2025:PHHC:149417

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

129 RERA-APPL-54-2025 (O&M)
Reserved on: 30.07.2025
Pronounced on: 30.10.2025

Blossom Conbuild Private Limited
...Appellant

Versus

EMAAR India Limited
...Respondent

129-1 RERA-APPL-55-2025 (O&M)

Initia Solutions Private Limited
...Appellant

Versus

EMAAR India Limited
...Respondent

129-2 RERA-APPL-56-2025 (O&M)

M/s Padampur Nirman Pvt. Ltd.
...Appellant

Versus

EMAAR India Limited
...Respondent

129-3 RERA-APPL-57-2025 (O&M)

Chirau PropBuild Pvt. Ltd.
...Appellant

Versus

EMAAR India Limited
...Respondent

129-4 RERA-APPL-58-2025 (O&M)

Blossom Conbuild Private Limited
...Appellant

Versus

EMAAR India Limited

...Respondent

129-5 RERA-APPL-59-2025 (O&M)

Zack Estates Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-6 RERA-APPL-60-2025 (O&M)

PS Technosystem Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-7 RERA-APPL-61-2025 (O&M)

Chirau Propbuild Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-8 RERA-APPL-62-2025 (O&M)

PS Technosystem Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-9 RERA-APPL-63-2025 (O&M)

PS Technosystem Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-10 RERA-APPL-64-2025 (O&M)

PS Technosystem Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-11 RERA-APPL-65-2025 (O&M)

Chirau Propbuild Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-12 RERA-APPL-66-2025 (O&M)

Initia Solutions Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-13 RERA-APPL-67-2025 (O&M)

Chirau Propbuild Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-14 RERA-APPL-68-2025 (O&M)

Initia Solutions Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-15 RERA-APPL-69-2025 (O&M)

PS Technosystem Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-16 RERA-APPL-70-2025 (O&M)

M/s Padampur Nirman Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-17 RERA-APPL-71-2025 (O&M)

PS Technosystem Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-18 RERA-APPL-72-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-19 RERA-APPL-73-2025 (O&M)

PS Technosystem Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-20 RERA-APPL-74-2025 (O&M)

PS Technosystem Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-21 RERA-APPL-75-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-22 RERA-APPL-76-2025 (O&M)

Chirau PropBuild Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-23 RERA-APPL-77-2025 (O&M)

Blossom Conbuild Private Limited

...Appellant

Versus

EMAAR India Limited

...Respondent

129-24 RERA-APPL-78-2025 (O&M)

PS Technosystem Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-25 RERA-APPL-79-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-26 RERA-APPL-80-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-27 RERA-APPL-81-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-28 RERA-APPL-82-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-29 RERA-APPL-83-2025 (O&M)

Zack Estates Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

129-30 RERA-APPL-84-2025 (O&M)

Initia Solutions Pvt. Ltd.

...Appellant

Versus

EMAAR India Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate for the appellant.

Mr. Kunal Dawar, Advocate for the caveator/respondent.

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VIKAS SURI, J.

1. Present bunch of appeals, the details of which are mentioned herein-above, involve common issues of law and similar set of facts, and hence, with the consent of the parties, have been taken up together and are being disposed of by common order.

2. The challenge in these appeals is to the order dated 21.02.2025, passed by the Haryana Real Estate Appellate Tribunal (hereinafter referred to as "Tribunal"), whereby the orders passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as "Authority") were set aside and the complaints filed by the appellant(s), have been dismissed.

2.1 For the convenience of reference, facts are being referred from RERA-APPL-55-2025, titled as *Initia Solutions Private Limted vs. EMAAR India Limited*, arising out of Appeal No. 373 of 2022 (emanating from Complaint No. CR/3115/2021), as the common verdict has been passed in the said matter, by the learned Tribunal.

3. Succinctly, 31 complaints were filed before the Authority

against Emaar India Limited (formerly known as 'Emaar MGF Land Limited') alleging violation of the Retail Space Buyer's Agreement (for short, "buyer's agreement") executed in respect of the units in question. The crux of the complainant's case before the Authority was non-delivery of possession and non-issuance of conveyance deed, together with the project's non-registration under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act"). The complainants demanded delivery of possession of the units and award of Delayed Possession Charges (for short, "DPC"). The Authority proceeded to decide the aforesaid complaints vide three separate common orders, which were assailed before the Tribunal.

3.1 The Authority disposed of the complaints, vide the orders impugned before the Tribunal, the operative part whereof reads thus:

> "**K. Directions of the authority**
>
> 61. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
>
> i. The respondent is directed to offer possession of the subject unit to the complainant within 1 month from the date of this order and thereafter, the complainant shall take possession of the subject unit within 2 months from the date of this order after paying the outstanding dues.
>
> ii. The respondent is further directed to pay interest at the prescribed rate i.e. simple interest at the rate of 9.30% per annum for every month of delay on the

amount paid by the complainant w.e.f. the due date of handing over possession as per the buyer's agreement i.e. 05.02.2016 till the date of handing over of the actual physical possession of the unit or up to two months from the valid written offer of possession if possession is not taken by the complainant, whichever is earlier. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

iii. The time period for which the complainant is entitled to delay possession charges and amount on which interest is to be calculated for all the connected complaints are detailed in table given in para 49 of this order. Hence, the delay possession charges in those complaints based the above decision of the authority shall be squarely applicable in all the complaints mentioned in para 3 of this order.

iv. The respondent is entitled to the outstanding dues, if any, payable by the complainant. Further, the interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same is being granted to the complainant in case of delayed possession charges as per section 2(za) of the Act.

v. The respondent shall set off the outstanding dues upon duly informing the complainant of the same in writing against the delay possession charges which the respondent is liable to pay to the complainant as per the proviso to Section 18(1) of the Act.

vi. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainant(s)/ allottee(s) at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nso. 3864-3889/2020 decided on 14.12.2020.

62. The decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.

63. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decree in individual cases.

64. File be consigned to registry."

3.2 Aggrieved by the aforesaid order and verbatim orders passed in other similar complaints, comprised in two sets, the respondent-Emaar India Limited carried the matter to the Tribunal, by way of an appeal in all the aforesaid cases. Thus, the Tribunal was seized of 31 appeals arising from three separate orders, passed by the Authority in the respective set of complaints.

3.3 The learned Tribunal delved into the rival contentions of the parties and, upon profound consideration, found the transactions to be highly questionable, being primarily intra-corporate (between the parent company and its entities), without consideration or for negligible consideration, and hence, not covered under the arm's-length principle or genuine consumer transactions. It was further observed that no transparent or competitive process for allotment was brought on record. Thus, the learned Tribunal concluded that the appellant/allottee-company did not fall within the term ‘consumer’, as the transaction was *inter se* contracting promoters without any outside participation and also noticed the fact that the buyer’s agreement was assigned to the appellant(s) by nomination/ transfer. The essence of the dispute was held to be between co-promoters/corporate affiliates followed by demerger, and was not a dispute between a promoter and a consumer as per the requirement under the RERA Act. Taking note of the fact that the project was not registered under the RERA Act, it was still further observed that the regulatory mechanism created under the RERA Act is meant to deal with the disputes between the allottee/consumers and the promoters who fall strictly within the purview of the enactment; and the instant case does not fall within the said parameters. Dehors the discussion, the learned Tribunal refrained from expressing any final opinion on the issues that it was not directly seized of.

4. Feeling aggrieved by the aforesaid, the complainant-appellant(s) have preferred the present appeals, invoking jurisdiction under Section 58 of the RERA Act.

5. Learned senior counsel for the petitioner argued that the learned Tribunal has not appreciated that the appellant is covered within the ambit of “allottee”, as defined under Section 2(d) of the RERA Act, being a party to the “agreement for sale” by way of substitution, which is defined under Section 2(c) *ibid.* In the present case, the unit was

transferred in the name of the appellant after obtaining consent of the original allottee viz., Sikarwar Developers Pvt. Ltd., vide letter dated 30.12.2015. Thus, name of the allottee was substituted. It was further submitted that 'allottee' means the person to whom the plot, apartment or building has been allotted and 'person' is defined under Section 2(zg), which includes a company. Therefore, the appellant, despite being a juristic person (company), falls within the ambit of an 'allottee'. Reliance has been placed upon the decision in ***Manish Kumar vs. Union of India and another,*** **(2021) 5 SCC 1.**

5.1 It is further argued on behalf of the appellants that the question, whether 'any person' aggrieved of an unregistered real estate project can invoke the provisions of the RERA Act or not, stands answered in favour of the allottees by a Division Bench of this Court in CWP-24591-2024 decided on 30.01.2025, titled as ***M/s Ramprastha Developers Pvt Ltd and others vs. State of Haryana and others,*** reported in **2025(3) RCR (Civil) 99**. Thus, it was contended that in view of aforesaid binding precedent, reliance ought not to have been placed upon the judgment rendered by a learned Single Bench of the Madras High Court in ***M/s Devinarayan Housing and Property Developments Private Limited vs. Manu Karan and others,*** reported in **2023(6) CTC 858**, which is not applicable to the present case and is distinguishable on facts, as such.

5.2 Learned counsel for the appellant also urged that the complainant-appellant cannot be considered a co-promoter as it does not fall within the definition of "promoter" under Section 2 (zk) of the RERA Act. Moreover, a perusal of the Memorandum of Understanding (MOU) dated 21.08.2017 shows the appellant not to be a party to the said MOU or an entity of either of the parties thereto, hence, the terms thereof cannot be construed to novate the Buyer's Agreement.

5.3 It was further submitted on behalf of the appellants that the validity of allotment made by respondent-promoter to the complainant-appellant has not been challenged before any competent forum, and as such, the transactions remains binding on the parties.

6. Per contra, learned counsel for the respondent company contested the above noticed submissions of the appellant(s), while defending the impugned order. It has been submitted that the promoter/respondent resisted the complaint primarily on the following grounds: (i) the appellant could not invoke the remedy under the RERA Act, as the project in question was not registered under the statute *ibid*, (ii) the complainants were not genuine allottees/consumers but entities of the same corporate group as the promoter; and (iii) the entire dispute was essentially intra-promoter, governed by a 2017 Memorandum of Understanding (MOU) between Emaar MGF Land Limited and MGF Development Limited, along with their associates, and not by the buyer's agreement. It was further submitted that the supra MOU stipulated transfer of units contingent upon fulfilment of pre-conditions and also

contained an arbitration clause, which was to be invoked in case of any dispute being raised by the appellant. According to counsel for the respondent, this MOU thereby had resulted in a novation of the buyer's agreement and hence, the original agreement cannot be made the basis of action brought by the appellant before the Authority. The counsel also contended that the transactions relevant for the instant appeal are the subject-matter of a dispute before the National Company Law Tribunal, Principal Bench, New Delhi, between the concerned parties since they were made for negligible consideration, thereby ousting the jurisdiction of the Authority. The impugned order was thus defended by the respondent.

7. I have heard learned counsel for the parties and with the able assistance of the counsel for the parties, have carefully perused the paper-book and the materials made available during the course of hearing.

8. The first issue that arises for consideration in the present appeal is whether non-registration of the project under the RERA Act would bar the jurisdiction of the Authority to entertain complaints from aggrieved allottees.

9. The said issue is no longer *res integra* in the light of the dicta in the verdict by a Division Bench of this Court in ***M/s Ramprastha Developers Pvt Ltd and others vs. State of Haryana and others,*** reported in **2025(3) RCR (Civil) 99**. Admittedly, the project in question has neither been registered nor any orders have been passed in that regard under the proviso to Section 3(1) of the RERA Act, as was the factual

position in ***Ramprastha's case*** (supra). The Division Bench (of which I was a member) after referring to various provisions of the RERA Act held that the aggrieved allottees have a statutory right to file complaints for violations or contraventions of the RERA Act and the Authority has jurisdiction to entertain complaints from allottees irrespective of whether the promoter has registered the project or not. It was further held that non-registration of a project under Section 3(1) of the Act *ibid* does not preclude the jurisdiction of the Authority to adjudicate disputes brought by aggrieved allottees. The relevant portion of the said judgment reads thus:

> "7. For the reasons to be assigned hereinafter, the (supra) addressed submissions before this Court are rejected primarily, for the reason (1) that even if assumingly, the present petitioners were not granted a licence in terms of Section 3 of the RERA Act (supra), provisions whereof become extracted hereinabove. However, the non issuance of the relevant/apposite licence to the present petitioners, yet does not yet restrict the right of the home buyers, to access the remedy as contemplated under the instant specific statute, i.e. the RERA Act.
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> 8. The reason for stating so emanates from the factum, that though the provisions embodied in sub-Section 1 of Section 3 of the RERA Act, though entail a statutory obligation vis-a-vis the promoter, rather against his advertising, marketing, booking, selling or offering for sale, or inviting 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, thus without the promoter registering, the real estate project with the RERA

Authorities.

9. Moreover, though the first proviso to sub-Section 1 of Section 3 of the RERA Act, though makes contemplations that vis-a-vis projects that are ongoing, on the date of commencement of this Act, and for which the completion certificate has not been issued, thereupons the promoter becomes enjoined to make an application to the Authority, for causing the registration of the said project but within a period of three months from the date of commencement of this Act.

10. In addition the second proviso which occurs under sub-Section 1 of Section 3 of the RERA Act, further makes speakings to the extent, that it casts a statutory obligation upon the competent authority, to if it in its profound wisdom it deems it necessary, but in the interest of allottees, to qua such projects, which are developed beyond the planning area, but with the requisite permission of the local authority, thus to make a direction upon the promoter of such a project, to register the same with the authority, where-upons the provision of the said provision or the rules and regulations made thereunders become further declared to apply to such projects from the date of registration.

11. Consequently, though in terms of the second proviso to sub-Section 1 of Section 3 of the RERA Act, thus irrespective of the promoter rather omitting to thus with the RERA Authorities, but cause the apposite registration. Yet, when a statutory obligation becomes encumbered upon the authority, to in the interest of allottees, thus in respect of the apposite project(s), to yet, make a direction upon the promoter to ensure the registration of the relevant project with the authority concerned. Moreover, with the provisions as embodied in Section 59 (2) of the RERA Act, provisions become extracted hereinafter, making contemplations vis-a-

vis the necessity of imposition of punishment upon the violator concerned, upon his/her making evident violations vis-a-vis the provisions embodied in sub-Section 1 of Section 3 of the RERA Act or upon his failing to comply with the order as become issued by the competent authority in terms of the statutory contemplations, as made in the second proviso to Section 3, rather for a term which may extend to 3 years or with fine which makes extend upto a further 10% per centum of the estimated cost of the Real Estate Project or with both.

> "Section 59: Punishment for non-registration under section 3.
>
> 59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent, of the estimated cost of the real estate project as determined by the Authority.
>
> (2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent, of the estimated cost of the real estate project, or with both."

12. Resultantly, on makings of combined and harmonious readings of statutory provisions supra, the conclusion therefrom, but is that, though prima facie there becomes an encumbered a statutory necessity, upon, a developer/ promoter, to cause the apposite registration before his proceeding market, book, sell or offer for sale manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area. Moreover, the further ensuing inference therefrom, is that, there also is a statutory obligation cast upon the competent authority, to but in the interest of the allotees, yet in respect of the apposite projects developed beyond the planning area, but

with the requisite permission of the local authority, thus make a direction upon the promoter to register the project with the competent authority, wherebys the provisions of this Act and of the thereunder regulations are declared to become applicable qua such projects from the date of registration. Moreover, the further inference therefroms, is that, since the sanction behind the lack of compliance qua the order rendered in the terms of the second proviso to sub-Section 1 of Section 3 of RERA Act, thus also becomes embodied in Section 51 of RERA Act, therebys the appositely made order requires adherence theretos becoming made, rather thus to avoid the imposition of the supra punishments.

> "**51. Officers and other employees of Appellate Tribunal**—(1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.
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> (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.
>
> (3) The salary and allowances payable, to and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed."

13. Consequently, though the learned counsel appearing for the petitioners, submits that when neither the provisions of sub-Section 1 of Section 3 of RERA Act supra, became complied with at the instance of the present petitioner(s) nor when in terms of the second proviso of sub-Section 1 of Section 3 of the RERA Act, the order ordained thereins became made by the competent authority, whereas, only therebys, thus the provisions of sub-Section 2 of Section 59 of RERA Act would become galvanized, which however for the apposite omissions rather cannot become galvanised. Resultantly, therebys though there is prima facie some substance in the arguments raised today before this Court,

by the learned counsel for the petitioners, that in the wake of respective non-issuance of the apposite licence, to the relevant project, besides, also for want of the provisions of the second proviso becoming activated, therebys there was no valid assumption of jurisdiction by the RERA authority vis-a-vis the instant complaints.

14. In other words, for the above omissions or for the above wants, it is argued before this Court by the learned counsel for the petitioners, that the assumption of jurisdiction over the subject complaints, whereons, the impugned verdict became recorded rather was an ill assumed jurisdiction there overs and also therebys the impugned order is non-est.

15. Furthermore, though, the learned counsel for the respondents refers to page No.311 of the paper-book, wherein, there are speakings, that the present petitioners had sought renewal of licence No. 128 of 2012 dated 28.12.2012 for setting up of Residential Plotted Colony, over an area measuring 105.402 acres falling in Sector-37C & 37D, Gurugram, Manesar Urban Complex, where froms also it is abundantly clear, that the supra licence became not issued within the ambit of the contemplation made in sub-Section 1 of Section 3 of the RERA Act. However, yet for the further reasons to be assigned hereinafter rather the non-compliances, if any, or the non-work-abilities if any, vis-a-vis sub-Section 1 of Section 3 of RERA Act, or non-activation of the second proviso of sub-Section 1 of Section 3, rather carry no consequential ill effects, so to forbid the present respondents, to agitate their claim against the present petitioners, thus before the RERA.

16. The reason for so stating becomes inter alia founded upon the factum (I) that the present petitioners have made a rigid dependence both upon the provisions which occur in

sub-Section 1 of Section 3 of RERA Act and also upon the provisions as become embodied in the second proviso thereof. Moreover, the counsel for the petitioners but has also remained unmindful vis-a-vis, the fact that the said provisions were to be also read alongwith the other corresponding provisions which occur in the RERA Act.

17. Therefore, all the hereafter alluded to provisions, as occur the RERA Act, are to be also read harmoniously alongwith the supra provisions, whereupon thus, for the further reasons to be assigned hereafter, rather the arguments addressed before this Court by the learned counsel for the petitioner, become rendered infirm and as such deserve becoming rejected. The said provisions are the ones which occur in Section 31 of the RERA Act, provisions whereof become extracted hereinafter.

> "**31. Filing of complaints with the Authority or the adjudicating officer**:-
>
> (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be."

18. A reading of the hereinabove extracted provisions, as carried in Section 31 of the RERA Act, reveal that, there is a bestowment of a statutory right in any aggrieved person to file a complaint with the authority or before the adjudicating officer, thus relating to any violations or contraventions qua any provisions of the Act or of the rules and regulations made thereunder, and, the said statutory endowment is stated therein to be ably raisable against any promoter, allottee or Real Estate Agent, as the case may be. Resultantly, therebys, the issue relating to the exercising of able jurisdiction, upon, the apposite complaint rather becomes more pointedly underpinned, on the supra

provisions relating to the adjudicatoiy capacity of the RERA, than vis-a-vis respective omissions being made to either sub-Section 1 to Section 3 of RERA Act or to the second proviso to sub-Section 1 of Section 3 of RERA Act.

19. The necessity of compliances being made vis-a-vis the provisions occurring in subSection 1 of the Section 3 of the RERA Act or vis-a-vis the provisions embodied in the second proviso to sub Section 1 of Section 3 of RERA Act, rather would be of immense consequential significance, but insofar as the instant case is concerned, the statute does not demand rigid compliances theretos, rather they but are to be read along with the Statutory vestment of adjudicatory competence in the RERA authorities. The reason for stating so, emanates from the factum, that the said provisions purportedly demanding absolute compliance, but do not underpin the issue relating to the vesting of adjudicatoiy competence in the RERA Authority. However, the apposite provision whereby becomes conferred the jurisdictional adjudicatory competence in the RERA authorities, rather is the one which become embodied in Section 31 of the RERA Act.

20. If so, in other words, the vesting of jurisdictional competence, in the RERA authority, is pinpointedly grooved upon the bestowment of a remedy to the aggrieved, thus through the statutory mandate enclosed in Section 31 of RERA Act, than upon, the necessity of compliances being made by the promoter, vis-a-vis the mandate which occurs in sub-Section 1 of the Section 3 of RERA Act. Moreover therebys wants if any of compliances rather even by the competent authority, vis-avis, the mandate enclosed in the second proviso to sub-Section 1 of Section 3 of RERA Act, thus is not the apposite statutory precursor rather for vesting the competent adjudicatoiy jurisdiction in the RERA

Authorities.

21. Moreover, since the term 'promoter' as defined in Section 2 (zk) of the RERA Act, has been statutorily imparted an omnibus meaning whereby it covers "any 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. In sequel, therebys if the said plenitude of statutory meaning, thus becomes assigned to "promoter" besides, when the term Real Estate Project, has been defined to cover the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings, as the case may be."

"23. Consequently, if the supra imparted statutory definitions, to the supra statutory words, are read alongwith the endowment of a statutory privilege vis-a-vis an aggrieved, from any violations, as become stated in Section 31 supra. As such when therebys any aggrieved, thus becomes bestowed with the right, to in the event of any promoter, allottee or real estate agent, as the case may be rather making violations vis-a-vis any of the statutory provisions. Resultantly, when the makings of such violations by supra vis-a-vis, thus any of the statutory provisions as occur in the RERA Act or qua any of the rules as become formulated thereunders, when thus confers a right in the home buyer(s) to agitate his grievance before the RERA Authority.

24. Consequently, since the gamut of the apposite jurisdictional provisions, relating to the conferment of competent adjudicatoiy jurisdiction, upon the RERA vis-a-vis the instant controversy, when but also naturally covers promoter(s), who irrefutably also is the present petitioner, as he has evidently in terms of the definition of 'promoter', offered through Annexure P-3 rather the subject project for sale to the prospective buyers. Resultantly, when on makings of plain and literal interpretation of the supra provisions, but manifests that therebys the competent adjudicatory jurisdiction vis-avis complaints, as received from any ill act of even a promoter, as the present petitioner, thus is, hence becomes conferred upon the RERA authorities. In sequel both the filing of the complaints and also in the makings of decision(s) thereons, thus neither suffers from any inherent jurisdictional defect nor the exercising of adjudicatoiy jurisdiction by the RERA authority, upon, the subject complaints, become ridden with the vice of coram non judice nor also the exercising of writ jurisdiction by this Court, thus in the face of availability of remedy of appeal to the present petitioner, to therebys challenge Annexure P-1, thus is a well re-coursed remedy.

25. Resultantly, also therebys the non registration of the subject project by the present petitioners with the RERA nor the passing of any order in terms of second proviso of sub-Section 1 of Section 3 of RERA Act, thus is completely meaningless nor therebys the complaints filed by the allottees concerned, can be argued to be not competently instituted complaints, thus by the aggrieved concerned, from the purported ill acts of the promoter, who is the present petitioner.

26. Furthermore, since Section 37 of the RERA Act, also confers a plenitude of jurisdiction upon the RERA authority

> to rather, for the purpose of discharging its function under the provisions of this Act or the rules or regulation thereunders, thus issue such directions as required from time to time vis-a-vis, promoters or allottees or real estate agents. Consequently, the supra plenitude of jurisdiction as envisaged in Section 37 of RERA Act when also covers promoters or allottees or real estate agents, thereby too, there was no requirement for the present petitioners as argued today before this Court, for theirs being registered with the RERA Authorities."

It has, thus, been held that non-registration of a project under Section 3(1) of the RERA Act does not preclude the jurisdiction of the Authority to adjudicate disputes brought by aggrieved allottees, who have a statutory right to file complaints for violations or contraventions of the Act *ibid*. The Authority has jurisdiction to entertain complaints from allottees irrespective of whether the promoter has registered the project or not. In summa, the issue at hand stands covered in favour of the allottees like the appellant and is decided accordingly.

10. The legal principle has not been disputed that a decision rendered by a Division Bench commands the strength of a binding precedent upon the single Judge of the same Court, whereas the decision by another High Court has only persuasive value.

11. The other issues that arises for consideration in the instant appeal are whether the appellant/complainant is an "allottee" under the RERA Act and whether the ambit and scope of the said term, is co-terminus with that of the term 'consumer' under the Consumer Protection

Act, 2019.

12. For proper appreciation of the argument advanced on behalf of the appellant and the counter argument on behalf of respondent on the aforesaid issues, it would be apposite to refer to the hereinafter extracted provisions as well as the objects and reasons:

The Real Estate (Regulation and Development) Bill, 2013:

STATEMENT OF OBJECTS AND REASONS

> The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.
>
> 2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) 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.

3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

4. 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;

(j) 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;

(l) to empower the appropriate Government to issue directions to the Authority and obtain reports and returns from it.

5. The Notes on clauses explain in detail the various provisions contained in the Real Estate (Regulation and Development) Bill, 2013.

6. The Bill seeks to achieve the above objectives.

*****

Real Estate (Regulation and Development) Act, 2016

(Act No.16 of 2016) Long title:

An Act 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 the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

xxx

2. Definitions.—In this Act, unless the context otherwise requires,—

xxx

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

xxx

(o) "company" means a company incorporated and registered under the Companies Act, 2013 (18 of 2013) and includes,—

(i) a corporation established by or under any Central Act or State Act;

(ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

xxx

(zg) "Person" includes,—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;

(v) a competent authority;

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

xxx

(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;

xxx

(zm) "real estate agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

xxx

(zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

xxx

Consumer Protection Act, 2019

Section 2:

(7) "consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.—For the purposes of this clause,—

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

xxx

13. A perusal of the afore-extracted provisions would show that the Real Estate (Regulation and Development) Bill, 2013 (hereinafter referred to as “Bill”), was introduced in the parliament in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed legislation was to ensure greater accountability towards consumers, and significantly reduce frauds and delays as also high transaction costs, while attempting to balance the interests of ‘consumers and promoters’ by imposing certain responsibilities on both. The commercial objective was to induct professionalism and standardisation in the real estate sector, thus paving the way for accelerated growth and investments in the long run. The essence of the objects and reasons, extracted hereinbefore, finds reflected in the long title of the RERA Act, whereby it is recorded to be enacted to protect the interest of consumers in the real estate sector.

14. Thought the word ‘consumer’ has been mentioned in the objects and reasons, accompanying the Bill, as well as in the long title of

the RERA Act (Act No.16 of 2016), but that term has not been defined under the Act *ibid*. A conjoint reading of the above extracted provisions makes it evident that the term 'consumer' has not been consciously used in the statute, so as not to give a narrow construction to the said term, under the RERA Act. The consumers in the real estate sector have been referred to as 'allottee', defined under Section 2(d) of the RERA Act. However, a perusal of the definition of the term 'allottee' in relation to the real estate project, would show that it refers to none other than the consumers of the real estate sector. The said definition is inclusive and exhaustive in nature. The terms used in the said provision have been defined under Section 2 of the Act *ibid* and similarly, the terms used in the other definition clauses are also defined under separate clauses, which have to be read together for proper construction of the terms and for determining the true intent of the legislature. The term 'allottee' refers to the 'person' to whom a plot or apartment or building has been allotted or sold or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise. 'Person' is defined under Section 2(zg) to include any of the eight categories mentioned therein, which includes a company. 'Company' is defined under Section 2(o) to mean a company incorporated and registered under the Companies Act, 2013 and includes a corporation established by or under any Central or State Act or a development authority or any public authority established by the Government in this behalf under any law in force. Learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court of India in ***Manish Kumar vs. Union of India and another***, reported in **(2021) 5 SCC 1**, wherein their Lordships of the Apex Court while considering the question as to what is to be the meaning of the word 'allottees' under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '2016 Code') referred to Sections 2(d) and 2(zn) of the RERA Act, for the reason that an explanation was inserted by Act No.26 of 2018 w.e.f. 06.06.2018, in Section 5(8)(f) of the 2016 Code, which provision has since been upheld by the Apex Court in ***Pioneer Urban Land and Infrastructure Ltd. vs. Union of India,*** reported in **(2019) 8 SCC 416**. The relevant portion of the judgment discussing the word 'allottee' under the RERA Act, is extracted hereunder:

> "**147.** For appreciating the meaning of the word "allottee", for the purpose of the Code, undoubtedly, it is necessary to travel to Sections 2(*d*) and 2(*zn*) of RERA for the reason that in Section 5(8)(*f*) of the Code, the following Explanation was inserted by Act 26 of 2018 w.e.f. 6-6-2018. This provision has been upheld by this Court in *Pioneer* [*Pioneer Urban Land & Infrastructure Ltd.* v. *Union of India*, (2019) 8 SCC 416] :
>
> > "**5. (8)(*f*)** * * *
> > *Explanation*.—For the purposes of this sub-clause—
> > (*i*) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
> > (*ii*) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (*d*) and (*zn*) of Section 2 of the Real Estate (Regulation and Development) Act, 2016;"

148. Real estate project may relate to plots, apartments, or buildings or plots/apartments and plots/buildings. As far as the expression "allottee" is concerned, since the Code in the Explanation to Section 5(8)(*f*), incorporates the definition of the word "allottee" in RERA, for the purpose of the provisos in question, we must necessarily seek light only from the expression "allottee" defined in Section 2(*d*) of RERA.

149. If we break down Section 2(*d*), it yields the following component parts:

149.1. An allottee may be an allottee of a plot or an apartment or a building. A real estate project may relate to plots or apartments or buildings; or plots/buildings or plots/apartments.

149.2. An allottee, in the case of an apartment, which expression includes flats, among other structures, would include the following categories of persons. It would include a person to whom the apartment is allotted. It would also include a person to whom the apartment is sold, whether as freehold or leasehold.

149.3. Thirdly, it would include a person to whom the promoter has transferred the apartment, otherwise than by way of a sale.

149.4. Lastly, it would include persons who have acquired the allotment through sale, transfer or otherwise, with the caveat that it will not include a person to whom the apartment is given on rent. Whatever we have mentioned about apartments, is equally true qua allotment of plots or buildings."

15. In view of the aforesaid, the reliance placed upon Section 2(zr) to contend that the definition of 'consumer' as contained in Section 2(7) of the Consumer Protection Act, 2019 deserves to be read into the RERA Act, is ill-founded. It is notable that the word 'consumer' has been sparingly used in the RERA Act and the said term cannot be read out of

context. In pith and substance, the term 'consumer' has been alternatively used in reference to allottee. Apart from finding mention in the long title, reference to the said term has also been made in the hereunder extracted provisions:

> "**31. Filing of complaints with the Authority or the adjudicating officer.**—(1) <u>Any aggrieved person</u> may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.
>
> *Explanation.*—For the purpose of this sub-section "person" shall include the association of allottees or <u>any voluntary consumer association</u> registered under any law for the time being in force.
>
> (2) xxx"

> "**32. Functions of Authority for promotion of real estate sector.**—The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on,—
>
> (a) to (f) xxx
>
> (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the <u>consumer or promoter associations</u>;
>
> (h) to (j) xxx"

> "**41. Establishment of Central Advisory**

Council.—(1) to (3) xxx

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector."

"**42. Functions of Central Advisory Council.—**(1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government,—

(a) to (b) xxx

(c) towards protection of consumer interest;

(d) to (e) xxx"

"**43. Establishment of Real Estate Appellate Tribunal.—**(1) to (4) xxx

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that ... xxx

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

But for the aforesaid references, the term 'consumer' has not been used under the RERA Act, so as to impress this Court for invoking Section 2(zr) *ibid* to import and apply the meaning assigned to the said term under the Consumer Protection Act, 2019.

16. The appellant/complainant thereby satisfies the essential

ingredients of an 'allottee' in relation to the real estate project in question, after its name was substituted in the Buyer's Agreement, i.e. through one of the modes recognised under the RERA Act, which nomination/substitution has been acknowledged by the respondent vide its letter dated 30.12.2015. Therefore, being an allottee, the appellant was well within its rights to invoke the jurisdiction of the Authority under the RERA Act.

17. This brings us to yet another aspect of the matter, which has been hotly contested by the rival parties. Learned counsel for the respondent had vehemently argued that on 21.08.2017, a Memorandum of Understanding (hereinafter referred to as "MOU") had been entered into between the appellant, respondent and their respective entities, with regard to Collaboration Agreements 1 and Collaboration Agreements 2. The recitals of the said MOU had been referred to contend that certain obligations were first required to be fulfilled by the appellant so as to seek enforcement of the Buyer's Agreement and the said MOU had novated the earlier contract, i.e. the buyers's agreement, which was not liable to be enforced. The said MOU has an arbitration clause and in case of any dispute sought to be raised, it has to be first got adjudicated by following the due process of arbitration.

18. On the other hand, learned senior counsel for the appellant has submitted that the appellant is not a contracting party to the said MOU. The appellant is also not one of the other companies referred to as

the 'entities' of the respective party, i.e. the appellant or the respondent. Moreover, the units which are subject matter of the present appeals find mention in the MOU only to confirm that the transactions are free from any dispute, hence, the same are not adversely affected. The MOU, is thus, not binding upon the appellant and cannot impinge upon its vested rights.

19. A perusal of the MOU dated 21.08.2017 shows that it has been entered into between the respondent and its entities specified therein as one party and MGF Development Limited and its entities specified therein as the party of the other part. The particulars of the contracting parties, as culled out from the MOU, are detailed hereunder:

<u>EMAAR entities :</u>

1. Emaar MGF Land Limited
2. Nayas Projects Private Limited
3. Toff Builders Private Limited
4. Modular Estate Private Limited

<u>MGF Entities :</u>

1. MGF Development Limited
2. Vairagi Projects Private Limited
3. Manbhav Projects Private Limited
4. Gyandarshini Exim Private Limited

20. Statutory principle of 'novation' is enshrined under Section 62 of the Indian Contract Act, 1872, which provides as under:

Contracts which need not be performed

62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

Illustrations

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

A perusal of the provisions reproduced hereinabove would show that in order to invoke the principle of novation of contract, it is *sine qua non* that the subsequent contract has to be between the same parties. In the present case, concededly the appellant is not a party to the MOU dated 21.08.2017. No material has been brought to the notice of this Court to demonstrate from the record that the appellant was in fact a contracting party to the MOU and hence, the earlier contract, i.e. buyer's agreement, need not be performed. Moreover, the MOU does not show to be complete substitution of the buyer's agreement. The Hon'ble Supreme Court in ***Lata Construction and others vs. Dr. Rameshchandra Ramniklal Shah and another*****, (2000) 1 SCC 586**, held as under:

"**10.** One of the essential requirements of "novation", as contemplated by Section 62, is that there should be complete substitution of a new contract in place

> of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract."

21. Learned counsel for the respondent also argued that the transactions covered under the buyer's agreement in question and the MOU, are sub-judice before the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter referred to as "NCLT"), in *re: Emaar Holdings II vs. Emaar MGF Land Limited and others*, and hence, if there is any dispute emanating from the buyer's agreement, as novated by the MOU, the appellant ought to have invoked the arbitration clause in the MOU and accordingly, sought its remedy under the provisions of the Arbitration and Conciliation Act, 1996. A copy of said petition has been appended from page 394 in RERA-APPL No. 55 of 2025. It was further argued that the allotment made vide the buyer's agreement, which stands novated, has been examined by the learned Tribunal to form an opinion and thereafter, rightly conclude that the said transactions lack transparency and are not outside the realm of suspicion and the entire dispute is between promoters, who after splitting, started proxy litigation.

22. It has already been noticed hereinabove that the appellant is not a party to the MOU and thus, cannot be asked to be relegated to a dispute settlement mechanism to which it has not consented. A perusal of the petition before the NCLT would reveal that only the following relief has been claimed therein:

> "**I. MAIN RELIEF(S)**
>
> 1. In the facts and circumstances aforesaid, the Petitioner, *inter alia* prays that this Hon'ble Tribunal may be pleased to:
>
> a) Direct Respondent No. 2 to 8 and their related or associated entities to compensate Respondent No. 1 and the Petitioner to the extent of loss caused due to the fraudulent and illegal acts of Respondent No. 2 to 8, along with interest at the rate of 18% from the date of respective loss, as may be determined by this Hon'ble Tribunal;
>
> b) pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

Moreover, in the pleadings thereof, there is no mention of the project in question or with regard to any financial loss caused by excessive discounts as has been argued in appeal. Para 161 of the said petition is extracted hereunder for reference:

> "**D. Other transactions of dubious nature causing financial loss to the Company**
>
> **I. Excessive Discounts**

161. Further, the recent investigation has revealed that Respondent No.1, has given unusual discount of over approximately INR 5,400,000,000 (Rupees Five Hundred Forty Crore) for the sale of over one thousand eight hundred (1,800) units spread across following projects:

a) Apartments at Palm Springs
b) Capital Towers
c) Colonnade
d) Commerce Park
e) Digital Greens"

23. Learned counsel for the appellant has drawn the attention of this Court to the categoric stand taken by the respondent before the Commissioner of Income-tax (Appeals) with regard to addition made for the Assessment Year 2013-14, in the appeal preferred on 31.12.2016, i.e. much after execution of the Demerger Framework Agreement dated 13.04.2016, in which the Appointed Date has been mentioned as 30.09.2015 and the Effective Dated as 31.07.2018. The relevant ground taken before the CIT (A), regarding which transactions addition had been made, pertain to the subject matter of RERA-APPL-56-2025 and RERA-APPL-70-2025, and is reproduced hereunder:

<u>RERA-APPL-56-2025 (M/s Padampur Nirman Pvt. Ltd. vs. EMAAR India Ltd.) at page 425</u>

"5) Addition of Rs.1,76,91,170

The Learned AO has erred in law and on facts of the case in making an addition on the ground that the appellant company has transferred 2 units in its project 'Emreld Hills' to Padampur Nirman Private Limited ("Padampur") at basic price of Rs. 1 each.

The Learned AO has erred in ignoring the fact that the appellant company has received services from Padampur and the units have been transferred as a consideration for such services.

The Learned AO has erred in making an addition with referring any legal provisions of the Act.

In the course of assessment proceedings, the Learned AO has disallowed Rs. 1,76,91,170 on the ground that the appellant has transferred plots in Emerald Hills Project @ Rs. 1/- per plot which is logically not possible for any company and does not flow from the Joint Development Agreement entered into between the appellant and M/s Padampur Nirman Pvt. Ltd (‘Padampur’).

Relevant facts in relation to each expense are mentioned below:

Padampur a company incorporated as per Indian Laws having its registered office at 7/21, Ansari Road, Daryaganj, Delhi. Padampur was incorporated with the main objective of the construct, develop, build, purchase, sale and deal in real estate, land, building, commercial, Industrial and residential complexes.

Padampur through its directors entered into joint venture in relation to procurement, acquisition or liasioning for land of various projects of the appellant. In this regard, Padampur regularly held meetings/discussion with the management of the appellant for finalizing the deals of lands.

Padampur helped the management of the appellant in the following manner –

- Identifying the land bank for the appellant.
- Negotiating with the sellers.
- Discussion with the management for the prospective projects to be undertaken the said lands.
- Acting as a facilitator for finalizing the deal for the procurement of the land.
- Getting the land ownership transferred in favor of the appellant.
- Providing the way forward the development of the project.

The aforesaid activities were provided by Padampur to appellant for the acquisition of land for the various projects. This in turn helped the appellant to procure the land on time and execute the project on timely basis. Against the same, it was mutually agreed between the appellant and Padampur to provide 2 plots admeasuring 758 sq. yard (each) in the project ‘Emerald Hills’ for the services of Padampur. For the contractual purpose, the consideration for the said land was fixed at INR 1/- each as the same was already provided in form of aforesaid services by Padampur.

Further, the services provided by Padampur were

> necessary for the appellant for timely delivery of projects. Any delay in completion of project would not only hinder the appellant financially but also effect the reputation of the appellant. Therefore in order to expedite the same it was necessary for the appellant to pay services charges to Padampur.
>
> The consideration paid by the appellant to Padampur is justified for the services provided by the Padampur. Therefore the Learned AO has erred in law and in facts of the case by contending that the payment of consideration @ Rs. 1/- per lot is not logical and does not flow from the JDA entered between Padampur and the appellant."

It is further submitted that the allotments in the supra two cases have been made pursuant to a Court settlement and hence, the observations regarding justifiable consideration in the impugned order are liable to be set aside.

24. Be that as it may, it is notable that the basic instrument, i.e. buyer's agreement, with regard to which the complaint had been filed before the Authority, is not shown to be in dispute before any other competent forum having jurisdiction over the alleged dispute, as is sought to be sketched before this Court in appeal. Needless to say that unless the instrument or document, which is called in question, is challenged before an appropriate forum and is set aside, the same cannot be adversely held to the disadvantage of the person intended to be benefited from it.

25. Besides the above, the learned Tribunal has consciously not assumed jurisdiction that is not specifically provided under the RERA Act. It would be useful to refer to the under extracted observations made by the learned Tribunal in the impugned order dated 21.02.2025.

> "20. ... ... There can be no hesitation in holding that possibility of such transactions being dubious cannot be ruled out. It is inexplicable how transfers of such valuable units was made practically without any consideration. In case, it was a commercial transaction between two parties, it is expected that the same would be for some justifiable consideration. In the absence of same, it has to be held that such deals lack transparency and are not out of the realm of suspicion. Besides, entire dispute appears to be between promoters who after split started this proxy litigation. <u>They embroiled the regulatory mechanism ('the Authority') in a dispute over which it had no jurisdiction.</u>"

> "22. Though there is nothing to show that transactions were carried out in a transparent manner, <u>this Tribunal does not intend to express any final opinion on their validity as they do not fall within the ambit of the Act.</u> The complainant, being entity of MGFD, cannot be treated as 'allottee'. Co-promoters invoked jurisdiction of the Authority through its entities after de-merger took place in the year 2018. Thereafter, two companies came into being Emaar India Limited and MGFD. It is inexplicable as to how such a dispute can be said to be a dispute between consumer and promoter."

> "23. Besides, there appears to be substance in the plea of the appellant that the contract, which is not on 'arm's-length basis' and not on normal commercial terms is

> not sustainable. <u>However, this Tribunal refrains from expressing any final opinion on this issue as well, as it is not directly seized thereof.</u>"
>
> "26. In the instant case, there is no explanation forthcoming why steps were never taken for registration of the project, even after occupation certificate was granted by the competent authority on 08.01.2018. In case the parent company intended to sell the plots by way of competitive process, it would necessarily have applied for registration under the Act. The very fact that it did not do so lends credence to the view that transactions were primarily between two contracting parties which were earlier co-promoters. In case such transactions were to shell companies (transferee) which were not entirely unrelated to the transferor company, serious doubts would arise whether such transfers were valid or sham. <u>No opinion, however, is being expressed on this issue as the dispute is outside the purview of the Act.</u>"

26. On a conspectus of the aforesaid, the impugned order primarily being based on the assumption that the Authority did not have jurisdiction to entertain the complaint, as the project in question had not been registered under Section 3(1) of the RERA Act, cannot be sustained.

27. Accordingly, the present appeal is allowed and the impugned order dated 21.02.2025 is set aside. The matter is remitted to the learned Tribunal for adjudication afresh. Any observations made hereinabove, are only for the purpose of adjudication of the present appeal(s) and the learned Tribunal will not be influenced therefrom, and would be free to

arrive at its own independent conclusions, on the merits of the case after hearing all concerned. The parties would be at liberty to additionally raise any challenge to the foundational instrument(s) before the competent forum, as permissible in law.

28. The present appeal is disposed of accordingly.

29. Pending application(s), if any, shall also stand closed.

(VIKAS SURI)
JUDGE

October 30, 2025
sumit.k

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No