

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION NO.637 OF 2026
WITH
COMM ARBITRATION PETITION (L) NO.14014 OF 2026

1. Laxman Mura Vaid
2. Rasila Laxman Vaid ... Applicants

Vs.

Shree Siddhivinayak Infrastructure
& Reality, a partnership firm. ... Respondent

ATUL
GANESH
KULKARNI

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Date: 2026.09.21
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Mr. Jeetendra Ranawat with Mr. Sandeep Kumar for
the Applicants/Petitioners.

Mr. Abhishek Kothari with Mr. Anirudh Ashok for the
Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 17, 2026.

PRONOUNCED ON : SEPTEMBER 21, 2026

JUDGMENT:

1. The Applicants have filed the present Application under Section 11(6) of the Arbitration and Conciliation Act, seeking appointment of an Arbitrator in respect of the disputes arising from the Agreement for Sale dated 11th March 2022. The said

Agreement for Sale contains an arbitration clause providing for resolution of disputes between the parties through arbitration.

2. The parties entered into and executed a registered Agreement for Sale dated 11 March 2022 in respect of the project known as “Ruparel Skygarden” situated at Kandivali. The Respondent, through its finance associate partner, offered a subvention scheme under which the payment was to be made in the ratio of 5:90:5. Although a Tripartite Agreement was executed between the parties and the Respondent’s associate partner, DHFL, the Respondent failed to comply with its terms and conditions. The Applicants state that they were required to pay interest to DHFL, amounting to Rs. 12,99,557/-, even though such payment was to be made by the Respondent to its finance associate partner. From time to time, the Respondent issued letters demanding payment of the balance amount. The Applicants, in response, requested the Respondent to hold a meeting so that the accounts and payments could be reconciled. According to the Applicants, the Respondent did not agree to reconcile the accounts and instead issued a Termination Notice dated 3 January 2026. The Applicants invoked Clause 86 of the Agreement for Sale. The present Application has been filed seeking appointment of an Arbitrator to resolve the disputes between the parties. According to the Applicants, the relevant facts leading to the filing of the present Application are as follows. The Respondent had advertised commercial and residential units in its project known as “Ruparel Skygreens”. The Respondent offered a subvention scheme of 5:90:5 to persons booking flats in the project. The Applicants state that, after

accepting the said scheme, they booked Flat No. 3903 on the 39th floor in “A” Wing of the project. The Respondent issued a Letter of Allotment dated 12 June 2017. Thereafter, a Tripartite Agreement was executed on 28 November 2017 between the parties and the Respondent’s associate finance partner, DHFL. Under the subvention scheme, the first and third instalments, each being 5% of the total consideration, were to be paid by the Applicants, whereas the remaining 90% was to be paid by DHFL on behalf of the Applicants.

3. The parties registered the Agreement for Sale in respect of Flat No. 3903 in the said project on 11 March 2022. According to the Applicants, the Respondent had assured that possession of the flat would be handed over on or before 31 December 2022. The Applicants state that DHFL, the Respondent’s associate finance partner, subsequently became bankrupt and that the Respondent failed to honour the assurances given by it. According to the Applicants, under the subvention scheme and the Tripartite Agreement, the Respondent was required to pay the EMI interest to DHFL on behalf of the Applicants. However, the Respondent failed to make such payment. The Applicants paid a sum of Rs. 12,99,557/- to DHFL. Thereafter, the Respondent demanded payment of the balance amount by email dated 12 March 2025. The Applicants replied and requested a meeting for reconciliation of the accounts. According to the Applicants, they have been ready and willing to pay the balance consideration, subject to proper reconciliation of the accounts.

4. The Respondent issued a Termination Notice dated 3 January 2026. The Applicants invoked Clause 86 of the Agreement for Sale and issued a statutory notice dated 21 February 2026. According to the Applicants, the Respondent did not reply to the said notice. The Applicants have filed the present Arbitration Application seeking appointment of an Arbitrator.

5. Mr. Ranawat, learned Advocate for the Applicants, submits that the parties entered into and executed a registered Agreement for Sale dated 11 March 2022 in respect of Flat No. 3903, situated on the 39th floor of “A” Wing, admeasuring 619 sq. ft. carpet area, in the proposed building known as “RUPAREL SKYGREENS”. The total consideration agreed between the parties was Rs. 1,33,89,000/-, inclusive of the proportionate price of the common areas and facilities attached to the said premises. The extent and description of the common and limited common areas and facilities were shown in the plan annexed to the Agreement for Sale. It is submitted that the Respondent admitted that it had received Rs. 59,64,800/- towards earnest consideration. Thus, according to the Applicants, a balance amount of Rs. 74,24,200/- remained payable out of the total consideration of Rs. 1,33,89,000/-. It is submitted that under the Agreement for Sale dated 11 March 2022, the Respondent had agreed to make efforts to hand over possession of Flat No. 3903 on or before 30 December 2022. According to the Applicants, the Respondent failed to comply with this commitment and did not hand over possession within the agreed period. The Applicants submit that, despite the obligation regarding the time for delivery of

possession, the Respondent failed to hand over the flat as assured under the Agreement for Sale dated 11 March 2022.

6. Mr. Ranawat submits that, through their emails, the Applicants had made it that they were ready and willing to pay the balance consideration payable under the Agreement for Sale. It is submitted that, although the Respondent had offered the subvention scheme, it failed to pay the pre-interest EMI to its associate finance partner, DHFL. The Applicants paid an amount of Rs. 12,99,557/- towards the interest payable to the finance company. According to the Applicants, this payment shows their readiness and willingness to perform their obligations under the Agreement for Sale. The Applicants reserve their right to claim interest on account of the delay in handing over possession, as provided under the Agreement for Sale.

7. Mr. Ranawat submits that the Applicants, by their reply dated 11 January 2026 to the Respondent's Termination Notice dated 3 January 2026, requested that the dispute be resolved. According to the Applicants, the Respondent did not show any willingness to settle the differences amicably. The Applicants invoked Clause 86 of the Agreement for Sale dated 11 March 2022 and sought resolution of the disputes and differences between the parties through arbitration. For ease of reference, Clause 86 reads as under:

“Clause 86 :- PROVIDED AND that if any dispute, difference, or question at any time hereafter arises between the parties hereto or their respective representatives or between Allotee/s of other said flat / unit in the said building and the

promoter in respect of the construction of these presents or concerning anything hereto contained or arising out of the said fat/unit or as the rights liabilities or the duties of the said parties hereunder the same shall be referred to Arbitrators of two persons one to be appointed by the Allottee/s or all other Allottee/s together and one by the Promoter. The Arbitrators so appointed shall appoint before entering the reference (a Chairman). The Provisions of the Arbitrations and Conciliation Act, 1996 shall apply to such reference. The language of the Arbitration shall be English and the place for Arbitration shall be Mumbai.”

8. Learned Advocate for the Applicants, relying upon the judgment of the Supreme Court in the case of *Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, 2024 (6) SCC 1, submits that the scope of enquiry under Section 11 is limited to examining the existence of an arbitration agreement. According to him, at this stage the Court is required to examine whether an arbitration agreement exists between the parties. The other issues raised by the Respondent can be considered by the Arbitral Tribunal. He relied upon the judgment of the Supreme Court in *Motilal Oswal Financial Services Limited vs. Santosh Cordeiro & Another*, 2026 INSC 5 : 2026 LiveLaw (SC) 32, and submitted that the enquiry at the stage of appointment of an Arbitrator is concerned with the existence of the arbitration agreement.

9. Per contra, Mr. Kothari, learned Advocate for the Respondent, relies upon the judgment of this Court in *Rashmi Realty Builders Private Limited vs. Rahul Rajendrakumar Pagariya & Others*, 2024 SCC OnLine Bom 3871. He submits that a dispute

between an individual allottee and a promoter is governed by the provisions of the Real Estate Regulation and Development Act, 2016 and that such dispute is non-arbitrable. According to the Respondent, therefore, the dispute raised by the Applicants cannot be referred to arbitration. Mr. Kothari relies upon the judgment of the Supreme Court in *Arif Azim Company Ltd. vs. Aptech Limited*, (2024) 5 SCC 313.

REASONS AND FINDINGS:

10. I have considered the submissions made by Mr. Ranawat, learned Advocate for the Applicants, and Mr. Kothari, learned Advocate for the Respondent. I have considered the documents relied upon by the Applicants, the Agreement for Sale dated 11 March 2022 and the arbitration clause contained in the said agreement. I have considered the judgments relied upon by both sides.

11. The first submission of the Applicants is that there is a arbitration agreement between the parties. Clause 86 of the Agreement for Sale provides for referring the disputes between the allottee and the promoter to arbitration. The existence of this clause is not disputed by the Respondent. Therefore, according to the Applicants, once the arbitration agreement is admitted, this Court while exercising jurisdiction under Section 11 should appoint an Arbitrator and should not go into the merits of the dispute. There is substance in the submission of the Applicants that at the stage of Section 11 the Court is not expected to conduct a full trial between the parties. The Supreme Court in *Interplay*, has

made it that the examination under Section 11 is limited. Therefore, the Applicants are right to the extent that the questions which require detailed evidence normally should not be decided at this stage. However, the submission that this Court can look only at existence of arbitration clause and nothing more cannot be accepted in such broad manner. The law recognises that there can be a limited examination as to whether the dispute itself is arbitrable or not. This principle is referred to by the Supreme Court in *Arif Azim Company Ltd.* The main enquiry is regarding existence and validity of the arbitration agreement, but there can be a limited enquiry where the dispute is claimed to be non-arbitrable. This enquiry is only prima facie. The Court is not required to conduct a detailed trial on this issue. Therefore, the principle is that normally the Arbitral Tribunal can first consider the questions relating to its own jurisdiction. But where from the statute governing the dispute and from the nature of the relief claimed, it is that the dispute is non-arbitrable, the Court is not required to send the parties to arbitration only because there is an arbitration clause in the contract.

12. The Applicants have relied upon Motilal Oswal Financial Services Limited. According to the Applicants, at the Section 11 stage the Court should mainly see whether an arbitration agreement exists. There is no dispute with the general principle that the Court should make only limited examination at this stage. However, merely because an arbitration clause exists, it does not answer the separate question whether the particular dispute can be decided by a private Arbitral Tribunal. An arbitration clause cannot

itself give jurisdiction where the law has kept a particular type of dispute outside arbitration.

13. The facts placed by the Applicants show what is the real nature of the dispute. The Applicants claim to be allottees of Flat No. 3903 in the project “RUPAREL SKYGREENS”. The Respondent is the promoter of the said project. The parties entered into a registered Agreement for Sale dated 11 March 2022. The Applicants allege that possession was not given within the promised period. They allege that the Respondent did not fulfil its obligation under the subvention arrangement towards DHFL and because of this the Applicants had to pay Rs. 12,99,557/- towards interest. The Applicants have disputed the demand for the balance consideration and the Termination Notice dated 3 January 2026. Therefore, the dispute is not commercial dispute having no connection with the real estate project. The whole dispute arises from the relationship of allottee and promoter concerning the flat booked by the Applicants in a registered real estate project. The claims which arise from these allegations concern possession, payment of consideration, termination of allotment, interest, refund and the respective obligations of the promoter and allottee. These matters are connected with the statutory field covered by RERA.

14. It is necessary to keep separate the arbitration agreement and the dispute which is sought to be referred to arbitration. Clause 86 may contain an arbitration agreement. But that by itself does not mean that every dispute between the parties, whatever may be its nature, has to be decided by an Arbitral Tribunal.

Therefore, the question before me is not whether Clause 86 exists. It does exist. The question is whether the particular dispute which the Applicants want to take before the Arbitrator is capable of being referred to arbitration.

15. In this connection, the judgment of the this Court in *Rashmi Realty Builders Pvt. Ltd.*, requires consideration. In that case the question before the Court was whether the jurisdiction of the Real Estate Regulatory Authority under Section 20 of RERA is excluded merely because the agreement between the promoter and allottee contains an arbitration clause. The Court answered this question by holding that the dispute between an individual allottee and promoter which is covered by RERA is non-arbitrable. In paragraph 50, the Court considered the nature of the rights involved and observed:

“50. As held by the Supreme Court, a Judgment in personam refers to a Judgment against a person as distinguished from a Judgment against a thing, right or status and a Judgment in rem refers to a Judgment that determines the status or condition of property which operates on the property itself. In the peculiar nature of disputes under RERA, although a dispute may be filed by an individual allottee against promoter, however the decision will affect the plot and building i.e. rights of other allottees and rights of association of allottees may be affected. Thus, the dispute covered by RERA cannot be termed as “a right in personam”.”

16. This reasoning is based upon the scheme of RERA itself. The Court noticed that a decision concerning one allottee can have consequences upon the project, other allottees and the Association

of Allottees. For this reason, such dispute cannot be treated as an ordinary private dispute between only two persons.

17. The Court considered the different powers created under RERA. In paragraph 51, it observed:

“51. The various provisions of RERA clearly shows that adjudication contemplated under RERA is as a matter of public policy and in the public interest. As noted herein above, it is the Chief Justice of the High Court who has been empowered inter alia to appoint the Authority and Appellate Authority under RERA. The Authority and Appellate Authority are empowered with vast powers for the purpose of safeguarding the interest of allottees/promoters/real estate agent. The decision with respect to one allottee is likely to affect other allottees having apartments in the same building or in the same Real Estate Project.”

18. The importance of this reasoning is that RERA is not dealing only with the private contractual rights of one allottee. Its scheme regulates the real estate project as a whole. It creates statutory rights, duties, and powers. Some of these rights and decisions can affect other persons connected with the same project.

19. The Court in Rashmi Realty considered the difference between a private Arbitral Tribunal and a statutory authority. In paragraph 52, it observed:

“52. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the

jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora.”

20. The Court considered Sections 8, 14, 15 and 17 of RERA and the rights of the Association of Allottees. It noticed that many decisions which may appear to concern only one allottee can have consequences upon other allottees. The Court noticed that a complaint under Section 31 can be filed by a voluntary consumer association and that the Authority can take suo motu action under Section 35. On this basis, the Court held that adjudication under RERA is, by necessary implication, outside the jurisdiction of private fora.

21. The Court considered the doctrine of election. In paragraph 53 it held:

“53. It is settled legal position that doctrine of election to select arbitration as a dispute resolution mechanism by mutual agreement is available only if the law accepts existence of arbitration as an alternative remedy and freedom to choose is available. There should not be any inconsistency or repugnancy between the provisions of the mandatory law and arbitration as an alternative. Conversely, and in a given case when there is repugnancy and inconsistency, the right of choice and election to arbitrate is denied.”

22. The Court then applied the four-fold test in *Vidya Drolia*. In paragraph 56, it concluded:

“56. On the touchstone of above parameters as set out by the Supreme Court for determining whether the subject matter of the dispute in an arbitration agreement is non-arbitrable, it is very that in the peculiar nature of the disputes covered by RERA, the decision of the same will not affect a particular allottee and promoter but will affect other allottees as well as Association of the Allottees of the particular Real Estate Project. The term “erga omnes effect” as referred in *Vidya Drolia* (supra) refers to the impact of a judicial decision that affects third parties. As discussed herein above in detail a particular allottee in Real Estate Project is included in the “Association of Allottees” as contemplated under RERA. Thus, by necessary implication the dispute between an individual allottee and promoter covered by RERA is non-arbitrable.”

23. Finally, in paragraph 59, the Court recorded its conclusion in terms:

“59. Thus, on the touchstone of the well established parameters for determining the non-arbitrary nature of the dispute it has to be held that dispute which is covered under the RERA is non-arbitrable and therefore, the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the RERA is not ousted. Accordingly, the substantial question of law framed by this Court by order dated 24th July 2023 is answered.”

The conclusion was again stated in paragraph 63:

“63. In view of the above discussion following conclusions are recorded:—

(i) The dispute between the individual allottee and the

promoter or the dispute between the Association of the Allottees and the Promoter covered under Real Estate Regulation and Development Act, 2016 is non-arbitral in nature.

(ii) The jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted, even if the agreement between the promoter and the allottee contains arbitration clause.

(iii) In this particular case the Respondents are “allottees” in view of the definition of “Apartment” under Section 2(e) read with the definition of “Allottee” under Section 2(d) of Real Estate Regulation and Development Act, 2016 and the provisions of the Real Estate Regulation and Development Act, 2016 are applicable to the present case.”

24. The facts of the present case are covered by the principle stated in the above judgment. Here, the Applicants say that they are allottees and the Respondent is the promoter. The subject matter is a flat in a real estate project. The dispute arises from the Agreement for Sale. The Applicants rely upon their rights under the agreement regarding possession, payments, interest and termination. Therefore, the relationship between the parties and the subject matter of the dispute come within the RERA framework.

25. It is true that a different view was taken by the Delhi High Court in *Priyanka Tak Sood and Others v. Sunworld Residency Pvt. Ltd. and Another*, NEUTRAL CITATION NO: 2022/DHC/001768. In that case the Court considered a dispute relating to refund of money after cancellation of allotment and held that the claim related to rights in personam. In paragraph 19, the Court

observed:

“..... arise from cancellation of allotment under the Flat Buyer Agreement and thus relate to rights in personam, which are amenable to arbitration. No issue of in rem has been put forth by either side. Moreover, in *Vidya Drolia* (supra), the Supreme Court has clarified that even - "Disputes relating to subordinate rights in personam arising from rights in rem are considered to be arbitrable." Besides, no function of the Authority under Section 34 of the RERA Act is impinged as well if such claims are referred to arbitration.”

26. The Delhi High Court considered Sections 79, 88 and 89 of RERA and held that the remedies under RERA were additional remedies. In paragraph 30, the Court concluded:

“30. From the foregoing, there is no doubt in the mind of this Court that, giving a purposive interpretation to Sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the A&C Act, and thus, there is no clash between the provisions of the RERA Act and the A&C Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the A&C Act.”

27. The Delhi High Court referred to Section 18 of RERA and the words “without prejudice to any other remedy available”. The Court considered that these words show that the remedy under the statute was not intended to exclude every other remedy. On the facts before that Court, it held that the dispute was arbitrable.

28. I have considered this judgment carefully. The reasoning in the said judgment cannot be ignored only because it is a judgment of another High Court. It takes a different view about the effect of

Sections 79, 88 and 89 of RERA. The judgment relies upon the judgments of the Supreme Court in *Imperia Structures v. Anil Patni*, *National Seeds Corporation* and *Fair Air Engineers*. However, the question before this Court is not whether the view taken by the Delhi High Court is possible or not. The question is which principle is to be followed by this Court when there is a later judgment of this Court in *Rashmi Realty* which considered the dispute between an individual allottee and promoter and held that a RERA dispute is non-arbitrable.

29. *Rashmi Realty* is a judgment of this Court on the same issue which arises for consideration here. It has not been set aside. The challenge to the said judgment before the Supreme Court was dismissed on 1 September 2025 after the delay was condoned. The Supreme Court recorded that it found “no good ground and reason to interfere” with the judgment of the High Court and dismissed the Special Leave Petition. The Supreme Court order was a short order and did not lay down a ratio on arbitrability. However, the judgment of this Court continues to operate and has not been interfered with by the Supreme Court.

30. The position is required to be understood in this way. *Priyanka Tak Sood* supports the proposition that certain individual claims of an allottee, claims for refund or other contractual reliefs, may be treated as rights in personam. *Rashmi Realty* takes a wider view of disputes covered by RERA and holds that the statutory scheme can have consequences beyond the individual allottee and promoter. For this Court, being a Court within the same High Court, the judgment in *Rashmi Realty* has to be followed unless

there is a later binding decision taking a different view.

31. The Applicants have relied upon Section 18 of RERA and the words “without prejudice to any other remedy available”. This provision is relevant. But these words by cannot be read to mean that every dispute between an allottee and promoter is arbitrable. Section 18 preserves remedies available to the allottee. It does not expressly say that every dispute falling under the RERA mechanism must be decided by an Arbitral Tribunal.

32. There is another important aspect. The dispute here is not only about recovery of some admitted amount from the Respondent. The Applicants dispute the demand for the balance consideration. They say that the Respondent failed to give possession within the agreed period. They rely upon the subvention arrangement and say that the Respondent was required to pay interest to DHFL. They challenge the Termination Notice dated 3 January 2026. They say that they were ready and willing to pay the balance amount after reconciliation of accounts. All these issues are connected with the contractual relationship of promoter and allottee under the Agreement for Sale concerning the real estate project. At this stage, I am not deciding whether the Applicants in fact paid Rs. 12,99,557/- in circumstances where the Respondent was required to bear the same. I am not deciding whether the Respondent was justified in demanding Rs. 74,24,200/-. These are disputed questions between the parties. Similarly, I am not deciding whether the Respondent committed default by not giving possession by 30 December 2022 or whether the Applicants committed default in making payment. These

questions may become relevant while deciding the substantive rights of the parties. But they do not change the statutory nature of the dispute.

33. The submission of the Applicants that payment of Rs. 12,99,557/- to DHFL shows their readiness and willingness cannot decide whether the dispute is arbitrable. At the highest, this fact may support a contractual claim of the Applicants against the Respondent. It does not change the relationship between the parties from allottee and promoter into two ordinary commercial parties outside RERA.

34. In the same manner, the alleged failure of the Respondent to hand over possession is a contractual allegation, but the relief arising from such failure remains connected with the statutory rights of an allottee against a promoter. Section 18 itself deals with the consequence of failure of the promoter to complete the project or give possession by the date mentioned in the agreement. Merely because the same grievance can be put in contractual terms, it does not take the dispute outside the statutory field of RERA. The Applicants say that the dispute regarding reconciliation of accounts and balance consideration is a private dispute between the parties. I am unable to accept this submission. The amount demanded by the Respondent is claimed as consideration under the Agreement for Sale. The Applicants say that the account requires reconciliation because of the Respondent's alleged obligations under the subvention arrangement and delayed possession. Therefore, the payment dispute cannot be separated from the allotment and the real estate transaction.

35. Therefore, the Respondent is right in submitting that the real question is not only whether Clause 86 exists, but whether the dispute covered by Clause 86 can be decided through arbitration. Clause 86 cannot be read from the mandatory provisions of RERA. If the dispute is non-arbitrable under law, the agreement to arbitrate cannot override that statutory position.

36. The reliance placed by the Respondent on *Rashmi Realty* is justified. The Respondent has relied upon *Arif Azim*. That judgment is relevant because it shows that the Court making reference is not completely without power to refuse a reference where the dispute is non-arbitrable. The enquiry remains limited. The Court is not required to decide the whole case. But where from the agreement and the statute the legal nature of the dispute is, there is no reason to send the parties to arbitration only for the same question to be decided once again.

37. The Applicants have relied upon the principle of *kompetenz kompetenz*. Section 16 gives the Arbitral Tribunal power to decide questions concerning its own jurisdiction. But this principle does not mean that the Court must make a reference even where a binding judgment of this Court has held that such category of dispute is non-arbitrable. The principle of *kompetenz kompetenz* is important, but it cannot give jurisdiction where the law itself has excluded such jurisdiction.

38. I am unable to accept that the issue can be left to the Arbitral Tribunal because the Respondent can raise an objection under Section 16. Such course may be proper where there is a real doubt

regarding arbitrability. Here, the nature of the dispute and the status of the parties are. The Applicants claim rights as allottees. The Respondent is the promoter. The dispute arises from the Agreement for Sale relating to the flat in the real estate project. The objection of the Respondent is not a merely technical objection raised for delaying the arbitration.

39. The statutory provisions considered in *Rashmi Realty* require to be seen. Section 79 of RERA excludes the jurisdiction of the Civil Court in matters which the Authority, adjudicating officer or Appellate Tribunal is empowered to determine. Section 88 says that RERA is in addition to and not in derogation of other laws. Section 89 gives RERA overriding effect where there is inconsistency with another law. These provisions have to be read together. Section 88 does not mean that every remedy under every other law will remain available irrespective of the nature of the dispute. Similarly, Section 89 does not mean that arbitration is excluded only where there is an express conflict. The question is whether the scheme of the statute, when read as a whole, shows that the dispute is intended to be dealt with by the statutory mechanism.

40. *Rashmi Realty* answers this question in the affirmative in relation to disputes between an allottee and promoter which are covered by RERA. This conclusion is based upon the nature of the statutory rights, involvement of other allottees, the Association of Allottees, powers of the Authority and the overall public character of the RERA mechanism.

41. The Applicants have relied upon the Delhi High Court judgment because it treats the remedies under RERA and arbitration as concurrent remedies. I have considered that view. But the facts here are wider than a simple claim for refund arising from cancellation of an allotment. The Applicants' case involves alleged failure of the promoter relating to possession, payment of consideration, the subvention arrangement, interest and termination of allotment. These matters are all connected with the statutory relationship between the promoter and allottee. Therefore, even on the reasoning of *Priyanka Tak Sood*, the nature of the relief and the dispute would have to be examined and not merely the existence of an arbitration clause.

42. This Court cannot disregard the judgment in *Rashmi Realty* merely because another High Court has taken a different view. Judicial discipline requires that a judgment of this Court on the same issue should be followed unless there is a later binding decision taking a different position. No such subsequent Supreme Court judgment has been shown to me which sets aside or overrules the conclusion in *Rashmi Realty*. The Supreme Court, in the proceedings arising from the said judgment, declined to interfere with it.

43. I find that the arbitration clause contained in Clause 86 does exist. The Applicants are right in pointing out that the Respondent was a party to the Agreement and has not disputed the existence of the said clause. I find that the dispute raised by the Applicants is a genuine dispute arising from the Agreement for Sale and is not a sham dispute. The Applicants have raised grievances concerning

possession, payments, the subvention arrangement and termination. These matters require adjudication in accordance with law. But merely because there is a genuine dispute and there is an arbitration agreement, it does not automatically follow that the dispute can be referred to arbitration. The main question still remains whether the subject matter of the dispute is arbitrable. For the reasons already stated, I follow the judgment of this Court in *Rashmi Realty* on this question.

44. I accordingly hold that the disputes raised by the Applicants against the Respondent, being disputes between an individual allottee and promoter in respect of a real estate project and covered by RERA, are non-arbitrable. The existence of Clause 86 in the Agreement for Sale does not take away the jurisdiction of the authorities constituted under RERA.

45. On overall consideration of the submissions of both sides, I find that the Applicants have established that there is an arbitration agreement. However, they have not established that the dispute sought to be referred is arbitrable. The objection raised by the Respondent regarding non-arbitrability has substance. The judgment in *Rashmi Realty* is applicable and continues to operate. Therefore, the contrary view taken by the Delhi High Court in *Priyanka Tak Sood* does not persuade me to take a different view.

46. The present Application under Section 11 of the Arbitration and Conciliation Act, 1996 cannot succeed. An Arbitrator cannot be appointed for deciding the disputes raised in the present Application, as the disputes are covered by RERA and are non-

arbitrable.

47. The Arbitration Application is accordingly dismissed.

48. Since the dispute involved in the present matter is non-arbitrable, the Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996 cannot be entertained. The said Petition is, therefore, dismissed accordingly.

49. However, it is made clear that the Applicants are at liberty to take such appropriate remedy as may be available to them in law. The contentions of both the parties on the merits of the matter are kept open and the same may be raised before the appropriate forum.

(AMIT BORKAR, J.)