the real estate sector. RERA provides for institution of a uniform regulatory environment, aimed at protecting the interests of all stakeholders. Infact, adjudicatory mechanism for speedy adjudication of justice was to be set up .

135. The relevant Section of the Act and Rules of RERA Act, which are important for adjudication of this case, are being reproduced below for ready reference :

> *'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 person who sells apartments or plots are different person, 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 thereunder;

x x x x

Section 3. Prior registration of real estate project with Real Estate Regulatory Authority.--*(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

x x x x

Section 4: Application for registration of real estate projects.

4*. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.*

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), 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 promoter;

(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;ll or some of the apartments to other persons and includes his assignees

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with 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 clear demarcation of land dedicated for the project along 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 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 the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised 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 realised 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 that 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 utilised 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;

(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.

x x x x

Section 5. Grant of registration.-*(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.*

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1),

the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

x x x x

Section 6.-Extension of registration.-*The registration granted under section 5 may be extended by the Authority on an application made by the promoter, due to force majeure, in such form and on payment of such fee as may be prescribed:*

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation.-- For the purpose of this section, the 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.

x x x x

Section 7. Revocation of registration.

(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 thereunder;

(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 purposes 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 any of 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 promoter 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 on 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 (l) 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.

X X X X

17. Transfer of title. -(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title ll or some of the apartments to other persons and includes his assigneesin the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.

18. Return of amount and compensation.-…...

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

……

34*. The functions of the Authority shall include—*

……..

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

(emphasis supplied)

136. Section 4 of RERA Act deals with application for registration of real estate projects. As per Section 4, every promoter shall make an application for registration of the real estate project and for that promoter has to enclose the mandatory documents. Section 11(4) of the RERA Act lays down the obligation of the promoter. Section 11(4)(a) specifically states that the promoter shall be responsible for all obligation, responsibilities and function till the conveyance of the apartments, plots or the building, as the case may be, to the allottees or the common areas to the Association of allottees. Section 18 of RERA Act provides for return of amount and compensation. If the petitioner/promoter fails to complete or in unable to give possession of an apartment as per terms of the agreement for sale or transfer the common area to the Association of Allottees and to provide the other

basic facilities like road, electricity, sewerage etc. he shall be liable to compensate the allottee to any loss caused to him as if there is a defect in the title or the project is not being developed as provided under this Act. If for any reason if the Promoter fails to discharge any obligation imposed on him under the Act or the Rules/Regulations made therein, he shall be liable to pay such compensation to the allottees in the manner as provided under the Act. The interest of the allottees is completely secured by the aforesaid provision and UPRERA is always at liberty to proceed against the petitioner, if he defaults or is unable to meet the obligations.

137. Further, the rights of the allottees under the RERA Act including Section 19 can be claimed against the Promoter as per the terms of the contract between the parties. Under Section 34(f) of the RERA Act, UPRERA is required to ensure compliance by the promoter of its obligations, which obligations have been undertaken by him. Section 32 deals with functions of authority for promotion of real estate sector. Under this section there are certain guidelines for the Authority for making recommendation to the appropriate Government or the competent authority, as the case may be, in order to facilitate growth and promotion of a healthy, transparent, efficient and competitive real estate sector. Section 38 talks about powers of authority. By this Section, RERA has been empowered to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents. This Section further enunciates that the Authority shall be guided by the principles of natural justice and, subject to other provisions of the Act and rules made thereunder, the Authority shall have powers to regulate its own procedure.

138. Rule 3 of RERA Rules in Chapter II lays down the mandatory documents which has to be furnished by the promoter for registration of the project. Rule 3(d) states that only a copy of the title deed of the promoter of the land has to be supplied by the promoter if the land is owned by them. Rule 3(e) lays down that the details of encumbrances on the land on which the development is to be carried out has to be mentioned and Rule 3(f) postulates the possibility when the developer does not own the title of the land but he is only developing, in that case the promoter needs to submit the consent of the owner of the land along with the copy of proper agreement with the person who has the title.

139. As per Rule 3(4) of these Rules, 2016, a declaration has to be submitted under Clause 1 of sub-section 2 of Section 4 in the form B. Form B along with the Rules specifically in the first clause clarifies that the promoter who owns the land can develop the land or anybody else on behalf of the promoter can develop the land. Form A under Rule 3(2) (which is an application for registration of the project) also recognizes that if promoter is not the owner of the land on which the development is to be carried out, the consent of the owner of the land along with the copy of the collaboration agreement or any other agreement entered between them and the copy of the title has to be furnished. As per clause 9 and 10 of Form A the project proponent has to give the boundary wall and the locations of the project and also a proforma of allotment letter, agreement for sale and conveyance deed proposed to be signed with the allottees. Rule 1 of U.P. Real Estate (Regulation and Development) (Agreement for sale/lease) Rules, 2018, sets out a proforma for agreement of sale. Even in that proforma the Statute recognizes that if the project proponent is not the owner of the land, all

he has to mention is about the development agreement/any other agreement which should be registered in the office of Registrar.

140. Rule 3 of RERA Rules, lays down information and documents to be furnished by the promoter for registration of the Project. Rule 3(1)(f) states that where the promoter is not the owner of the land on which development is proposed, details of the consent of the owner of the land along with copy of the collaboration agreement, development agreement, joint development agreement or any other agreement restricting the title of the land has to be submitted. As per Rule 14(1)(e)(vi)(E), where the promoter is not the owner of the land on which development is proposed, he has to submit copy of the collaboration or any other agreement has to be placed. These rules further goes to show that two kinds of promoters have been recognized, first is one who constructs and the other, who causes to construct. The RERA Act as well as Rules, 2016 itself recognize a party who is developing a project on somebody's land as a promoter(s).

141. A plain reading of Section 2(zk)(i) shows that a promoter is a person "who constructs or causes to be constructed an independent building consisting of apartments for the purpose of selling". Further, Section 2(zk)(v) also defines the promoter as any other person who acts as a builder, developer holding the power of attorney from the owner of the land on which the apartment is to be constructed. A plain reading of this section shows that the promoter is defined as a person who has been assigned development rights in respect of a project for the purpose of constructing and selling the apartments. The Parliament in its wisdom has used the word 'or' and not 'and' and hence the promoter need not be the owner of the land, but can be a person who is developing the land

even on the basis of power of attorney. When the definition is not ambiguous, it has to be read as it is, and the scope of promoter cannot be expanded.

142. On the touchstone of above provisions we find that in the present case, the promoter is not the owner of the land, so he will fall under the category of Rule 3 (f). All these documents sought under the Rules have been furnished and inspite of completing all the formalities as laid down under Rule 3 of Rules 2016 yet the respondents have illegally held back the registration. There is no Section, Rules or Clause under the RERA Act or Rules, which makes it mandatory for the owner to be a Promoter.

143. It is apparent that a promoter is the one who is responsible for constructing the project or causes to be constructed and is responsible for selling the project. In this case, on a plain reading of the definition the petitioner falls within the category of the promoter as he is constructing and selling the project and also have the necessary agreements from the owner of the land.

DOES JIL NEEDS TO BE CO-PROMOTER

144. As per Section 2(zk) of the RERA Act, the word ‘promoter’ has been defined, which is comprehensive and not inclusive definition, which shows that the person who has been assigned development rights in a project for the purpose of selling apartments would qualify as being a “promoter”. RERA does not require owner of the land to be a promoter, infact the other consequences in the rule makes it clear that the promoter could be the owner OR the person who is developing the project on his land. The definition of ‘promoter’ is not ambiguous, hence, no other meaning could be assigned to the expression than what

is stated in Section 2(zk) of the RERA Act. The attempt of the respondent/RERA to expand the definition of word 'promoter' to include the landowner would not be correct.

145. While drafting the Act, the legislature intended for two parties to be made co-promoters and they have expressly said so in the "Explanation" to Section 2(zk) wherein it has been provided that "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 person 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 thereunder. The words "cause it to be constructed" in Section 2(zk) have to be read in context of the entire subsection and further apply only to a promoter who is responsible for construction.

146. Earlier, the Hon'ble Supreme Court in the matters of **P. Kasilingam vs. P.S.G. College of Technology**[33] and **Punjab Land Development and Reclamation Corporation Ltd. Chandigarh vs. Presiding Officer, Labour Court, Chandigarh**[34] has held that when a definition used the word "means", it means that such definition is hard and fast definition and no other meaning can be assigned to the expression than what is put down in the definition.

147. Bombay High Court in the matter of **Vaidehi Akash Housing (P) Ltd. vs. New D.N. Nagar Co-op Housing Society Union Ltd.**[35] has clearly held that a society, who is owner of the property, who has entered into an agreement with the developer, there the society cannot

33 AIR 1995 SC 1395
34 (1990) 3 SCC 682
35 2014 SCC OnLine Bom 5068

be treated as a promoter and cannot be foisted with the responsibilities of the promoter in relation to the projects made by the promoter.

148. Similar view was taken by Bombay High Court in the matter of **Goregaon Pearl CHSL vs. Dr. Seema Mahadev Paryekar and others**[36] wherein it is settled that being owner of the land would not essentially make them the promoter and they would not suffer the consequence of being a promoter.

149. The forms annexed to U.P. Real Estate (Regulation and Development)(Agreement for Sale/Lease) Rules, 2018 provides standard form of agreement to sale/lease which clearly contemplates a situation where the owner is not a promoter. This goes to show the builder who do not own the land can be a promoter alone. It further shows the intent of the Legislature that the promoter need not be the owner. The person who constructs and sells is the promoter even if he is carrying on the construction activities on someone else's land, provided that a valid agreement has to be there between the owner of land and the developer. Therefore, in our considered opinion, JIL would not fall in the category of promoter for the project.

APPLICATION UNDER SECTION 4 OF RERA ACT

150. Section 4 of the RERA Act lays down how a promoter has to make an application for registration of his project under RERA Act. As per Section 4(1) every promoter has to make an application to the Authority for registration of the UPRERA project in the form and manner provided accompanied by the fees. Section 4(2) of the Act lays

36 2019 SCC OnLine Bom 3274

down that while making an application the promoter shall enclose the documents set out in the Section.

151. In this case, the petitioner has made an application as a developer wherein it was clearly stated by him that the land is owned by JIL. The fact is that said land is actually owned by YEIDA and leased out to JAL/JIL, who has given a permission by way of Assignment Deed to develop the project land on which the petitioner is supposed to construct/sell the apartments to the allottees. The petitioner apparently comes within definition of 'promoter' wherein he does not own the land but he is developing the land. The application filed by the petitioner on 02.06.2023 completes all the formalities and has been accompanied by all the documents as contemplated under Section 4(2) of RERA Act. However, an objection was raised by UPRERA on 07.06.2023 that the petitioner may include JIL as a co-promoter. However, the first application of the petitioner was rejected on technical grounds on 06.07.2023 giving right to the petitioner to re-apply for registration of Towers 1 & 2 inter alia by providing (i) A copy of the Concession Agreement, (ii) A confirmation on which party will sign and execute the deed and which party will be the confirming party in the deed along-with the promoter to be executed in favour of the homebuyer, and (iii) A confirmation on which party will bear/pay the Farmer's additional compensation as demanded by YEIDA.

152. In response to the same, the petitioner made fresh application dated 21.07.2023 which was uploaded in UPRERA website on 31.07.2023. All the documents sought under Section 4(2) of RERA Act were annexed along with the application. In the second application, UPRERA for the first time took an objection on 22.08.2023 for Towers 1 & 2 and pointed out two defects wherein they stated that, the project land and approved map are not under the ownership of the petitioner and

further asked to add the landowner JIL as the promoter. The second objection raised by them was asking the petitioner to provide a letter from M/s Suraksha Realtors Pvt. Ltd. and M/s Lakshadeep Investment and Finance Pvt. Ltd showing that the proposed land was not under the resolution plan which was accepted by the NCLT. The promoter immediately provided a letter, which was provided earlier as well from M/s Suraksha Realtors Pvt. Ltd. And M/s Lakshadeep Investment and Finance Pvt. Ltd, which goes to show that the proposed land was not under the resolution plan accepted by NCLT. As far as first objection was concerned, this Court is of the view that to add the landowner as promoter was contrary to the provisions of Section 2(zk) of RERA Act. Evidently, Section 2(zk) of the Act, which contains the definition of 'promoter', specifically lays down that the promoter can be a person who owns the land and wants to construct on it, or a promoter can just be a developer who is developing the apartments on the land owned by somebody else.

153. In the supplementary reply filed by UPRERA, the annexures confirm that all the details and documents as required to be filed by the petitioner have been received and they have marked 'no objection' to the same. This was reflected from the print out of the website of UPRERA, which was filed along with the supplementary reply. A plain perusal of the document uploaded shows that all the documents as required by UPRERA to be submitted, have been duly uploaded by the petitioner. Since Section 4(2) lays down a format and all the documents have to be uploaded in the particular format and it has been done so, since it is an online portal, no further document can be uploaded. The

objections raised by UPRERA to include JIL as co-promoter was not a mandatory requirement as per the Act.

154. In view of the foregoing paragraph it is clear that the application filed by the petitioner was complete in all respect and the objections raised were the same which were raised earlier. Since the application was in proper format and accompanied by all the documents as laid down in Section 4(2), we find that there is no illegality in the application and UPRERA cannot do a hair-splitting exercise and ask for further documents which are not even been asked for in Section 4(2) of the RERA Act.

155. Thus, in view of clear provisions of the Act, this Court is of the firm view that it is not open for UPRERA to impose the condition on the petitioner to get JIL/JAL sign the application as a co-promoter. The application filed by the petitioner under the provisions of the Act and Rules of RERA was complete and there was no occasion for UPRERA to raise an objection, which is not contemplated under the Act and also to hold back the application for more than a period of thirty days.

DEEMED PROVISION

156. To examine the import of Deemed provision, it is imperative to refer Section 5 of RERA Act, which is again reproduced below:-

> *Section 5. Grant of registration.-(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.*
>
> *(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or*

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

157. Section 5 lays down provision for grant of registration. Section 5(1) clearly lays down that on receipt of the application under sub-section(1) of Section 4, the Authority shall within a period of thirty days grant the registration or reject the application for the reasons to be recorded in writing. It also provides that no application shall be rejected without giving opportunity of hearing to the applicant. Section 5(2) lays down that if the Authority fails to grant the registration or reject the application, as the case may be, the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

158. In the instant case, the petitioner had initially made an application for Towers 1 & 2 on 02.06.2023 and for that an objection was raised on 07.06.2023 by the UPRERA and the same has been complied with. UPRERA was still not satisfied, hence, physical hearing took place on 23.06.2023. Thereafter, vide order 06.07.2023, UPRERA rejected the application of the petitioner with a liberty that the petitioner can move a fresh application within three months. In response to this letter/rejection order, the petitioner made a fresh application for Towers 1 & 2 on 31.07.2023. Along with the application, the three specific queries raised in rejection order dated 26.07.2023 were properly answered. Not only the Concession Agreement executed between YEIDA and JAL/JIL was provided but also further agreements between JAL and JIL, Assignment Agreement and General Power of Attorney and further contract letters from JIL/JAL between the petitioner and JIL/JAL were provided to the Authority. In response to second query the petitioner specifically stated that JIL has executed an Assessment Agreement as well as Power of Attorney in favour of the petitioner.

159. A plain reading of both these agreements shows that JIL has empowered the petitioner to execute sub-lease deed in favour of the allottees. Further, JIL has also issued confirmation letter to UPRERA to satisfy their queries. In response to the third query of payment of extra compensation to the farmers it was made clear that the petitioner would pay the additional compensation to the farmers by way of demand draft to the tune of ₹6.49 crores. With the application dated 31.07.2023, all the three queries raised by UPRERA were properly answered. It is on 22.08.2024 that a fresh query has been raised by UPRERA that the project map is not under the ownership of the promoter. Secondly, they

asked the Promoter to provide letters from Suraksha Realtors Pvt. Ltd. and Lakshdeep Investments and Finance Private Limited that the land do not come under the resolution plan. Reply to this objection was given on 29.08.2023 wherein all the queries raised by the respondents were completely answered. In the meanwhile, on 23.08.2023, the petitioner made second application for Towers 3 & 4. Since all the queries were answered, but still RERA did not allow the application for registration though it was complete in all respects.

160. Hon'ble Supreme Court in **Bhavnagar University's case (supra)** has rightly held that when a public functionary is required to do a certain thing within a specified time period, the same is ordinarily directory but when the consequence for inaction on the part of the statutory authorities within such specified time is specifically provided, it becomes imperative.

161. Hon'ble Supreme Court in **Sharif-Ud-Din's case (supra)** has specifically held that, whenever a Statute prescribes that a particular act has to be dealt with in a particular manner and also lays down for failure to comply with the said requirement, would lead to specific consequence, it would be difficult to hold that the requirement is not mandatory and specific consequence should not follow.

162. Hon'ble Supreme Court in the matter of **Kehar Singh v. State (Delhi Admn.)**[37] has held as follows:-

> *"231. During the last several years, the 'golden rule' has been given a go-by. We now look for the "intention" of the legislature or the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or*

37 (1988) 3 SCC 609

> *any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine the act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-on relation…."*

163. Similar view has been taken by Hon'ble Supreme Court in the matter of **District Mining Officer vs. Tata Iron & Steel Co.**[38] wherein it has been held as under :-

> *"A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. The function of the courts is only to expound and not to legislate. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but is preamble, the exiting state of law, other statutes in pari materia and the mischief which the statute was intended to remedy."*

164. Argument of the learned counsel for the respondents, that the application of the petitioner was not complete and had deficiencies/shortcomings, hence, the same was kept pending by UPRERA, giving opportunity to the petitioner to complete the deficiencies, but since the petitioner did not cure the defects, hence, he cannot get benefit of Section 5(2), cannot be accepted as it is the **mandatory duty** of UPRERA to act in accordance to the provisions of the Act, and the UPRERA cannot hide from its statutory obligations on

38 (2001) 7 SCC 358

the ground that the application was incomplete and was pending. As per Section 5(2) of the Act, UPRERA had only two options to be exercised within thirty days,- (a) to grant registration (b) reject the application. As per the Act, it was mandatory for UPRERA to exercise one of these options within stipulated time of thirty days. However, in this case, UPRERA did not exercise the above options. Section 5(2) of the RERA Act clearly lays down that in case registration is not granted or rejected within a period of thirty days, the project shall be deemed to have been registered within seven days after the expiry of thirty days and thereafter UPRERA had to provide registration number, login Id and password to the applicant/petitioner for accessing the website of the Authority and to create his web page. This provision of Section 5(2) has been embedded in the Act with sole purpose to strangulate the ill practices going on in certain authorities. It is mandatory for UPRERA to have taken call of either granting or rejecting the registration within stipulated time and since the same was not done, Section 5(2) of the Act comes into play. If UPRERA had serious objections on the application of the petitioner, and if they thought it necessary to include JIL as promoter, and if the same was not done within stipulated time, they ought to have rejected the application. UPRERA cannot keep any application pending beyond the statutory period of thirty days.

165. When the words of a section in the Act is unambiguous, it is presumed that the legislature has deliberately and consciously used the words for achieving the purpose of the Act. Such a situation had been considered in legal maxim “A Verbis Legis Non Est Recedendum” which means “From the words of law there must be no departure”. The Court has to decide on the footing that the legislature intended what has

been said in the Act. A statute is required to be interpreted without doing any violence to the language used therein. This ratio has been followed by Hon'ble Supreme Court in the matter of **Hardeep Singh vs. State of Punjab and others**[39]**.**

166. Similar view has been taken by Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers vs. State of U.P.**[40] wherein the court has held as under :-

> *"It is well established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience, nor does any canon of construction permits the court to read the section in such a manner as to render it to some extent otiose."*

167. The Legislature while framing the Act could have well anticipated of such a situation, and to curve all the ills, which comes from keeping the application pending, this clause of 'deemed approval' was brought into the Act.

168. Since, the application of the petitioner was kept pending much beyond the period of thirty days, hence, as per Section 5(2) of the RERA Act, the project of the petitioner is deemed to have been registered and UPRERA is bound to provide the petitioner registration number, login Id and password to the applicant/petitioner for accessing the website of the Authority and to create his web page.

169. The Legislature in its wisdom has enacted Section 5 of the Act which states that any application moved under Section 4 has to be allowed or rejected within a period of thirty days, failing which the application will be deemed to have been approved. Definitely, this provision has been introduced by the Legislature to address the

39 (2014) 3 SCC 92
40 (2021) 18 SCC 1

mischiefs which could possibly happen. This Section 5(2) was an answer to the prospective ills in the system whether to grant registration, the officers of the authorities could harass the promoter or extract a pound of flesh.

ASSIGNMENT AGREEMENT AND GENERAL POWER OF ATTORNEY

170. It is an admitted fact between the parties that Assignment Agreement dated 31.07.2017 was executed between JIL/JAL and the petitioner. In its Clause 1c, "Common Areas & Facilities" and in Clause 1f , "Shared Areas and Facilities" had been defined. Clause 4 mentions Assignment of Development Rights. Clause 2.4 (vi) allows the petitioner to execute sub-lease of impartible and undivided share/rights in the Development Land, as per Clause 10.5. Clause 2.6 gave the petitioner all rights to deal with the development rights including but not limited to right to sell, enter into any arrangement with any third parties, to allot and enter into arrangement for sub-lease, renting, license of units in the project land. Clause 2.7 makes it clear that by this Assignment Agreement, JIL/JAL is not executing any sub-lease or the ownership rights. However, the Developer has the right to cause JIL and execute sub-lease of impartible and undivided share in the development land.

171. As per Clause 8.1, JIL/JAL is obliged to make necessary arrangement of electricity supply, water supply, sewage system and drainage system as a part of Shared Areas and Facilities similar to those made available to other sub-projects/plots in Jaypee Greens, Wish Town, Noida. Clause 8.2 also gave right to way to the roads adjoining the development land and was entitled to enter upon such roads for the purpose of accessing the project land. As per Clause 10.5 of the

Assignment Agreement after completion of the project, the Developer would get occupancy/completion certificate thereof, JIL/JAL along with the Developer shall execute conveyance deed in the form of sub-lease of land sale of super structure in favour of the allottees/customers of the Developer. JIL/JAL would further provide impartible and undivided sub-lease rights to the customers/owners of the flats. It was further clarified that the flat owners would have proportionate share in the undivided land on which the building and the towers were constructed and for this JIL/JAL executed a power of attorney in favour of the Developer to transfer the conveyance right and title to the Association/body or Association of allottees/customers.

172. A plain reading of the Assignment Agreement read with general Power of Attorney answers all the apprehensions raised by the respondents. The petitioner by means of the agreement has right to built and sell the apartments made on the contracted area, and also has right to transfer undivided portion of the land on which the project has been made in favour of the Association of Allottees, and also has a right to provide water/sewerage/road/electricity etc. to the project on behalf of JIL/JAL.

REGISTRATION GRANTED TO SIMILARLY SITUATED DEVELOPERS

173. It has been brought to the notice of the Court that few companies, who had identical Assignment Agreement from JIL/JAL and General Power of Attorney has made application with UPRERA and their projects were granted registration. The companies are as follows:-

(i) Mahagum Manorialle (Registration granted on 22.07.2017)
(ii) Kalpatru Vista (Registration granted on 22.01.2018)

(iii) Genx Estate LLP Project (Registration granted on 17.08.2018)

174. The case set up by the petitioner is that all these promoters had identical agreement as that of the petitioner while the application of the petitioner has been rejected but their application for grant of registration has been accepted by UPRERA, Response given by UPRERA for them is that as per the Act, UPRERA has set up a website, on which on the basis of self certification, the aforesaid three projects were granted automatic registration without scrutinization of their documents. It was later on that UPRERA realized that number of promoters were defaulting, and thereafter, they started scrutinizing the documents and a Circular dated November 27, 2018 was issued by UPRERA wherein it was said that automatic registration would not be granted and the application would be scrutinized.

175. It has been argued on behalf of the petitioner that the registration certificate has been issued to M/s Golf Lake LLP in October, 2019 aforesaid company much after rejection of the application of the petitioner. This goes to show that UPRERA has adopted a pick and choose method wherein they have earlier granted permission to similarly situated companies whereas they have rejected the application of the petitioner. In response to aforesaid, UPRERA submitted that since Golf Lake LLP had purchased the land in an auction and had become the developer, hence, there was no need for them to make JIL/JAL as co-promoter.

176. It is evident that first the projects were granted registration on the basis of self certification it happened because of technical glitch and the teething problem. They got the automatic registration without their

application being scrutinized, once RERA realized the mistake, they started scrutinizing the applications, hence, the ratio laid down in the matter of **Doiwala Sehkari Shram Samvida Samiti Ltd. (supra)** will be applicable and the petitioner cannot claim the negative parity. Moreover, as far as the last registration granted to M/s Golf Lake LLP is concerned, they have bought the land in auction and has become the owner, hence, there were no need for them to get the owner to sign as a co-promoter. Case of M/s Golf Lake LLP is different from that of the petitioner's case.

177. The stand of the respondents in aforesaid respect is well accepted and the petitioner cannot ask for negative parity on the ground of similarly situated companies who had been granted registration whereas the petitioner has been refused for registration.

CONDUCT OF UPRERA

178. It is not in dispute that the petitioner has filed the second application on on 31.07.2023 and when after expiry of stipulated time period of thirty days, neither the application was rejected nor the registration number, login Id and password were issued to the petitioner, which ought to have issued within a period of seven days after expiry of thirty days as per the deeming provision under Section 5 of the Act, the petitioner had no choice but to file the instant writ petition. The main ground in the writ petition was that under Section 5 of the RERA Act, the petitioner gets the deemed registration, and hence, all the formalities post registration has to be complied with. On the first date of hearing i.e. 17.05.2024, while passing an order the Court has observed as under:-

> *"5. It is informed that two simultaneous proceedings under Section 3/59 and Section 4 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) are ongoing against the petitioner. So far as the proceeding under Section 3/59 of the RERA Act is concerned, the same entails imprisonment and penalty and in case it is finalized on the next date fixed, i.e. 23.05.2024, the petitioner would suffer irreparable loss and injury even though on the ground of medical exigency the matter is adjourned. Suffice to indicate, on the next date, the parties shall appear in response to the impugned notice but no final decision shall be taken till 29.05.2024."*

179. It is evident from the record/order sheets of this petition that once the matter was adjourned on the ground of illness of Sri Anil Tiwari, learned Senior Advocate appearing on behalf of UPRERA and this Court vide order dated 17.05.2024 specifically directed the Authority to not take any decision till 29.05.2024. On the next date of listing i.e. 29.05.2024, the matter was adjourned till 31.05.2024, and the interim order, granted earlier, was extended. Despite of such clear direction by this Court, the application preferred by the petitioner under Section 4 of the RERA Act was rejected by the Authority vide order dated 28.05.2024. Such conduct of UPRERA is nothing but an endeavour to just overreach the order of this Court and in our view, the same is not appreciable.

180. In addition to above, an affidavit was filed by respondents on 28.05.2024, which was sworn on 27.05.2024, wherein there was not even an iota of suggestion that the rejection has already taken place on 16.05.2024 in Authority's 147th Meeting. When the rejection order was already passed on 16.05.2024, it ought to have been brought to the notice of the Court in the said affidavit. It was only on 29.06.2024 that it was communicated to the petitioner that the application stands rejected in a meeting, which was held on 16.05.2024. It has been argued that the

entire exercise seems to be a back dated exercise, just to overreach the orders of this Court. In spite of a clear direction by this Court, the application of the petitioner was rejected which appears just to ensure that no adverse order is passed against the Authority, on the next date of hearing, which was barely two days away.

181. Further, it is settled that once a matter is subjudice and a question of law is pending consideration before a court of law, the Authority ought not to act with undue haste and interfere in the adjudication process of the Court and any attempt of the authority to decide the same matter, which is pending before the court, would be an overreach. **[Seimens Aktiengeselischaft and Seimens Limited vs. Delhi Metro Rail Corporation Ltd. and others[41], Sarku Engineering Services and others vs. Union of India and others[42]].**

182. Though it has been argued by learned counsel for the petitioner vehemently on the conduct of RERA, but we refrain ourselves to pass any observation on the conduct of RERA.

APPREHENSIONS OF UPRERA

183. All the apprehensions raised by learned Senior Counsel appearing for UPRERA, regarding putting the interest of allottees/customers in jeopardy, has been very well taken care of in Sections 18, 32, 38 and 40 of the Act itself.

184. An apprehension was raised by counsel for the respondents that in case JIL/JAL is not made a co-promoter, there could be a chance that the common area of the building as well as amenities like water supply, sewage system, electricity, road etc., which fall in the domain of

41 (2014) 11 SCC 288
42 AIR 2017 (NOC) 49 (BOM)

JIL/JAL, could not be provided to the allottees. No authority or the court could move on apprehensions, specially when, the apprehension is far-fetched. The Act is absolutely clear that it does not interfere in the ownership rights of the owner and it is only there to take care of interest of the allottees, in case, the project is not completed or handed over in time to the allottee, the Authority has to ensure the refund of his money along with interest. Section 18 of the RERA Act is answer to the apprehensions raised by learned counsel for the respondents wherein return of amount and compensation has been laid down.

185. Hon'ble Supreme Court in the matter of **S. Rangarajan vs. P. Jagjivan Ram**[43] has observed that, "The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression."

CONCLUSION

A. The definition of the Promoter is clear that a person, who does not own the land but is constructing for selling would fall under the definition of "promoter" as per Section 2(zk) of the RERA Act. There is no provision under the Act which calls for the owner of the land to co-sign as a promoter. Hence, the objections raised by the UPRERA for not according the registration to the petitioner, on this ground, is baseless and incorrect.

B. Section 5 (2) of the Act is clear that UPRERA has only two choices either allow the application for registration of the project within 30 days, or reject the same, but for any reason if the same is kept pending beyond the prescribed period of 30 days it would amount to a "deemed registration". Hence, the application of the petitioner is deemed to have been registered after lapse of the mandatory period,

43 (1989) 2 SCC 574

since the same was not rejected, and it is mandatory on UPRERA to provide the registration number, Login ID and Password to the petitioner.

C. Once the project is deemed to have been approved under the deeming provision, it is beyond the jurisdiction of UPRERA to reject the application. The application could only be rejected as per Section 7 of the RERA Act.

D. The petitioner is not entitled for the negative parity with the other builders as their registration was granted on self certification and that too without scrutinizing, the act of UPRERA is justified on this account.

E. In view of the above discussions, the order and rejection of the petitioner's application taken in the meeting dated 16.05.2024 and communicated on 23.06.2024 are set aside.

F. As per Section 5 (2) of the RERA Act, the petitioner is entitled to the benefit of deemed approval, hence, the advertisement given by the third party would not be an offence under Section 3 of the RERA Act and no penalty under the RERA Act can be imposed on the petitioner.

186. The instant writ petition, accordingly, stands **allowed.**

Order date :- 01.10.2024
Manish Himwan