

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 2

APPEAL NO. 415/2024

TAHSIN ASKARI ----- **Appellant.**

Vs.

M/S HABITECH INFRASTRUCTURE LTD
----- **Respondent.**

APPEAL NO. 467/2024

CHANDER PRAKASH ----- **Appellant.**

Vs.

M/S HABITECH INFRASTRUCTURE LTD
----- **Respondent.**

APPEAL NO. 468/2024

ANOOP KUMAR ----- **Appellant.**

Vs.

M/S HABITECH INFRASTRUCTURE LTD
----- **Respondent.**

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Appeal No. 415/2024, Appeal No. 467/2024 and Appeal No. 468/2024 have been filed by the appellants/complainants/allottees assailing the impugned order dated 23.07.2024 passed by the Ld. Regulatory Authority, Gautam Buddha Nagar in complaint no NCR144/05/109208/2023, and

NCR144/08/112077/2023, NCR144/06/109813/2023, wherein the Ld. Regulatory Authority has dismissed the complaints.

2. The batch of appeals (three in number) are being heard and decided together with the consent of parties because issues, project, respondents and reliefs sought are common.
3. Appeal No. 415/2024 is being referred as a leading case.
4. The brief facts, culled out from memo of appeal are that: -
 - 4.1. That the appellant/allottee booked a flat under the residential apartment bearing Flat No. 804, A-7 floated by respondent no.1/promoter in the name and style of "Habitech Panchtatva (1st Phase))", situated at plot no. GH-08A, Tech Zone IV, Greater Noida, U.P. Allotment letter was issued on 05.04.2018 for a total sale consideration at Rs. 37,27,407/-. Offer of possession issued on 10.02.2018 and possession delivered to allottee on 13.07.2019 by Respondent no.1.
 - 4.2. The Respondent No.1 and Respondent No.2 are real estate developer and have been developing various residential projects in and around NCR Region. The Respondent planned to develop a Group Housing Complex by constructing thereon multi-storied buildings. The project comprising of 2 BHK and 3BHK having spacious apartments and amenities for 1st and 2nd phase namely "Habitech Panchtatva".
 - 4.3. Learned counsel for the appellant submits that the Respondent No.2 was in capacity as a developer by way of an agreement dated 10.10.2022 executed with Respondent No.1, wherein the Respondent No.2 has agreed for the completion of 2nd phase of the said project without completing the work in the first phase of the land.

- 4.4.Learned counsel for the appellant submits that, the respondent's primary focus was on executing sale agreements for the Phase-2 project without completing the necessary works and right to passage in the Phase-1 project.
- 4.5.Learned counsel for the appellant submits that, Respondent No.1 and Respondent No.2 are jointly and severally responsible for all affairs, dealings, omissions, and commissions related to the project. The proposed location of the society's main gate near tower A-4 was an integral part of the Phase-1 layout.
- 4.6.Learned counsel for the appellant submits that, Respondent No.2, in conjunction with Respondent No.1, has registered Phase-2 under UPRERA, with registration number UPRERAPRJ613747 and further submits that the land designated for Tower A-4, the proposed main gate, and other amenities which was initially marked for Phase-1 has been relocated to Phase-2 and the registration of Phase-2 was obtained without the explicit written consent of the Phase-1 buyers and without obtaining Occupancy Certificate for all the towers in Phase-1.
- 4.7.At the time of the revised sanction and map approval, Respondent No. 1 did not have OC for three towers (Towers 8, 9, and 10), only partial OC was obtained for Towers 5, 6, 7, and Studio Tower.
- 4.8.Respondents illegally started the second phase with other builder/developer without completing the work of the first phase in accordance with the builder buyer agreement promised with the Phase-1 residents.
- 4.9.Respondent No. 2 without obtaining the completion certificate for the Phase-1 started construction over Phase-2 in the name of CRC JOYUS.
- 4.10. Respondent no.1/promoter did not update the status of Phase-1 in the RERA as required by RERA Rules.

- 4.11. Greater Noida Authority issued part OC regarding Phase-1 without conducting appropriate test of sight and also have not checked the right to passage to the society through exit gate.
- 4.12. Respondents want to build up the new plan infringing the easementary rights and peaceful enjoyment of appellant and Phase-1 residents.
- 4.13. Respondents have fraudulently obtained the registration of Phase-2 in RERA.
- 4.14. Common area pertaining to Phase-1 has been illegally given to Phase-2.
- 4.15. Respondents are duty bound to share the purchasable F.A.R with the appellants including the residents of Phase-1.
- 4.16. Respondents cannot start Phase-2 without completing the Phase-1.
5. The appellant has challenged the impugned order dated 23.07.2024, passed by the learned Regulatory Authority on the following grounds: -
 - A. The Hon'ble Authority has completely ignored the facts and documentary evidence placed on record and passed the impugned order out of its whims and fancies.
 - B. The impugned order/judgment is ex-facie erroneous, incorrect and untenable in law as the substantial facts has not been appreciated.
 - C. The impugned judgment is bad in law as well as in facts and the same has been passed by Hon'ble Authority without application of judicious mind and without appreciating the entire evidence and facts in the present facts.
 - D. Hon'ble Authority while passing the order has failed to consider any contention, put forth by the appellant in the light of the existing settled preposition of law and the impugned order was based on conjecture and surmises.

- E. The impugned order is contrary to the settled law of RERA Act that sufficient reason should be given to construe a liberal opinion in granting benefit so as to advance justice to the appellant.
- F. The impugned judgment is way far from the substance of the case and is totally based on personal presumption and assumptions and not check Right to passage is the fundament right of residents.
- G. The Hon'ble Adjudicatory Authority failed to consider the testimony of the Appellant in its entirety and selectively relied on certain parts of the same. In passing the impugned order, the Hon'ble Authority incorrectly referenced the project as "CRC Joyous Unit A7 ", whereas the Appellant had in fact booked their flat in the project "Habitech Panchtatva". Constitutes a material error, leading to a flawed assumption. Such a misstatement of facts
- H. The Hon'ble Adjudicatory Authority failed to properly assess the testimony regarding the fact that the issuance of the part Occupancy Certificate (OC) and possession of the flat does not imply that the project is fully completed.
- I. The Hon'ble Adjudicatory Authority, incorrectly stated that the project would be transferred to the Association of Allottees (AOA) on 23.01.2024. This finding is factually incorrect and contrary to the evidence on record, as the Authority overlooked crucial documents submitted in the complaint.
- J. The Hon'ble Authority has failed to consider that the Respondent/ Promoter has not obtained the proper consent and take forged approval from the concerned authority for starting the Phase-2 work. The respondent deliberately concealed the material fact and mischievously by showing the wrong information to authority for started the Phase-2 of the said project. However, the Appellant was forced to take possession of an incomplete Phase-1 of the said project which was under construction

project which shows the mala fide intention of the Respondent to avoid getting proper approval from the concerned authority.

K. The Hon'ble Authority has wrong interpretation that complaint filed for common amenities and structural defects and services as mentioned in section 14(3) RERA Act.

L. While dismissing the complaint filed by the appellant the Hon'ble Authority wrongly observed the complaint preferred by the appellant in their complaint.

M. The Impugned Order is arbitrary and bad in law since as per the Builder Buyer Agreement, the Respondent did not mention anything about the incomplete Phase-1 of the said project while starting the Phase-2 work and that too by violating the rules of RERA Act and also changed the name of Phase-2 as CRC Joyous that show this is separate project to new allottee.

N. The Respondent is trying to mislead the Hon'ble Authority by hiding behind and using wrong facts and submission by concealing and suppressing the material fact which have been mentioned in the complaint filed by the appellant.

O. The Respondent/promoter has nowhere in its written statement, which is filed before the Hon'ble Authority, have attached any document to show that Noida Authority has given consent or approval for starting the Phase-2 work of the said project.

P. The Respondent has forced the Appellant including the all the residents of the Phase-1 living without completing the said project starting the Phase-2 work by changing the name of the project by encroaching the substantial areas of Phase-1.

6. In view of above facts and grounds, the appellant has sought the following reliefs: -

- (i) Set aside the impugned order dated 23.07.2024 passed by the Ld. UP RERA at Gautam Buddha Nagar in complaint case no. NCRI44/05/109208/2023 and;
- (ii) Pass an order against the respondents for deregistration of the phase -2 Project under name and style of the CRC JOYOUS (UPRERAPRJ613747) under the provision of section 7 RERA Act;
- (iii) Pass an order directing the Respondents to immediately complete the unfinished work of phase-1 and give right to passage as mentioned in the sanctioned plan of phase-1.

7. Respondent No. 1 has filed the objection against the memo of appeal and denied the averments made by the appellant in memo of appeal.

7.1.Learned Counsel for the respondent submits that consortium of five companies in which Respondent 1 is a lead member. Land admeasuring 86,037 Sq.m in Sector- Techzone-IV, Greater Noida West, Gautam Buddha Nagar was allotted on lease hold and further respondent carried out the division of the original plot and land admeasuring 41,509 Sq.m was allotted to them followed by sub lease deed, as per the request of respondent and confirmation of the GNIDA.

7.2.Sanction of the building plan on the land was approved by GNIDA on the said project land and further area of the allotted project land was increased by 497.05 Sq.m basis the supplementary lease deed which in total increased to 42,006.05 Sq.m

7.3.Learned counsel for the respondent submits that area of the land was increased therefore respondent applied for revised sanction application which was approved by GNIDA.

7.4.As per the approved sanctioned plan the Panchtatva Phase 1 of the project comprises of 8 Towers [Towers - A-4, A-5, A-6, A-7, A-8, A-9, A-10 & Studio Tower (ST)]. Further, it is submitted that the respondent in accordance with the approved sanctioned plan, developed the Panchtatva Phase 1 of the said Project and accordingly obtained Temporary Part Occupancy Certificate (OC) for Towers A-8, A-9 and A-10 from GNIDA on 23.10.2017. Thereafter, Permanent Part Occupancy Certificate (OC) for Towers A-8, A-9 and A-10 was issued by GNIDA on 19.10.2023 and further obtained Part Occupancy Certificate for Towers A-5, A-6, A-7 and Studios Towers of Panchtatva Phase 1 on 11.07.2018.

7.5.Out of 8 Towers A-4 was dropped by the respondent due to certain business related decision which was part of revised sanctioned plan and it was never constructed nor has been offered for sale and was planned to develop the area of Tower A-4 with phase 2 of the project. The location of society's main gate near Tower A-4, remains unchanged.

7.6.Respondent has constructed the Panchtatva Phase-1 on a land admeasuring 26,516 Sq.m out of 42006.05 Sq.m and has obtained Occupancy Certificate for the same and by executing a Memorandum of Association Understanding handed over maintenance and facility to the said association.

7.7.Respondent planned to develop the Phase-2 of the Project, however, as per Rules it required consent from 2/3rd allottees, therefore, the Respondent obtained the requisite consent from its existing allottees of Panchtatva Phase-1 and, submitted an application before GNIDA for revised sanction plan for Phase-2. Further, GNIDA after receiving Application for revision in the Sanction Plan published a Public Notice in two Newspapers. Despite the said publication no one came forward, thereby, raising any objection upon the Application submitted by the respondent seeking revision in the sanctioned

plan dated 17.12.2014, therefore, GNIDA approved the revised sanctioned plan on 28.09.2022.

7.8. Respondent no.1 for the purpose of developing and constructing the Phase-2 entered into a Joint Development Agreement dated 05.08.2022, with a separate legal entity namely, CRC Homes Private Ltd/ the Respondent No. 2 herein and got the said Agreement registered 13.08.2022 and further applied for registration of the project before RERA for Phase- 2 in the name and style of CRC JOYOUS.

7.9. Respondent No.1 respectfully submits that the said Project land was planned to be developed in Phases namely, Phase-1 (Panchtatva Phase 1) and Phase 2 (CRC Joyous) and therefore, the Respondent was required to obtain separate RERA registration for the both phases and the said phases shall be considered as two separate projects, as per provision contemplated under Section 3 of the RERA Act. 2016.

8. Respondent No. 2 has filed the objection against the memo of appeal and denied the averments made by the appellant in memo of appeal.

8.1. Learned counsel for the Respondent No.2 submits that CRC Joyous is distinct project with registration no. UPRERAPRJ613747 with approved sanctioned plans including all the approval and has no connection with Phase-1 of the project “Habitech Panchtatva” which was developed by Respondent No.1 and appellant being an allottee of Phase 1 has no contractual or legal relationship with Respondent No.2.

8.2. Respondent No.2 has not interfered with or infringed upon the rights, amenities or facilities of Phase 1 residents and has not encroached upon land or common area meant for phase 1.

8.3.The entire area of plot where the two phase of the said project are located, as per lease deed between Respondent No.1 and GNIDA is 42006 Sq.m. The then total F.A.R, as per then building bye laws of GNIDA, was 2.75, meaning thereby, cumulatively 115516.5 Sq.m. The Respondent No.1 at the time of launch of the Panchtatva, accordingly got sanctioned approved by GNIDA for total 8 Towers, thereby, consuming only 90456.940 Sq.m. The remaining F.A.R, as per then building bye laws of GNIDA was earmarked by the respondent No.1 to be used and consumed for the proposed development for phase 2.

8.4.Respondent No.2 has no involvement in the execution, management, or maintenance of Phase 1 and cannot be held accountable for any deficiencies alleged by the appellant as the issue raised did not pertain to CRC Joyous or it's development.

9. The appellant in rejoinder denies the averments made by the Respondents and reiterates, and adopts the contents of the appeal.

10.Heard Shri. Syed Nasir Abbas Hasani, learned counsel for the appellant and Shri Ashish Chaturvedi and Shri Dinkar Tiwari, learned counsel for the Respondent no.1 and Dr. Fakrukh Khan & Shri. Fauzan Khwaja, learned counsel for the Respondent No.2.

11.On examining the pleadings and submissions of learned counsel for the parties, we deem it proper to frame the following issues:

- 1) Whether the appellant/allottee/complainant is entitled for the relief claimed?
- 2) Whether there is any illegality and perversity in the impugned order dated 23.07.2024.

12. Answer to Issue No. (1) and (2)-

12.1. The appellants have sought the following reliefs in the appeals-

- (i) Set aside the impugned order dated 23.07.2024 passed by the Ld. UP RERA at Gautam Buddha Nagar in complaint case no. NCRI44/05/109208/2023 and;
- (ii) Pass an order against the respondents for deregistration of the phase -2 Project under name and style of the CRC JOYOUS (UPRERAPRJ613747) under the provision of section 7 RERA Act;
- (iii) Pass an order directing the Respondents to immediately complete the unfinished work of phase-1 and give right to passage as mentioned in the sanctioned plan of phase-1.

12.2. Learned counsel for the appellant has submitted that without completing the Phase-1 of the project by the respondent No.1, the respondent No.2 started construction of Phase-2 CRC Joyus. Learned counsel for the appellant submitted that the respondent No.1 had to construct 8 towers as per original layout plan in Phase-1, but the respondent No.1 constructed only 7 towers in Phase-1. The respondent No.1 promoter had to provide pathway in front of 8 towers but the entry has been provided from the back side. Stilt parking has been provided on greenway for which gate is from other side. Only one gate has been provided for egress and ingress. The land of Phase-1 has been used for Phase-2 which has been constructed by the respondent No.2 promoter. Learned counsel for the appellant submitted that the registration of respondent No.2 for Phase-2 with the U.P. RERA be deregistered while the learned counsel for the respondents have submitted that the relief of deregistration has been sought under Section 7 of the Act. Learned counsel for the respondents submitted that a separate proceedings under Section 7 of the Act is pending before the U.P. RERA in which notices have been issued to and received by the respondents and reply has been filed by the respondents before the Authority which means that the proceedings under Section 7

(Revocation of Registration) is pending before the appropriate/competent authority and which has to be decided by the appropriate/competent authority of U.P. RERA. Party aggrieved by the final order passed by the Regulatory Authority in proceeding under 7 of RERA Act, 2016 shall have right to appeal against that order. In such appeal, this tribunal will have jurisdiction to look into this issue. Therefore, relief of deregistration sought in the complaints/in the present appeal is premature and not sustainable.

12.3. Learned counsel for the appellant has submitted that a direction be issued to the respondents to not use extra purchase of FAR for second phase. It is very clear from the submissions and pleadings of parties that the appellant is allottee/owner in possession of an apartment in Phase-1 while extra purchase of FAR has been used for Phase-2. The complainant is neither allottee nor in possession of any part of Phase-2. Process of extra purchasing of FAR is completed after the publication of public notice. If the appellant has any objection on extra purchase of FAR for Phase-2 and its use in Phase-2, the appellant has to seek any relief regarding his grievance before the concerned competent authority. The Regulatory Authority is not competent authority to entertain objections against extra purchase of FAR. If extra purchase of FAR is part of the sanctioned map/approved layout plan of Phase-2, then the appellant has to ventilate his grievance regarding the extra purchase of FAR before the competent authority which has approved the layout plan and approved the map of Phase-2. Competent authority has jurisdiction to decide such objections, grievances and locus of the party.

12.4 Learned counsel for the appellant has submitted that a direction be issued to the respondents to immediately complete the work of Phase-1 and give right to passage as mentioned in the sanctioned plan of Phase-1. Perusal of the above pleadings, submissions and objections made by the respective parties

show that appellant/allottee booked a flat under the residential apartment bearing Flat 804, A-7, floated by respondent no.1, in the name and style of "Habitech Panchtatva (1st Phase))", situated at plot no. GH-08 A, Tech Zone IV, Greater Noida, U.P, in the year 2018 for a total sale consideration at Rs. 37,27,407/-. Other appellants of Appeal no. 467/2024 & 468/2024 have also been allotted flat in Phase-1. It is clear that the other project, namely, 'CRC Joyous', was subsequently floated by the respondent no.2 and registered with RERA as the separate project. It is admitted fact that offer of possession was given to appellant on 10.09.2018. Temporary part OC for tower 8, 9, 10 was granted on 23.10.2017, OC for these towers was granted on 19.10.2023. Further part OC for Tower A-5, 6, 7 and studio apartment was granted on 11.07.2018. Tower A-4 was dropped by the respondent which was neither constructed nor offered for sale. As per revised plan, development of the area of Tower A-4 was planned with Phase-2 of the project. Respondent has submitted that promoter has obtained the consent of the 2/3rd allottees of the Phase-1 for the approval of the revised layout plan/map. It has been submitted by the respondent that Phase-1 has been handed over to the Residents Welfare Association on 12.12.2022. Issuance of OC substantiates the fact that Phase-1 of the project has been developed and constructed as per the layout plan/revised plan approved by the competent authority because occupation certificate is issued after inspection of the project by the technical team of the Authority. Issuance of occupancy/completion certificate by the competent authority gives rise to presumption that project has been developed as per the sanctioned layout plan/approved map. If allottee has any grievance regarding deviation, alteration or addition from sanctioned plan or map, allottee can seek remedy before the competent authority who has issued occupation/completion certificate regarding project. Therefore, submission of incomplete project of Phase-1 or not developed as per approved layout plan, is not sustainable in this appeal.

12.5 Section 14 (1) of RERA Act, 2016 lays down the provision that the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plan, layout plan and specifications as approved by the competent authority. Section 14 (2) (i) of the Act, 2016 lays down the provision that the promoter shall not make any addition or alteration in respect of the apartment, plot or buildings which are agreed to be taken without previous consent of that person. This provision requires consent of the allottee if promoter is making any addition or alteration in respect of the apartment/plot allotted to the allottee. This provision does not cover the common area. Section 14 (2) (ii) of the Act, 2016 lays down the provisions for the written consent of at least of 2/3 of allottees, who have agreed to take apartment in such building, if the promoter is making any alteration or addition in the building or the common area within the project in the sanctioned plan/layout plan and specifications of the building. The appellant has not mentioned any alteration or addition in the apartment/flat which has been allotted to the appellant. Therefore, provision of the previous consent of the single allottee/appellant is not necessary. The appellant has mentioned the alteration regarding common area of the land. Learned counsel for the respondent has submitted that the consent of 2/3 allottees has been obtained before getting approved the revised plan/map of the project. Section 14 (3) of the Act makes provision that in case of 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. Section 14 (3) of the Act, 2016 is very clear that aggrieved allottee is entitled for compensation if 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 five years from the date of handing over the possession and promoter does not rectify such defect within 30 days. Above discussion and analysis makes it clear that if there is any deviation from the sanctioned plan/approved map, then the allottee is entitled for compensation and jurisdiction of granting compensation lies with the Adjudicating Officer under the RERA Act, 2016. Therefore, if the appellant is pleading deviation from the layout plan/approved map by the promoter or any alteration or addition in the sanctioned map/layout plan, then the allottee can seek remedy by filing a complaint for compensation before the Adjudicating Officer and during the hearing of that complaint, the allottee will have to prove any such deviation, alteration or addition in the sanctioned/plan/approved map. Such jurisdiction does not lie with the Regulatory Authority. The domain, scope and jurisdiction of exercising powers by the Regulatory Authority and the Adjudicating Officer are different. RERA Act, 2016, provides sweeping powers to the Adjudicating Officer for deciding compensation in the eventuality of failure of promoter to fulfil obligations, not only in respect of the Section 12, 14, 18 or 19 but also on failure of promoter to fulfil its obligations of any other provisions of the Act or the Rules or the Regulations made thereunder, or as per the terms and conditions in the agreement for sale.

12.6 The Hon'ble Supreme Court in the case of **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs STATE OF U.P. and Others [2021(11) ADJ 280], [2022 (1) R.C.R.(Civil) 357]** while dealing with the jurisdiction of the Authority and the Adjudicating officer

under the provision of the Real Estate (Regulation and Development) Act, 2016 has decided in para 86 of the judgement that *when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act.*

12.7 It is clarified that no other ground or points were pressed by either of the parties.

12.8 From the aforementioned discussion of fact and law, it is clear that reliefs claimed by the appellants in the appeals cannot be granted either by the Regulatory Authority to allottee in complaint or in present appeal to appellants by this tribunal. Therefore, we are of the considered view that the impugned order dated 23.07.2024 passed by the Ld. Regulatory Authority rejecting the complaints of allottees does not suffer from any illegality or perversity.

The Issue No (1) and (2) are answered accordingly.

13. Having due regard to the facts and circumstances of the cases and the reason assigned hereinabove, the appeals are accordingly liable to be **dismissed**.

14. Appeal No. 415/2024, 467/2024 and 468/2024 are dismissed accordingly.

15. No orders as to the cost.

(Rameshwar Singh)

(Sanjai Khare)

Dated: 13.10.2025

BHAVESH.D/PRADEEPKUMAR