

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM (M) No. 96/2026
CAV No. 1401/2026

***Pronounced on : 21.05.2026
Uploaded on : 21.05.2026***

Royal Omkar Nests Pvt. Ltd. & Anr.

.....Applicant(s)/Petitioner(s)

Through :- Mr. Amit Gupta, Sr. Advocate with
Mr. Sumit Moza, Advocate

v/s

.....Respondent(s)

Sandeep Kumar & Ors.

Through :- Mr. Ayush Pangotra, Advocate
Mr. Navyug Sethi, Advocate

CORAM: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER (ORAL)

CAV No. 1401/2026

1. With the appearance of learned counsel for the caveator, caveat stands discharged.

CM (M) No. 96/2026

- 1) Through the medium of the instant petition, petitioners have invoked the extraordinary jurisdiction vested in this Court under Article 227 of the Constitution of India, whereby they have challenged interim order dated 09.01.2026, passed by the J & K Special Tribunal, Jammu [“the Tribunal”] in an appeal filed under Section 44 (1) of the Real Estates (Regulation & Development) Act, 2016, titled “Sandeep Kumar & Ors. Vs. Royal Omkar Nest & Ors.”, bearing File No. STJ/341/2025, by virtue of which as an interim measure, the petitioners herein have been directed not to raise or bring under

construction any structure, permanent or otherwise, any of the common areas kept as per the original sanctioned plan, and shall also maintain status quo with regard to the title and possession of two commercial spaces (shops) forming part of the club area till further orders. It has been further directed that the petitioners herein are at liberty to execute the conveyance deeds, with regard to the other residential units, as per law, which they have already sold to buyers as per the sanctioned plan.

- 2) Learned senior counsel appearing on behalf of the petitioners states that the Appellate Tribunal has no jurisdiction to pass the impugned order on account of the fact that in terms of Section 45 of the Real Estate (Regulation and Development) Act, 2016, it is mandatory that the Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government. However, the impugned order has been passed by only two members, one is the judicial and the other is administrative member. For facility of reference, Section 45 of the Act, is set out below:

“45..... Composition of Appellate Tribunal:

The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation- For the purposes of this Chapter-

- (i) **“Judicial Member”** means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of Section 46;
- (ii) **“Technical or Administrative Member”** means a Member of the Appellate Tribunal appointed as such under clause (C) of sub-section (1) of Section 46.”

3) Mr. Gupta, further states that the preliminary objection with respect to the constitution of the Appellate Tribunal, though has been referred in the impugned order, however, the same has not been considered. He has further placed reliance upon the judgment of the High Court of Madhya Pradesh at Indore passed in case titled “*G.S. Enterprises, Indore & Ors. Vs. Yogesh Agrawal*”, (S. A. No. 1053/2021), relevant portion of which, for facility of reference, is set out below:

“24..... In view of the aforesaid dictum of the Supreme Court, it leaves no room for any further interpretation of S. 45 and 55 of the Act of 2016. And thus, it is held that a Real Estate Appellate Tribunal shall consist of Chairman and two members as aforesaid, and any defect in the constitution would not mean that it is permissible to function with two members only. In the case at hand, as there was neither any vacancy in the Appellate Tribunal nor any defect in its constitution, thus, only two members could not have passed the final order. In such circumstances, the first substantial question of law is answered in favour of the appellant and the impugned order is hereby set aside.”

4) Learned senior counsel lastly states that the petitioners would feel satisfied, if the instant petition is disposed of, by directing the Appellate Tribunal to decide the preliminary objections raised by the petitioners with respect to the maintainability of the petition viz.-a-viz. the jurisdiction of the Appellate Tribunal, within a reasonable period of time.

- 5) Learned counsel appearing for the respondents are not averse to the proposition being made by learned senior counsel appearing for the other side.
- 6) In view of the above and with the consent of learned counsel for the parties, **the instant petition is disposed of**, at its threshold, without expressing any opinion on the merits of this case, thereby directing the Appellate Tribunal to consider the preliminary objection raised by the petitioners with respect to the maintainability of the petition *viz.-a-viz.* the jurisdiction of Tribunal, strictly in accordance with the Real Estate (Regulation and Development) Act, 2016, within a period of two weeks from the date of passing of this order.

JAMMU
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