



CWP No. 23526 of 2021 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh

CWP No. 23526 of 2021 (O&M)

Reserved on: 18.2.2025

Date of Decision: 01.4.2025

Parveen Gambhir and others

.....Petitioners

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Brijesh Kumar, Advocate and
Ms. Suverna Mutneja, Advocate
for the petitioners.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Brijeshwar Singh Kanwar, Senior Panel Counsel
for the respondent-Union of India (through VC).

Mr. Ankur Mittal, Addl. A.G., Haryana,
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana,

Mr. Shekhar Verma, Advocate and
Mr. Rahul Chadha, Advocate
for respondent No. 6.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners seek the quashing of the directions dated 25.1.2021 (Annexure P-19) issued by respondent No. 2 under Section 83 of the Real Estate (Regulation and Development) Act, 2016 (for short '*the RERA Act*'), and, also seek the quashing of the in-principal approval dated 4.3.2021 (Annexure P-21) granted for the fourth Occupation Certificate, issued by respondent No. 4.

2. In addition, the petitioners also seek the hereinafter extracted reliefs.



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- (i) To issue directions upon the respondents concerned, to furnish the complete status of the project and conduct a fresh site inspection by respondent No. 5 in the presence of buyers' representatives to determine all violations of sanctioned plans.
- (ii) For the issuance of directions upon respondents No. 3 to 5 to ensure that respondent No. 6 complies with the sanctioned plan for the project concerned.
- (iii) For the issuance of a writ in the nature of certiorari seeking quashing of any amendment to the project sought by respondent No. 6, being contrary to the provisions of RERA.

Brief facts of the case

3. It is averred in the instant petition, that a group housing project, namely, 'Windchants' measuring 23.43 acres, situated at Sector-112 within the revenue estate of village Chauma, Tehsil and District Gurugram, was sought to be developed by respondent No. 6, and, for the said purposes, licence No. 21 dated 8.2.2008, and, licence No. 28 dated 7.3.2012 were obtained under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 for short '*the Act of 1975*'). On 7.6.2012, respondent No. 6 got the building plan sanctioned and advertised for sale of flats. The petitioners after relying upon the advertisements, sales and marketing brouchers as well as the statements made by respondent No. 6, deposited the earnest money, and, agreed to purchase their respective units/flats in the said project. The petitioners were respectively allotted flats bearing Nos. WT05/1802, WT-7/801, WT05/2002, WT06/2102, WT05/601 and WT07/2001. It is further averred in the instant petition, that the zonal plan was got approved on 10.4.2012 (Annexure P-5), and, vide memo dated

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7.6.2012 (Annexure P-6) approval of revised building plan (BR-III) was obtained. The licence for the project was initially granted for five years which could be further extended for a maximum period of five years. Since the project was not completed within the stipulated time i.e. on 26.6.2016, thereupon an allottee, namely Mr. Pawan Gupta approached the National Consumer Disputes Redressal Commission, New Delhi, by filing two Consumer Cases bearing Nos. 285 and 286 of 2018, agitating therein two separate issues i.e. (i) additional demand on account of the alleged increase in sale area, and (ii) compensation for delay in possession. The issue of additional demand owing to an increase in sale area was decided in favour of petitioner No. 3, and, vide order dated 26.8.2020, the demand for an increase in sale area was quashed by the National Consumer Disputes Redressal Commission. The said order was challenged by respondent No. 6 by filing Civil Appeal Nos. 2703 and 3704 of 2020 before the Apex Court. However, vide order dated 12.1.2021, the said appeals were dismissed the Apex Court.

4. It is further averred in the instant petition, that initially the entire project consisted of 23.43 acres of land, however, subsequently respondent No. 6 purchased an additional area 1.19 acres. Respondent No. 6 applied for a licence for the said land and licence No. 99 dated 4.9.2019 became issued to it. Respondent No. 6 tried to evade the RERA Act by claiming that the project is in phases. The RERA Act was enacted on 25.3.2016, and, the relevant date for consideration is when the said Act came into force partially on 1.5.2016 and in its entirety on 1.5.2017. It is averred that the builder concerned was not having the occupation certificate as well as completion certificate, on that date, and, that the said certificates were respectively obtained on 6.12.2017, 23.7.2018 and on 24.12.2018. It is



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further averred that the term ‘Ongoing Projects’ has not been defined under the RERA Act but Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (for short ‘the HRERA Rules), provisions whereof become extracted hereinafter, define the same.

“2(o) “on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”

5. Furthermore, it is averred that since no completion certificate had been obtained by respondent No. 6 before the implementation of RERA, therefore, he failed to register certain towers which he referred to as Phase-1 of the project. Respondent No. 6 also applied for registration of remaining towers under RERA claiming it to be Phase-2, 3 and 4. It is also averred in the instant petition that respondent No. 4 issued the occupation certificates (Annexures P-10 to P-12) without examining and verifying the mandatory registration required under RERA, and, also without verifying whether the construction has taken place, as per the approved sanctioned plan.

6. Furthermore, it is averred that respondent No. 5 has wrongly reported that there was only one deviation i.e. construction of 20 additional EWS units on organized green are, however, the facts reveal that there are several other material deviations to sanctioned plans and layouts. In the present case, respondent No. 6 has not only divided the project into four

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phases but also did not register a major portion of the project calling it Phase-1 under RERA. It is further averred that petitioner No. 1 made a representation (Annexure P-20) to the Hon'ble Governor of Haryana challenging the impugned direction dated 25.1.2021. It is further averred that respondent No. 4 gave in-principal approval dated 4.3.2021 subject to issuance of a public notice by respondent No. 6 inviting objections to the illegal constructions of 20 EWS units on organized green area. Respondent No. 6 sent a letter dated 12.3.2021 to some of the allottees inviting objections, and, also got published a public notice in the said regard in the newspaper on 14.3.2021. In the said letter and public notice, respondent No. 6 claimed that original and proposed revised building site plans were available for inspection in his office as well as in the office of respondent No. 5. However, no such plans were made available for inspection, and, despite repeated requests and reminders, respondents No. 4 to 6 have failed to provide a complete set of sanctioned building plans, as-built drawings, deviation plans etc. to the petitioners.

7. It is also averred that in pursuance of the public notice dated 14.3.2021, more than 75 objections were filed by the various allottees. Respondent No. 5 advised objectors to join an online meeting on 28.6.2021 to discuss the abovesaid objections. Notice for the said meeting was not sent to all the objectors. In the meeting, respondent No. 5 overlooked most of the objections which pointed towards illegalities and violations committed by the builder. Subsequently, petitioners also sent a representation to the Director of respondent No. 4 seeking a personal hearing, upon which the petitioners were asked to be present in the office of respondent No. 4 on 13.7.2021. During the said meeting, the petitioners reiterated their

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objections. The petitioners have sent several reminders to respondent No.4 to decide the matter but nothing has been done till date. It is further averred that respondent No. 6 issued a public notice dated 21.7.2021 (Annexure P-33) stating therein qua the withdrawal of the earlier public notice dated 14.3.2021, and, conveying his decision to demolish the 20 EWS units illegally built on the organized green area without any permission. However, with regard to other objections, no action has been taken by the respondents concerned. The said averment is rejected, as it is stated, at the bar, by the learned counsel for the respondents that the action of demolition, vis-a-vis, the supra has already been undertaken, whereby the said relief becomes rendered infructuous.

Submissions on behalf of the learned senior counsel for the petitioners

8. The learned senior counsel for the petitioners submits-

(i) That the RERA Act was enacted by the Parliament and received the assent of the President on 25.3.2016 and was brought into force on 1.5.2016. All the ongoing projects, in respect whereof completion certificates were not issued, were brought within the ambit of RERA and were required to be registered within three months. However, since the present project was not complete, and, no completion certification had been obtained for the said project, thus the respondent concerned, sought to wriggle out of the provisions of RERA and, thus devised a plan vide which the towers which were ready to be occupied, becoming termed as a separate phase, and, even after the expiry of three months, the authorities concerned, issuing occupation certificate vide Annexure P-10 and Annexure P-11. Moreover, even after coming into force of the RERA Act, the respondent concerned, retained the powers of issuing the supra certificates.



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(ii) That after the issuance of above certificates, the builders asked the buyers to deposit the money and to shift in the project concerned. However, when the petitioner visited the site concerned, they found numerous infirmities in the project concerned, which they pointed out by filing objections (Annexures P-25 and P-26), but no concrete decision taken upon the said objections by the authority concerned.

(iii) That the Principal Secretary to Government of Haryana, Town and Country Planning Department took out the impugned instruction dated 25.1.2021, wherebys he assigned primacy to the two Haryana State Acts, namely, the Act of 1975 and the Haryana Apartment Ownership Act, 1983 (for short 'the Act of 1983') over RERA Act, with regard to treatment of community and commercial facility, to he held in licenced colonies, wherebys he has changed the procedure and has diluted the severity of Section 14(2) of the RERA Act, in relation to the procedure for addition/alteration in the sanctioned plan vis-a-vis layout plans, building plans etc.

(iv) That the impugned instructions are far in excess to the powers given under Section 83 of the RERA Act, provisions whereof become extracted hereinafter, especially when therein no authority has been given power to supplant the RERA authority and assume control over those functions which fall within the ambit of RERA authority.

“Section 83. Powers of appropriate Government to issue directions to Authority and obtain reports and returns.

(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time:



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Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) *If any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final.*

(3) *The Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.”*

(v) The learned senior counsel has placed reliance on a judgment rendered by the Apex Court in case titled as ***Forum for People’s Collective Efforts (FPCE) and another versus State of West Bengal and another (2021) 8 SCC 599***, to submit, that the impugned executive instructions (Annexure P-19) would thus run counter to Sections 88 and 89 of the RERA Act read with Article 254 of the Constitution of India, and, that the two Haryana State Acts cannot be given primacy over the RERA.

(vi) That Section 89 read with Section 88 of the RERA Act, provisions whereof become extracted hereinafter, provide that the provisions of the RERA Act will have an overriding effect over any other similar State laws. Therefore, in the impugned instructions, thus giving an overriding effect to the State laws, but are violative of Section 89 of the RERA Act, and, are liable to be declared unconstitutional.

“Section 89- Act to have overriding effect.

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Submissions on behalf of the learned State counsel

9. The learned State counsel submits-

(i) That as per Section 3 of the RERA Act, provisions whereof become extracted hereinafter it is mandatory for a promoter to



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register the project with RERA before making any advertisement, sale etc. in any manner.

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

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

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

(ii) That insofar as the validity of the issuance of the occupation certification is concerned, since as per Section 19 of the Act of 1975, the petitioners have an alternate remedy to file an appeal before the Additional Chief Secretary Town and Country Planning Department, Haryana, thus for the redressal of their grievance. Resultantly, any relief in respect thereof cannot become agitated before this Court.

(iii) That insofar as the grievance of the petitioner qua construction of 20 EWS dwelling units in the green belt, are concerned, the said dwelling units became demolished by the colonizer. Therefore, the said



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grievance already becomes mitigated.

(iv) That as per Section 88 of the RERA Act, provisions whereof become extracted hereinafter, the provisions of the local acts will continue to operate and apply. However, when there is an inconsistency between local acts and the RERA Act, thereupon the RERA Act will apply, but since in the instant case, there is no such inter se inconsistency, therebys vis-a-vis the instant subject sites, the applicability theretos of HRERA Rules does become necessitated.

“Section 88- Application of other laws not barred.

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

Submissions on behalf of the learned counsel for respondent No. 6.

10. The learned counsel for respondent No. 6 submits-

(i) That the petitioners are not the allottees of the towers for which the application for grant of Occupation Certificate has been submitted by respondent No. 6.

(ii) That the objections with regard to construction of certain EWS units in excess, has been removed, and, that the project has been completed in accordance with law, and, there is no challenge in that regard.

(iii) That the real estate project concerned, is being developed in separate phases and each phase is a stand-alone project as per the explanation attached to Section 3 of RERA Act.

(iv) That the impugned instructions are in fact, such directions, which but become issued by the appropriate government, in consultation with the learned regulatory authority in the exercise of statutory powers under Section 83 of the RERA Act, and, in terms of Sections 9-A and 23-A of the Act of 1975, provisions whereof also become extracted hereinafter.



“Section 9-A of the Act of 1975

Control by Government—*The Director shall carry out such directions, as may be issued to him, from time to time, by the Government for efficient administration of this Act.*

Section 23-A of the Act of 1975

23-A. Power to issue directions.—The Director, with the approval of the Government, may, from time to time and/or under the directions issued under section 9A by the Government, shall, issue directions as are necessary or expedient for carrying out the purposes of this Act.

(v) That since the Colonization is a ‘State Subject’, thereupon the same can never be within the purview of any Central Legislation. A perusal of Section 4 of the RERA Act, provisions whereof become extracted hereinafter, makes it clear that a ‘Real Estate Project’ is registered under Section 5 only after all approvals under State of local laws are in place.

“Section 4: Application for registration of real estate projects.

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

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

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;



- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;
- (i) the number and area of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—
- (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;
- (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
- (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;
- (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:
- Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:
- Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:



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

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

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

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.”

(vi) That since in terms of Section 14 of the RERA Act, provisions whereof become extracted hereinafter, upon any demand being made, vis-a-vis any change in a project concerned, thereupons theretos but prior consent of 2/3rd allottees, thus is imperative. However, in the present case, the petitioners are not the allottees of the registered phase/project qua which occupation application dated 8.4.2019 has been submitted.

“Section 14: Adherence to sanctioned plans and project specifications by the promoter.

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor



changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter’s failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

(vii) That the building plans are sanctioned and modified under the Haryana Scheduled Roads and Controlled Act, 1963 (for short ‘the Act of 1963’), and, that Section 23 of the Act of 1963, provisions whereof become extracted hereinafter, thus contains a non-obstante clause and which has an overriding effect.

“23. Effect of other laws. (1) *Nothing in this Act shall affect the operation of-*



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- (a) *the Punjab New Capital (Periphery) Control Act, 1952 (Punjab Act I of 1953);*
- (b) [* * * * *]
- (c) *the Punjab Slum Areas [Improvement and Clearance] Act, 1961 (Punjab Act 24 of 1961)*
- (d) [* * * * *]
- (2) *Save as aforesaid, the provisions of this Act and the rules made thereunder shall effect notwithstanding anything inconsistent therewith contained in any other law.*
- (3) *Notwithstanding anything contained in any such other law-*
- (a) *when permission required under this Act for doing any act or taking any action in respect of any land has been obtained, such act or action shall not be deemed to be unlawfully done or taken by reason only of the fact that permission, approval or sanction required under such other law for doing such act or taking such action has not been obtained;*
- (b) *when permission required under this Act for doing such act or taking such action has not been obtained, such act or action shall not be deemed to be lawfully done or taken by reason only of the fact that permission, approval or sanction required under such other law for the doing of such act or the taking of such action has been obtained.”*

However, since the saved from the application the supra statutes, are not contended to be applicable to the present subject sites, therebys none of the supra saved statutes either come into force, nor violation, if any, thereto has any consequential effect.

Inferences of this Court

11. Before proceeding to make an adjudication upon the instant case, it is relevant to extract the relevant paragraphs of the impugned directions dated 25.1.2021 (Annexure P-19).

“Whereas, several inter-se conflicts in the implementation of the statutory provisions of the Acts, as mentioned under subject above, have come to notice of the Government, and, accordingly, detailed and deliberate consultations have been held with the Chairmen, RERA Panchkula & Gurugram and the Director, T&CP Department in fulfilment of the requirements of the respective general and special statutes;

Now, in order to further streamline the processes involved and for resolution of inter-se conflicts in the implementation of the



statutory provisions, and, in exercise of the powers conferred under section 83(1) read with its proviso of the Act of 2016, as well as the powers conferred under Section 9A of the Act of 1975, the Governor of Haryana is pleased to issue the following directions:

A. Procedure for addition/alteration in sanctioned plans, viz., layout plans, building plans etc: *The following procedure shall be adopted for the purpose of considering objections/suggestions of the allottees, in fulfillment of the provisions of Section 14(2) of the RERA Act, 2016 as well as the requirements, if any, under the Act of 1975:*

I. The revised layout/building plan is approved in-principle with the following conditions:-

- (i) That the colonizer shall invite objections from each existing allottee regarding the said amendment in the layout/building plan through an advertisement to be issued at least in three National newspapers widely circulated in District, of which one should be in Hindi Language, within a period of 10 days from the issuance of approval.*
- (ii) Each existing allottee shall also be informed about the proposed revision through registered post with a copy endorsed to the Senior Town Planner, Circle office in case of layout/building plan within two days from the advertisement as per (a) above clearly indicating the last date for submission of objection. A certified list of all existing allottees shall also be submitted to the Senior Town Planner, Circle office.*
- (iii) A copy of the earlier approved layout/building plan and the revised layout/building plan being approved in principle shall be hosted on your website and site office for information of all such existing allottees.*
- (iv) That the colonizer shall submit certificate from the Senior Town Planner, Circle office about hosting the revised layout/building plan showing changes in the earlier approved plan on the website of the licensee.*
- (v) To display the revised layout/building plan showing changes from the approved layout/building plan at your site office.*
- (vi) That the allottees may be granted 30 days' time to file*



their objections in the office of the Senior Town Planner, Circle office. During this 30 days' period the original layout/building plan as well as the revised layout plan/building plans shall be available in the office of the colonizer as well as in the office of the Senior Town Planner, Circle office for reference of the allottees.

(vii) The objections received, if any, shall be examined by the office of the Senior Town Planner, Circle office. The Senior Town Planner, Circle office shall give an opportunity of hearing to the colonizer and objector to explain their position regarding revised layout/building plan and shall submit the recommendation to the Competent Authority, within a period of 90 days from the issuance of the advertisement. The Competent Authority may decide to make amendments in the layout/building plan, which shall be binding upon the colonizer.

(viii) That the colonizer shall submit a report clearly indicating the objection if any, received by him from the allottees and action taken thereof alongwith undertaking to the effect that the rights of the allottees have not been infringed, and that no objection on the changes has been received from any existing allottee.

(ix) That you shall not give the advertisement for booking/sale of apartment till the final approval of revised layout/building plan.

II. All such objections and suggestions shall be considered on their individual merits by the Director before taking a final decision on the approval of revised layout/building plan.

III. In case the coloniser submits an affidavit regarding non-creation of any third party rights in the colony, the requirement of intimating each allottee through registered post and related subsequent action shall be dispensed with, however, the requirement of issuance of public notice is still followed.

B. Treatment of community and commercial facilities falling in licensed colonies: *In order to resolve the situation arising out of conflicting definition of common areas in the RERA Act, 2016, vis-a-vis the Haryana Apartment Ownership Act, 1983, for all intents and purposes, the common areas shall be governed by the definition*



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as provided under the special Act of 1983 ibid in force in the State since 28.09.1983 and Rules of 1987 framed thereunder. Any contradictory provision / definition as existing in the RERA Act, 2016 shall be considered to be redundant for all facts and purposes.

This is issued with the approval of the competent authority in the Government All necessary steps be taken to ensure the implementation of the decision as above in letter and spirit.”

12. The issue relating to the effect of non-registration of a project upon the home buyers has been in extenso dealt with in a judgment pronounced by this Court in **CWP No. 24591 of 2024**, titled **M/s Ramprastha Developers Pvt. Ltd. And others, decided on 30.1.2025**. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

“2. At the outset, the learned counsel appearing for the respondent has vigorously contended, that since the impugned annexure is appealable through a statutory appeal becoming made, thereagainst before the authority contemplated under Section 43(5) of the Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as RERA Act), provisions whereof becomes extracted hereinafter:-

43. Establishment of Real Estate Appellate Tribunal

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“(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 where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

3. As such, the counsel for the respondents vigorously contends that therebys the instant writ petition is required to be declared as mis-constituted. Moreover, the counsel for the respondents also contends that therebys the instant challenge as becomes cast to Annexure P-1 but is required to be the rejected at the very threshold.

4. However, the learned counsel appearing for the petitioners, has vigorously argued before this Court, that the impugned decision is ridden with a jurisdictional defect, inasmuch as, the Real Estate Regulatory Authority, Gurugram (hereinafter referred to as



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'RERA'), rather has proceeded to assume jurisdiction over complaint(s), rather whereovers no valid jurisdiction was so assumable. Consequently he has argued that the impugned annexure is ridden with the vice of coram non judice.

5. *The reasons which he so advances are inter alia i) no licence becoming granted to the present petitioners in terms of Section 3 of the RERA Act, whereas, the makings of the registration of the subject project rather was a pre-requisite mandatory requirement, thus for the subject project becoming covered within the ambit of the RERA Act.*

ii) Annexure P-3 contents whereof becomes extracted hereinafter, "Ramprastha Developers Pvt. Ltd.

Rgd. Office: Shop No. 10, C-Block Market, Vasant Vihar, New Delhi.

Receipt No. 671

Dated 23/08/06

RECEIVED with thanks from M/s / Ms. / Mr. Yuvraj Arora & Vivek Arora.

R/o INR International E47/6 okhala Ind. Area Phase II Delhi.

A sum of Rs.24937500 (Rupees Two Crore Forty Nine Lacs thirty Five Thousand Five Hundred Only).

Vide cheque(s) No.409900, 717917, 790502. Dated 28/06/06. Drawn on Karur Vyasa Bank.

Against your request for tentative Registration of 250 X 26 = 6500 Sq. Yds plot in our future potential projects."

When but becomes confined to the receipts of payments, vis-à-vis certain specific projects and when they do not cover the instant project. Resultantly, it is argued that the supra extracted contents of Annexure P-3 also do not leverage right, if any, in the present petitioners to avail the remedy under the RERA Act.

6. *For determining the force of the supra submissions, it is deemed imperative to extract the provisions as become carried in Section 3 of RERA Act, the said provisions become extracted hereinafter:-*

"Section 3: Prior registration of real estate project with Real Estate Regulatory Authority.

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

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

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the



planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

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

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

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

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

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

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 respondent concerned was not granted a licence in terms of Section 3 of the RERA Act (supra). However, the non issuance of the relevant/apposite licence to the respondent concerned, 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.*

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-à-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, whereupons 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-à-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 allottees, 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, whereby 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 therefrom, 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, thereby the appositely made order requires adherence thereto 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.*

(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 therein became made by the competent authority, whereas, only thereby, 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, thereby 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, thereby 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 thereby 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, wherefrom 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-workabilities if any, vis-à-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-à-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, thereby, 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 adjudicatory 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-à-vis the provisions occurring in sub-Section 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 adjudicatory 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 thereby wants if any of compliances rather even by the competent authority, vis-à-vis, 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 adjudicatory 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, thereby 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.

22. Resultantly, thereby the present respondent, qua whom the present petitioner uncontrovertedly issued Annexure P-3, contents whereof becomes extracted hereinabove, but becomes an allottee, inasmuch as, his falling within the ambit of the supra statutory meaning, as has been assigned to the coinage 'allottee' supra, besides when he would naturally through Annexure P-3, thus subsequent thereto hence acquire the thereby promised to him, thus allotment by sale, transfer or otherwise.

(zk) "promoter" means-

(i) Forgather the definition of promoter it is obviously relevant to allude to the statutory definitions has become imparted to promoter who in the supra extracted provisions has been declared to be 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

(c) Since the present petitioner has constructed or has caused to be constructed a building or independent building or apartments. Besides who has developed the subject lands in the project thus for the purpose of selling then to other persons which he has to the promise to be done to the making of Annexure P-3. Moreover, when the present petitioner is has acted himself as a builder, coloniser, contractor, developer, estate developer. In respect of the subject projects which are so constructed or vis-à-vis the subject plots which are so developed for sale which has instantly happened. Therefore, when the person petitioner falls within the ambit of promoter thereby with the said employed statutory definitions to respectively to the terms allottee and to the promoter. Thus leads to further influence that the present respondents ill acts of the promoter. Resultantly, when thereby to the presently aggrieved the respondents from the purported ill acts of the present petitioner whose the promoter of the subject projects as become arouse though the makings of Annexure P-3. In sequel when the present respondent



on becoming aggrieved as such becomes empowered to within the ambit of Section 31 (2) filed a complaint before the RERA authorities against the present promoter who is the present petitioner. The vesting of jurisdictional competence to decide the present subject complaints is to be becomes rested on the provisions embodied in section specially when the said provisions then the provisions incorporated in sub-Section 1 of Section 3 of RERA Act.. All the provisions incorporate in the second proviso Section 3 thus a linchpin or the nerve center for vestment of competent adjudicatory jurisdictional competence in the RERA authority. Wherebys, the subject complaints are declared to be competently instituted before the RERA Authority.

(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.

(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 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;

23. Consequently, if the supra imparted statutory definitions, to the supra statutory words, are read alongwith the endowment of a statutory privilege vis-à-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 adjudicatory 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 thereby the competent adjudicatory jurisdiction vis-a-vis 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 adjudicatory jurisdiction by the RERA authority, upon, the subject complaints, become ridden with the vice of coram non iudice 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 thereby challenge Annexure P-1, thus is a well resorted remedy.

25. *Resultantly, also thereby 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 thereby 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-à-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.*

“37. Powers of Authority to issue directions.—*The authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”*

27. *Though the learned counsel for the petitioners has vehemently argued before this Court, that the present respondent is not an allottee, since it becomes displayed by Annexure P-3, contents whereof also become extracted hereinabove, that he has only tendered money in respect of prospective projects, and when*



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evidently no prospective project have ever been floated at the instance of the present petitioners, therebys at this stage, there was no activated cause of action vesting in the present petitioners. However, the said argument is also rudderless nor has any telling effect vis-à-vis the locus standi of the present respondent to institute the subject complaints. The reason being that, when within the ambit of the statutory meaning assigned to an 'allottee', wherebys becomes covered also potential as well as prospective allottees, vis-a-vis the prospective projects, therebys not only in respect of ongoing projects, but also in respect of projects to be launched in future, rather, at the instance of the present petitioners, that therebys the present respondent but became an allottee. Conspicuously, also when in terms of Annexure P-3, he became promised to be made, the allotments vis-a-vis projects to be undertaken in future, wherebys also the present respondent was a person/allottee who would subsequently acquire the subject project through sale or transfer thereof being made in his favour.

28. In aftermath, this Court finds no merit in the submissions addressed before this Court by the Counsel for the petitioners, that the alternative remedy as available to the present petitioners, inasmuch, as its making an appeal against the impugned order, thus is not an efficacious remedy, as the jurisdiction assumed on the complaint was non-est or was coram non judice. Resultantly, the instant writ petition is dismissed.

29. In case, the petitioners statutory appeal is time barred, thereupon, on an application cast under Section 14 of the Limitation Act, becoming appended therewith, thereupons the appellate body, shall pass a well reasoned decision thereon and shall subsequently register the appeal whereafter a well reasoned decision shall be made thereon, but after hearing all the affected parties."

13. Therefore, the effect of non-registration of the real estate project in terms of Section 3 of the RERA Act, but would not bring the consequence qua therebys the home buyers/allottees concerned, becoming barred to avail the remedy, as contemplated in Section 31 of the RERA Act. Moreover, when the penalty to be imposed upon the errant promoter/real estate agent, arising from non-registration of the project, thus also becomes envisaged in Section 59 of the RERA Act.

14. Be that as it may, it has yet to be determined, but on an incisive reading being made of Section 14 of the RERA Act, whether thereunders

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becomes vested any jurisdiction in the RERA authorities to, upon breaches theretos becoming made by promoters/real estate agents, whether thereupons they can proceed to order for demolition of the constructions, which deviate from the sanctioned plans.

15. Now a reading of Section 14 of the RERA Act, reveals, that thereunders an injunction becomes enjoined upon the promoter/realtor against the makings of deviations from the sanctioned plans, excepting the makings of minor alterations and additions, besides subject to such minor alterations and additions becoming yet asked to be made by an allottee, or the said minor alterations and additions being necessary, thus owing to architectural and structural reasons duly recommended and verified by an authorized Architect. Furthermore, the explanation details that the said “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as, the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

16. Therefore, there is a preemptory statutory necessity of adherence being made to the sanctioned plans, thus by the project developer or by the promoter, and, whereto in the manner detailed in Section 14 of the RERA Act, certain minor alterations and additions are permissible, but yet subject to qua theretos consent emanating from the home buyers or from the allottees concerned, but yet only for ensuring architectural and engineering safety.



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17. If so, even a circumspect reading of the supra provisions discloses that therebys no power becomes vested in the authority(ies) contemplated under the RERA Act, to order for demolition, nor any mandamus to the said extent, as asked for in the instant case by the petitioners, rather can be passed, thus grounded on the factum, that since there are gross deviations, and, excess of construction(s) on the subject plots at the instance of the respondent concerned, especially reiteratedly, when no apposite empowerment becomes vested in the authorities contemplated under the RERA Act, rather to order for the apposite demolition, nor therebys it can be argued that despite the said empowerment becoming vested, yet it not becoming exercised.

18. Since the test for analyzing the relevant inter se repugnancy(ies) is to be made, on the anvil of the provisions respectively embodied in Sections 88 and 89 of the RERA Act, provisions whereof become extracted hereinabove, and, are re-extracted hereinafter.

“Section 88- Application of other laws not barred.

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

“Section 89- Act to have overriding effect.

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

19. Therefore, unless in the HRERA Rules, or in any other laws, which become passed within the legislative competence of the State Legislature, thus exist such provisions, which are evidently inconsistent with the RERA Act, thereupon alone, an overriding effect, thus would become assigned to the provisions encapsulated in the RERA Act. Resultantly therebys, this Court may proceed to pass a mandamus upon the authorities contemplated under the RERA Act, to in case a home buyer/allottee

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concerned, accesses its jurisdiction by filing a complaint, to pass orders for demolishing the excess construction or to demolish those the constructions, which deviate from the sanctioned plans. However, since Sections 88 and 89 of the RERA Act are entwined with each other, therefore, a conjoint reading of the supra statutory provisions reveals, that though Sections 88 of the RERA Act, does not create a bar with respect to the home buyers/allottees availing the remedies under some other statute i.e. the Consumer Protection Act, 2019.

20. Resultantly when therebys, the Consumer Protection Act, 2019, does also hold clout over the subject matters, thus covered within the RERA Act, whereupon in terms of Section 88 of the RERA Act, the aggrieved home buyers/allottees concerned, can both access the authorities contemplated under the RERA Act, as also the authorities contemplated under the Consumer Protection Act, 2019. However, both remedies are complementary to each other, and, are permissible to be exercised only before one or the other, and, not before both the supra authorities.

21. If so, since Section 89 of the RERA Act is to be read in conjunction with the prior thereto Section 88 of the RERA Act, whereto the supra interpretation has been accorded, therebys the speakings made in Section 89 of the RERA Act, that the provisions of the said Act, shall have an overriding effect, irrespective there being any inter se inconsistency with the provisions enclosed in the RERA Act, thus with the ones enclosed in any other law for the time in force, but require becoming analyzed. Therefore, the test of inconsistency or repugnancy inter se the HRERA Rules, and, the provisions enclosed in Section 14 of the RERA Act, becomes rested upon the mandate enclosed in Section 14 of the RERA Act. If in the HRERA

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Rules, there was a provision inconsistent with the provisions embodied in Section 14 of the RERA Act, thereupon the provisions enclosed in Section 14 of the RERA Act, rather would have an overriding effect over the purportedly inconsistent therewith provisions embodied in some other statute. Since this Court has circumspectively analyzed the scope of Section 14 of the RERA Act, and, has ultimately concluded, that thereunder rather no jurisdiction becomes vested in the authority(ies) concerned, to order for demolition of constructions raised beyond the sanctioned plans.

22. Be that as it may, in the HRERA Rules, there are envisagings only with respect to the issuance of licence to the builders, besides therein occur envisagings that on apposite breaches thereof, thereby there becoming endowed the power of resumption, thus in the authority created thereunder. Consequently, since on violations of the conditions of the licence, being made by the realtors, thereby when there is an apposite power of resumption, thus vested in the licencing authority concerned. Therefore, when the said power of resumption is to be exclusively exercised by the authority envisaged in the HRERA Rules, thereby when there is no such power of resumption vested in the authorities contemplated in the RERA Act. In sequel, there is no inter se inconsistency inter se the RERA Act and the HRERA Rules, nor thereby there would be any assigning of overriding effect to the RERA Act, vis-a-vis the HRERA Rules.

23. Now in the event of an order of resumption being passed against the realtor, thereby the home buyers/allottees under the realtor concerned, who suffers an order of resumption, but necessarily would nurse a grievance. Resultantly, for mitigating the said grievance, either the remedies contemplated in the RERA Act, or the remedies contemplated in

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the Consumer Protection Act, 2019, thus are canvassable but limited to compensation being awarded to the home buyers/allottees. In the said event also there would be remedyings of the grievance of the home buyers/allottees concerned, besides therebys there would be no inconsistency inter se the RERA Act and the HRERA Rules.

24. Insofar as the vesting of powers of demolition in the RERA authorities are concerned, this Court has drawn a conclusion that no such power of demolition becomes vested in the RERA authorities. However, the said power of demolition in respect of the constructions deviating from the sanctioned plans, may become vested either in the Commissioner of the Municipal Corporation concerned, or with the Town and Country Planning Department concerned, but the exercisings of the said jurisdiction, becomes dependent upon, whether the apposite construction falls within the corporation limits, or within the territorial jurisdiction of the Town and Country Planning Department, or within the jurisdiction of some other functional statute, with envisagings therein vis-a-vis the power to make an order for demolition of constructions, in case, there are deviations from the sanctioned plans, as approved by any statutory authority concerned. Therefore, in the said event also, there would be no inconsistency inter se the provisions envisaged in the RERA Act, thus with the ones envisaged in any other statute, wherein occur envisagings to order for demolition of constructions in case such constructions, deviate from the sanctioned plans.

25. Since in the impugned directions there appears to be a resolution of the purported conflict with respect to the implementation of RERA Act, the Act of 1975, and the Act of 1983, but the said resolution of any purported inter se conflict inter se the supra Acts, thus in view of the

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hereinabove observations, and, the hereinafter observations, though is of some significance, but does not have the fullest clout. The reason being that the supra Acts mentioned in the impugned directions, do evidently have their separate fields of occupation, and, also have their separate effective implementable occupied fields.

26. Given the apposite separateness of fields of occupations or of the effectivity(ies) of the clout of the respectively passed legislations, therebys each of the said pieces of legislation(s) which occupy, thus distinct separate fields, therebys they require becoming exclusively enforced in respect of those fields, which each does separately occupy. In other words, there can be no encroachments over the fields exclusively occupied by each of the supra laws. Tritely, the HRERA Rules occupy those fields relating to the issuance of licence to the builders, besides occupy the field qua upon apposite breaches thereof being made, thereupon the power of resumption becoming vested in the authority created thereunder. On the other hand, the Act of 1975 occupies the field relating to regulating the use of land in order, to prevent ill-planned and haphazard urbanization in or around towns and for development of infrastructure sector and infrastructure projects, rather for the benefit of the State of Haryana. Moreover, the Act of 1983 occupies the field relating to providing of ownership to an Individual apartment in a building and to make such an apartment heritable and transferable. Therefore, all the supra stated fields detailed in the supra respectively passed competent legislations, when cover such fields, which are distinct from the fields, as mentioned in the RERA Act, therebys there is no inter se repugnancy inter se them, thus with the RERA Act, nor therebys there is any requirement for the mandamus, as asked for, being passed. However, in case

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the present petitioners become aggrieved from the order granting occupation certificate(s), vis-a-vis the builder(s) concerned, thereupon they may raise an appeal thereagainst before the competent authority concerned.

Final order

27. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned annexures are maintained and affirmed.

28. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

April 01, 2025
Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No