

BENCH-1

**THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL,
AT
LUCKNOW.**

1. **Appeal No. 53/2022**
Vaibhav Sharma Appellant
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
2. **Appeal No. 52/2022**
Alok Raina & Surabhi Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
3. **Appeal No. 54/2022**
Shalini Grewal and Ajay Jain Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
4. **Appeal No. 55/2022**
Sushree Chinmayee Priyadarshni and Chinmay Kumar Mallick ...
.....Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
5. **Appeal No. 56/2022**
Kusum Lata & Rajendra Singh Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
6. **Appeal No. 58/2022**
Priyanka Appellant.
Versus

- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
7. **Appeal No. 71/2022**
Ramesh Kumar Dhadwal Appellant.
- Versus
- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
8. **Appeal No. 78/2022**
Amit Raj and Neha Kiran Appellants.
- Versus
- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
9. **Appeal No. 122/2022**
Ruby Kumari Appellant.
- Versus
- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
10. **Appeal No. 123/2022**
Naresh Sain Appellant.
- Versus
- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
11. **Appeal No. 124/2022**
Anjani Kumar Vidyarthi Appellant.
- Versus
- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
12. **Appeal No. 125/2022**
Roshan Kumar SinghAppellant.
- Versus
- AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
13. **Appeal No. 126/2022**
Shiv Bhushan Sharma Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

14. **Appeal No. 127/2022**
Ajay Pandey Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

15. **Appeal No. 128/2022**
Shambhu Prasad Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

16. **Appeal No. 129/2022**
Irshad Ahmad Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

17. **Appeal No. 130/2022**
Pinky Mishra Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

18. **Appeal No. 131/2022**
Saransh Chandra Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

19. **Appeal No. 132/2022**
Sunaina Sharma Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

20. **Appeal No. 171/2022**

- Vinita Agarwal & Sharad Agarwal Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
21. **Appeal No.172/2022**
Raj Kamal Batra and Samjay Batra Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
22. **Appeal No.173/2022**
Anil Chhajer & Prem Lata Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
23. **Appeal No. 178/2022**
Mukesh Kumar Jindal & Nisha Jindal Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
24. **Appeal No. 179/2022**
Ajay Raina & Reema Raina Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
25. **Appeal No. 180/2022**
Umesh Singh and Pooja Singh Appellants.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
26. **Appeal No. 181/2022**
Pushpanjali Kumari Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
27. **Appeal No. 191/2022**

- Ajay Kumar Peshin Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
28. **Appeal No. 192/2022**
Alok Kumar Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
29. **Appeal No.193/2022**
Anurag Verma Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
30. **Appeal No.194/2022**
Shashi Shekhar Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
31. **Appeal No.195/2022**
Sangita Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
32. **Appeal No.196/2022**
Rajnish Pratap Singh Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With
33. **Appeal No. 197/2022**
Subhonita Chakraborty Appellant.
Versus
AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
With

34. **Appeal No.198/2022**
 Sunil Kumar Dwivedi Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
 With
35. **Appeal No.199/2022**
 Kamna Dhyani Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
 With
36. **Appeal No. 200/2022**
 Sunil Bhat Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
 With
37. **Appeal No. 201/2022**
 Nitin Verma Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
 With
38. **Appeal No.202/2022**
 Rishabh Sahu Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
 With
39. **Appeal No. 203/2022**
 Dr. Ipsita Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
 With
40. **Appeal No.204/2022**
 Supriya Kaushik Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

41. **Appeal No. 231/2022**
 Akhil Maurya Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
42. **Appeal No. 232/2022**
 Ashok Kumar Mishra Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
43. **Appeal No. 233/2022**
 Alka Datta Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
44. **Appeal No. 239/2022**
 Sanjeev Kumar Rai Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
45. **Appeal No. 187/2022**
 Yogita Tripathi & Puneet Tripathi Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
46. **Appeal No. 190/2022**
 Nishant Gaurav Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
47. **Appeal No. 312/2022**
 Rajeshwar Prasad Tyagi & Ashish Tyagi Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

- With
48. **Appeal No. 313/2022**
 Avinash Raman & Khushbu Sharma Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
49. **Appeal No. 314/2022**
 Manish Sikarwar Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
50. **Appeal No. 317/2022**
 Amit Kumar Chauhan & Poonam Rani Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
51. **Appeal No. 318/2022**
 Arjoo Kumari & Rajeev Ranjan Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
52. **Appeal No. 319/2022**
 Manu Ranjan Tewari and others Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
53. **Appeal No. 320/2022**
 Reena Singh and Rajesh Kumar Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
54. **Appeal No. 330/2022**
 Tanuja Prasad & Rajeev Ranjan Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

- With
55. **Appeal No. 331/2022**
 Nupur Sahay & Mayank Jha Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
56. **Appeal No. 332/2022**
 Jagat Singh Tomar & Anu Tomar..... Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
57. **Appeal No. 333/2022**
 Gagan Maheshwari & Deepti Maheshwari through Power of
 Attorney Mr.Satish Lavania Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
58. **Appeal No. 334/2022**
 Archita Mishra & Anand Kumar Jha Appellants.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
59. **Appeal No. 335/2022**
 Mohit Dutt Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
60. **Appeal No. 336/2022**
 Mitter Sain Appellant.
 Versus
 AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.
- With
61. **Appeal No. 337/2022**
 Raj Kumar Goyal Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

62. **Appeal No. 339/2022**
Swadeep Singh Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

63. **Appeal No. 340/2022**
Anuj Sharma through Gopal Hari Sharma Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

64. **Appeal No. 341/2022**
Vivek Joshi & Bhawna Joshi Appellants.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

65. **Appeal No. 370/2022**
Mukesh Pandey Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

66. **Appeal No. 374/2022**
Archana Barthwal Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

67. **Appeal No. 618/2022**
Harmeet S Shah Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

68. **Appeal No. 559/2022**
Manoj Kumar M Yadav Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

69. **Appeal No.57/2022**
Prabha Jain and Kuldeep Chand Jain..... Appellants.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

70. **Appeal No. 72/2022**
Neha Jain Appellant.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

With

71. **Appeal No. 338/2022**
Manu Ranjan Tewari and others Appellants.

Versus

AIMS RG ANGEL PROMOTERS PVT LTD. Respondent.

HON'BLE Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

Heard Shri Prashant Kumar, Shri Kshemendra Shukla, Shri Atharva Arya, Ms. Fuhar Gupta and Shri Anubhav Srivastava, for the applicant and Shri Sudeep Seth, Senior Advocate assisted by Dr. Azhar Ikram and Shri Manish Singh, for the respondent on the application for condonation of delay.

2. The submission of learned counsel for the applicant is that these defective appeals have been filed against the composite impugned order dated 02.03.2020. The impugned order was uploaded on the web portal of U.P. RERA and communicated to the parties on 17.03.2021. The limitation for filing appeal against the impugned order of the Regulatory Authority was up to 16.05.2021, but the appeals have been filed from December 2021 to 24.08.2022.
3. The further submission of learned counsel for the applicant is that the issue of delay in filing the appeal against the impugned order of the Regulatory Authority dated 02.03.2020 is squarely covered by the order of Hon'ble Supreme Court dated 10.01.2022 passed in Sua Motu Writ Petition (C) No. 3 of

2020 (In re: Cognizance for extension of limitation) whereby the period of filling suit, appeal etc. was extended from 15.03.2020 till 30.05.2022. Therefore, except defective Appeal at serial no. 129 and 130 i.e. Appeal No. D 374/2022 (Archana Barthwal Vs. AIMS RG Angel Promoters Private Ltd.) and Appeal No. D 618/2022 (Harmeet S Shah Vs. AIMS Angel Promoters Private Ltd.), which have been filed with a delay of 9 and 85 days respectively.

4. The learned counsel for the respondent fairly admitted that the issue of delay is squarely covered by the judgment and order passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020 (In re: Cognizance for extension of limitation)* and the matter be examined after condoning the delay. As far as defective Appeal No. D 374/2022 and Appeal No. D 618/2022 are concerned, the learned counsel for the respondent submitted that since the issue is common and the same has been challenged by all the applicants, therefore, in the interest of justice if the delay is condoned in filing the appeal, then the respondent has no objection.
5. We have examined the submissions of learned counsels for the parties on the application for condonation of delay except in two Appeals i.e. Appeal No. D 374/2022 and Appeal No. D 618/2022, in rest of the appeals the issue of condonation of delay is squarely covered by the order passed by Hon'ble Court in *Suo Motu Writ Petition (C) No. 3 of 2020 (In re: Cognizance for extension of limitation)* as the instant bunch of appeal has been filed against the composite order dated 02.03.2020. Therefore, in the interest of justice, we deem it proper to condone the delay in remaining two cases also.
6. Accordingly, all the **applications for condonation of delay are allowed**. The registry is directed to convert the defective appeals in to regular appeals.
7. These 71 appeals have been filed by the allottees/complainants against composite order dated 02.03.2020 passed by U.P. Real Estate Regulatory Authority, Regional Office Gautam Budh Nagar (hereinafter referred to as 'Regulatory Authority') raising various grounds with the prayers (i) to set aside the impugned order dated 02.03.2020, (ii) to direct the respondent to execute lease deed and get it registered in favour of the appellants, (iii) to set aside all the consequential letters/demands or actions taken by the respondent in respect of GST/VAT/Farmers' Compensation/Labour Cess, and (iv) to restrain the

respondent from raising future illegal demands with respect to GST/VAT/Farmers' Compensation/Labour Cess.

8. The Regulatory Authority, vide impugned order dated 02.03.2020 has directed the respondent to ensure execution of Registry within 45 days after providing justified details to the complainants regarding GST/VAT, Labour Cess, Farmers' Compensation and registry fee etc.
9. Preliminary objections with respect to maintainability of appeals have been filed by Sri Manish Singh, learned counsel for the respondent and reply of the same has been filed by Sri Prashant Kumar and Sri Kshemendra Shukla, learned counsel for the appellants.
10. With the consent of parties we take up Appeal No.53/2022 (Vaibhav Sharma Vs. AIMS RG Angel Promoters Private Limited) as lead case.
11. Learned counsel for the respondent presses his preliminary objections and prays that before examining the issue on merit the preliminary objections with respect to maintainability of this bunch of appeals be considered. Learned counsel for the appellants agrees to it, accordingly we proceed to examine the preliminary objections.
12. Learned counsel for the respondent submitted that—
 - 12.1 The project against which these appeals have been filed is beyond the purview of this Tribunal as per Section 3 of the RERA Act, 2016 readwith Rule 2(1)(h) of Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 ("Rules").
 - 12.2 Rule 2(1)(h) of Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 ("Rules") defines "Ongoing Project" as follows:-

"(h) "ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules:

 - (i) where services have been handed over to the Local Authority for maintenance.*
 - (ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.*

- (iii) where all development work have been completed and sale/lease deeds of sixty percent apartment/houses/plots have been execute, or
- (iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate."

- 12.3 There are 7 towers in the said project and the respondent had applied for the occupancy certificate/completion certificate with all formalities and NOC's and obtained the occupancy certificate of Towers 1, 2, 6 and 7 on 27.10.2016 from the Noida Development Authority, much before the RERA Act came into the force.
- 12.4 The respondent had applied for the occupancy certificate/completion certificate of remaining towers with all formalities and NOC's on 02.01.2017 and obtained the occupancy certificate of Towers 3, 4, and 5 on 22.09.2017 from the Noida Development Authority on the basis of inspection done on 21.04.2017, much before Section 3 of the RERA Act came into the force, which was notified on 19.04.2017 in official gazette of India and commenced from 01.05.2017, thus the respondent is not covered under the RERA Act and Rules thereof and neither the complaint was maintainable nor the present appeal is maintainable as the respondent does not come within the purview and jurisdiction of Real Estate Regulatory Authority, Uttar Pradesh as per clause 2 h(iv) of the RERA Rules, hence the present appeal is without jurisdiction.
- 12.5 The present appeals are not maintainable in view of the judgment of Hon'ble Supreme Court in ***Civil Appeal No.(s) 6745-6749 of 2021 (M/S Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others)*** decided on 11.11.2021. The Relevant paras 52, 53 and 54 of the aforesaid judgment are reproduced as follows:--

"52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and

in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

- 12.6 Only four allottees namely (i) Prabha Jain & Kuldeep Chand Jain, (ii) Manju Ranjan Tiwari, (iii) Mohit Bansal and (iv) Neha Jain & Jitendra had filed complaint before the Regulatory Authority, rest have neither filed Form M nor paid Rupees one thousand, which is mandatory as per section 31 of the Act, 2016 read with Rule 33 of UPRERA Rules, 2016, hence the rest appeals deserve to be dismissed *in limine* on this ground alone.
- 12.7 As per section 44 of the RERA Act, 2016 the appeal can only be preferred by the person aggrieved by order or direction or decision of the RERA Authority, which in the present case only be entertained for the aforementioned four appellants/complainants, as the RERA Authority only adjudicated the grievances of aforementioned four appellants/complainants.

12.8 In the case of *Thammanna Vs. K. Veera Reddy, (1980) 4 SCC 62*, the Hon'ble Supreme Court held that although the meaning of expression "person aggrieved" may vary according to the context of the Statute and facts of the case nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance; a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused something, or wrongfully affected his title to someone. However, in *Dr. Duryodhan Sahu & Ors. Vs. Jitendra Kumar Mishra & Ors., (1998) 7 SCC 273*, the Hon'ble Supreme Court rejected the claim of a stranger to maintain a writ petition even in public interest litigation before the Hon'ble Administrative Tribunal. It was further held that the Administrative Tribunal constituted under the Act is meant for resolving the personal dispute of an employee, does not have a right to entertain public interest litigation at the instance of a total stranger.

12.9 In the case of *M.S. Jayaraj Vs. Commissioner of Excise, Kerala & Ors., (2000) 7 SCC 552*, the Hon'ble Supreme Court considered the matter at length and placed reliance upon a large number of its earlier judgments including the Chairman, Railway Board Vs. Chandrimadas, 2000 (7) SCC 465; and held that the Court must examine the issue of locus standi from all angles and the petitioner should be asked to disclose as to what is the legal injury suffered by him.

12.10 The "person aggrieved" means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment of personal inconvenience. "Person aggrieved" means a person who is injured or who is adversely affected in a legal sense. (Vide *K. N. Lakshminarasimaiah Vs. Secretary, Mysore S.T.A.T., (1966)2 Mys. L.J. 199*).

12.11 The term "person aggrieved" was also considered and defined in Re: Sidebotham, 1880 (14) Ch. D. 458, wherein it has been observed as under:--

"The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

13. In reply/objections to the preliminary objections of the respondent, the learned counsel for the appellants submitted that—

13.1 The project of the respondent promoter falls under the category of the "ongoing project" because the respondent promoter has not brought on record any document pertaining to completion of the project i.e. completion certificate.

13.2 Chapter 2 of the Act, 2016 relates to registration of real estate projects. Section 3 of the Act, 2016 provides for prior registration of real estate project with the Real Estate Regulatory Authority. Section 3(1) of the RERA Act, 2016 is of utmost importance as it makes it mandatory for the promoters to register its project within a period of three months from the date of commencement of this Act for which the completion certificate has not been issued. Section 3(1) of the Act, 2016 reads as under:--

"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.

13.3 The above-mentioned provision requires that the projects which fulfill the above conditions are required to be registered within a period of three months from the date of commencement of this Act. The commencement date of the Real Estate

(Regulation and Development) Act, 2016 is 01.05.2017, except Sections 2, 20 to 39, 41 to 58, 71 to 78 and 81 to 92, which came into force with effect from 01.05.2016. Accordingly, by 31.07.2017 the following projects covered in proviso 3(1) of the Act have to register with the Regulatory Authority:

- (i) The projects that are ongoing on the date of commencement of the Real Estate (Regulation and Development) Act, 2016; and
- (ii) The projects for which completion certificate has not been issued.

For the issuance of the completion certificate material date is 01.05.2017 i.e. the date of commencement of the Real Estate (Regulation and Development) Act, 2016. Accordingly, all those projects where completion certificate has not been issued on the date of commencement of this Act are necessarily to be registered with the Regulatory Authority within a period of three months. The proviso to section 3(1) provides that the projects that are ongoing on the date of commencement of this Act and for which 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 the Act. This Act came into force on 01.05.2017- barring some sections which came into force on 01.05.2016. Accordingly, for the on-going projects registration was to be applied by the promoter within three months, i.e., by 31.07.2017.

- 13.4 Section 3(2) of the RERA Act, 2016 very specifically provides for those categories of the projects for which the registration shall not be required. The section 3(2) reads as under: -

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

a) where the area of/and 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

Explanation. -For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

13.5 Section 3(2) exempts certain categories of real estate projects only from prior registration related provisions but not from the ambit of other provisions of the Act, 2016. When the promoter has received completion certificate for a real estate project prior to the commencement of the Act, then there is no necessity for the promoter to get registration of the real estate project with the Real Estate Regulatory Authority. The Act came into force on 01.05.2017. Therefore, to get exemption from registration invoking Section 3(2)(b) of the Act, the promoter should have received the completion certificate as on 01.05.2017. The Act, 2016 only provides certain categories of projects that are not required to be registered but these are well within the ambit of the Act. The projects mentioned in Section 3(2) have been taken out of the prior registration requirement, but not out of purview of other provisions of the Act. From the plain reading of section 3, it is evident that the projects for which the completion certificate has been issued prior to commencement of this Act have only been exempted from prior registration. Therefore, all projects where completion certificate has not been issued are ongoing projects and completion certificate issued by the competent authority on or before 30.04.2017 is the conclusive proof of the fact that the project is complete, and it is not "on-going". In the present case, no completion certificate has been issued to the respondent company by competent authority.

13.6 The Act 2016 does not also specify that certain kinds of projects fall outside the ambit of the Act, 2016. Only Section 3(2) of the Act, 2016 specifically provides for the projects which shall not require registration. Taking into consideration the Act itself, registration of certain categories of real estate projects have been

exempted from registration but not from the provisions of the Real Estate (Regulation and Development) Act, 2016.

13.7 Upon bare perusal of section 3(1) of the RERA Act, 2016, it can be understood that the only exemption made for not registering a project with the Authority is of issuance of completion certificate. Apart from that, it is obligatory for the ongoing projects to register themselves with the Authority within a period of three months from the date of commencement of the Act, 2016 and Section 3(2) of the RERA Act, 2016 very specifically provides for those categories of the projects for which the registration shall not be required.

13.8 The Act 2016 bestows upon the promoter to obtain completion certificate and execute a registered conveyance deed in favour of the allottee. Section 11 of the Act 2016 reads as under:--

Section 11 "Functions and duties of promoter" - The Real Estate (Regulation and Development Act, 2016)

(4) The promoter shall-

(a).....

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be,

(c).....

13.9 It is the responsibility of the respondent promoter to obtain completion certificate and since, the respondent has yet not obtained completion certificate from the competent authority therefore, it is covered under the RERA Act.

13.10 In pursuance of Sections 3 and 11(4)(b) of the Act, 2016 the project falls within the category of ongoing project as no completion certificate has been issued to the respondent promoter prior to commencement of the Act, 2016 and it is the responsibility of the respondent promoter to obtain completion certificate which he has yet not obtained from the competent authority. The conclusive proof of completion of project is completion certificate.

13.11 The interpretation by the Respondent that it had obtained OC of towers 1,2,6,7 on 27.10.2016 and towers 3,4,5 on 22.09.2017 which is prior to Section 3 of RERA Act coming into force hence, it is not covered under the Act 2016, would be nugatory to the objects sought to be achieved by the Act. Such type of interpretation is violative of the legislative intent and would lead to the consumers, who may have genuine grievances against a promoter, being left in lurch without any remedy contrary to the basic principle "*ubi jus ibi remedium.*" The consumers of the real estate sectors and projects will be deprived of the remedies under the Act 2016. Such interpretation of the Respondent defeats the very purpose, policy, aim and object of the Act.

13.12 The respondent states that it has applied for Completion certificate/Occupancy certificate but it has failed to provide sufficient proof of having applied for completion certificate in a rightful manner because while obtaining completion certificate, several statutory requirements and documents have to be given, only after the fulfillment of which the application for grant of completion certificate can be considered as a valid & deemed completion certificate. The respondent has not brought on record all the required documents and NOCs which are mandatory to be submitted with the application for grant of Completion Certificate.

13.13 The respondent cannot be absolved from its responsibilities, liabilities and obligations only on the ground that it has applied for completion certificate (if it has) with the concerned authority. The definite and conclusive proof of the completion of the project is completion certificate which the Respondent has failed to procure till date. If the completion certificate was not issued to the Respondent then it was duty bound to make a necessary application and procure it. Merely applying for completion certificate cannot be the conclusive proof of having completed the development work. The conclusive proof of completion of development work is completion certificate only which has not yet been issued to the respondent.

13.14 In *Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr*, decided on 10th July, 2008, the Hon'ble Supreme Court has observed as under:--

".....27. A prayer for completion certificate and C&D Forms cannot be brushed aside by stating that the builder has already applied for the completion certificate or C&D Forms. If it is not

issued, the builder owes a duty to make necessary application and obtain it. If it is wrongly withheld, he may have to approach the appropriate court or other forum to secure it. If it is justifiably withheld or refused, necessarily the builder will have to do whatever that is required to be done to bring the building in consonance with the sanctioned plan so that the municipal authorities can inspect and issue the completion certificate and also assess the property to tax. If the builder fails to do so, he will be liable to compensate the complainant for all loss/damage. Therefore, the assumption of the State Commission and National Commission that the obligation of the builder was discharged when he merely applied for a completion certificate is incorrect."

13.15 The Act 2016 draws distinction between Occupancy Certificate and Completion Certificate and as such, both the terms cannot be used interchangeably. Definitions of Occupancy Certificate and Completion Certificate as provided under the Act are being reproduced herein below :-

2(2f) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

2(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

13.16 From the aforementioned definitions it can be inferred that occupancy Certificate is issued when a building is fit for occupation and has a provision for civic infrastructure whereas completion certificate is issued when the project is developed as per the sanctioned plan and layout plan. In the present case, the respondent has admitted that it had applied for and has received occupation certificate only and it is inferred from the averments mentioned in the affidavit filed by the respondent, that no completion certificate has ever been applied for by the respondent before the competent authority and as such in light of section

3 (1) of the Act 2016, since no completion certificate has been issued to the respondent prior to 01.05.2017, the project of the respondent falls within the purview and jurisdiction of UPRERA.

13.17 Since the project is now already registered with UPRERA therefore the averment of the respondent that it does not fall within the jurisdiction of UPRERA becomes invalid and is a nullity.

13.18 The necessity to enact the present Act was felt as there was no special statute to provide effective and simplicitor remedy for redressal of the grievances of the home buyers. Keeping in view the background of the Act, it has to be looked from the perspective harmony with the aim and objects for which it was enacted. The preamble of the Act makes it clear that the Real Estate (Regulation and Development) Act, 2016 has been enacted with the object of regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector. The preamble of the Act 2016 is as under:--

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicate officer and for matters connected therewith or incidental thereto"

The entire purpose with which the said Act, 2016 has been established is to protect the interest of consumers and to grant relief to the allottees and to ensure compliance of obligations of the promoters, real estate agents and allottees. It is well settled that the preamble of the statute is a guiding light to ascertain the legislative intent.

13.19 The Act 2016 was enacted with emphasis on "protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal". It is submitted that the entire machinery has been created so that the grievances of the allottees/homebuyers can be resolved in a speedy and

expeditious manner. The object and purpose of RERA Act is as a beneficial legislation to abate the hardships on the home buyers. The Act is a welfare legislation and must be interpreted in such a manner to further and advance the policy and object of the Act.

13.20 Consideration of conditions which gave rise to the said Act and the mischief the said Act wished to remedy should be considered to give force and life to legislative intention. Purposive construction in the present case should be applied. But the interpretation of the Respondent does not reflect the intention of the Legislature behind enactment of the said Act 2016 and the same shall only defeat the very object of the said Act 2016. The Hon'ble Supreme Court in *Bengal Immunity Co. Vs. State of Bihar reported in: AIR 1955 SC 661*, wherein, the Constitution Bench speaking through the then Acting Chief Justice S.R.Das has held in paragraph 23 as follows:--

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st-What was the common law before the making of the Act,

2nd-What was the mischief and defect for which the common law did not provide,

3rd-What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th-The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico...."

13.21 The respondent has placed reliance on Rule 2(h)(iv) of the UP RERA Rules, 2016. Rule 2(h) is being reproduced herein below for quick reference-

2.(h) "ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules:

(i) where services have been handed over to the Local Authority for maintenance.

(ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.

(iii) where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.

(iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate.

Upon considering the above mentioned Rule, the Respondent cannot be given the benefit of Rule 2(h)(iv) of the UP RERA Rules, 2016 because neither all development work has been completed i.e. 100% of the development work nor has the Respondent filed any application with the competent authority for issue of completion certificate. Development Work, External Development Works and Internal Development Works as defined in sec 2(t), 2(w) and 2(zb) of the Act 2016 respectively are being reiterated as below -

..2(t) "development works" means the external development works and internal development works on immovable property;

2(w) "external development works" includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

2(zb) "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting,

provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;"

13.22 Rule 2(h)(iv) of the UP Rules 2016 is also not applicable on the respondent company because it has not completed all the development work. Also, the respondent has absolutely failed to state the total number of units, total number of parking spaces and all the amenities to be provided in the project in question, without the knowledge of which it cannot be concluded without doubts that the project is complete in all spheres and the respondent has failed to establish that it has applied for completion certificate with all the documents as required in a rightful manner and its application was complete in all senses and there were no shortcomings or anomalies in its application for completion certificate which could be liable for its rejection. Furthermore, the Rule uses the word "and", therefore even if it is assumed that the project does not fall within the jurisdiction of RERA in lieu of Rule 2(h) (iv) of the UP Rules 2016 then it should have fulfilled both the condition i.e. 100% development work and applying with the competent authority for issue of completion certificate, which absolutely remains unfulfilled in the present case.

13.23 Rule 2(h) of the Uttar Pradesh Real Estate (Regulation & Development) Rules, 2016 is in total contradiction and in conflict with section 3 of the Act as the rule has enlarged the definition of the on-going projects and has given escape route to builders/respondent promoter to shy away from their rights and liabilities towards the buyers and also from the wrongs they have committed and also as it defies the primary object of the Act 2016 which is to protect the interest of consumers in the real estate project. The Rule 2(h) of Rules, 2016 framed by the appropriate government in exercise of power conferred by section 84 of the Act 2016 cannot be in contradiction with the provisions of the Act.

13.24 It has been upheld in number of judgments that when there is a conflict between the provisions of an Act and provisions of the rules and regulations framed thereunder, the Act will supersede the rules and regulations and the Act will have to be followed rather than the contrary rules and regulations. The principle

that the subordinate legislation cannot be in violation of the Act is supported by decision of the Apex Court in *Global Energy Ltd., Vs. Central Electricity Regulation Commission reported in (2009) 15 SCC 570*. The Rule 2(1)(h) is contrary to Section 3 of the Act and therefore the Regulatory Authority should not have accepted the claim of exemption from registration by the respondent. In the matter of *National Stock Exchange Member Vs Union of India and Others 2005 125 (2005) DLT 165*, the Hon'ble Delhi High Court has observed and held the following --

".....15. In our country this hierarchy is as follows:-

(1) *The Constitution of India.*

(2) *Statutory Law, which may be either Parliamentary Law or law made by the State Legislature.*

(3) *Delegated legislation which may be in the form of rules, regulations etc. made under the Act.*

(4) *Administrative instructions which may be in the form of GOs, Circulars etc.*

16. *The SEBI Act is in the second layer of this hierarchy and the rules and regulations are in the third layer, whereas the circular dated 16.3.1998 is in the fourth and the lowest layer in the hierarchy. Hence, if there is a conflict between the Act and the Rules & Regulations, the Act will prevail, and if there is a conflict between the Act, Rules and Regulations on the one hand, and the circular on the other, the former will prevail and the latter becomes ultra vires vide Union of India v. Arun Kumar Roy, AIR 1986 SC 737 (para 15), Page 1997 Shish Ram v. State of H.P, Union of India v. Madras Telephone S.C & S. T Social Welfare Association, etc."*

13.25 Rule 2(1)(h) of the Rules 2016 is inconsistent with Section 3 of the Act 2016 and therefore, as per Article 254 of Constitution of India, law made by the Parliament shall prevail. If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, the law

made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

13.26 In Writ Petition no. 29329/2022 filed against the Respondent before the Hon'ble High Court of Judicature at Allahabad, it has been brought to the notice of the Hon'ble Court that the New Okhla Development Authority has cancelled the Occupancy Certificate dated 22-09-2017 issued to the Respondent for the Golf Avenue 2 project. Since the Occupancy Certificate issued has been cancelled, the Respondent's project is not covered under the provisions of Section 2(h) (iv) of the Rules, 2016.

13.27 Section 31 of the Uttar Pradesh Real Estate (Regulation and Development) Act, 2016 provides that any person aggrieved can file a complaint with the Authority or the Adjudicating Officer. Section 31 of the Act 2016 is being reproduced herein below-

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

2) The form, manner and fees for filing complaint under sub-section

(1) shall be such as may be specified by regulations,

13.28 The Word "person" is defined in Section 2(zg) of the Uttar Pradesh Real Estate (Regulation and Development) Act, 2016 which reproduced here in below:

2(zg) "Person" includes, -

(1) an individual;

(ii) a Hindu undivided family;

(iii) a company,

(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case maybe

(v) a competent authority;

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

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

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

13.29 In the light of the above, it is submitted that the Act itself provides that "body of individuals" can also make a complaint before the Authority. The allottees who have filed the complaints fall under the category of body of individuals and as such, a single complaint filed along with other allottees forming a body of individuals having a same cause of action is maintainable. Further, while filing the complaint online before the Authority, a detailed complaint in form M was also filed. Upon perusal of the said detailed complaint, it can be observed that names of all the allottees and all the corresponding details/ relevant particulars of the flat numbers, date of application, date of booking, date of execution of the apartment buyers' agreement, sale consideration, amount paid till date and the final demand raised and made of the individual flats necessary for the adjudication of the case, in respect of the units allotted by the respondent in its project have been mentioned specifically in the body of the complaint. A complete list of all the allottees has been mentioned in the detailed complaint. Furthermore, the Respondent neither, at any stage, has raised the plea/averment as made in the para under reply, before the Authority nor has he taken the plea in its reply filed against the memo of Appeal. In addition to it, a Synopsis has been annexed with the detailed complaint on Form M wherein it has been clearly stated that ".....this is a joint complaint under section 2 (zg) (vi), read with Order 1 of Rule of the Code of Civil Procedure, 1908, is being preferred in a

representative capacity by the above captioned complainants for the benefit of entire class of persons having the same interest before this Hon'ble Authority since all the complainants have signed identical agreements to purchase dwelling units in the same project by the name of "Aims Golf Avenue-II" undertaken by the opposite party no.1. All the complainants have common grievances and the relief claimed is also common to all...."

- 13.30 The appellants have a locus standi to file the appeal as well as the complaint which they had filed before the Regulatory Authority being aggrieved by the certain actions and inactions on the part of the Respondent builder. The allottees have genuine grievance against the respondent as it has failed to execute the conveyance deed and is making illegal demands from the allottees.
14. Heard Shri Sudeep Seth, Senior Advocate, assisted by Dr. Azhar Ikram and Shri Manish Singh, learned counsel for the respondent and Shri Prashant Kumar and Shri Kshemendra Shukla, learned counsel for the appellants on the preliminary objections of maintainability of the appeals.
15. The learned counsel for the respondent submitted that Prabha Jain along with Kuldeep Chand filed complaint (Appellants of Appeal No. 57/2022; Prabha Jain and Kuldeep Chand Vs. AIMS RG Angel Promoters Pvt. Ltd.) on 19.09.2022. In the summary details under the heading of 'Complainant' the name of Prabha Jain, Kuldeep Chand Jain and others has been mentioned. Further under the heading of complaint detail, the flat number has been indicated as T-4, 1607, Golf Avenue 2, Sector 75, Noida. The total consideration amount of the flat has been mentioned as Rs. 53,60,076/- and the date of execution of Builder Buyer's Agreement as 26.10.2017. As per Builder Buyer's Agreement the possession was to be given by the respondent on 01.01.2019 (wrongly transcribed as 01.01.1900). Under the heading of 'any other details' the complainant mentioned that builder is charging excess money before registration, buyer has already paid GST as applicable under GST Act. Hence, registry to be executed without any additional payment. Even VAT is not applicable, GST tax invoice to be provided by the builder.
16. The appellant also filed a detailed complaint (Annexure No. 15, page 134) giving details of the claim by mentioning the name of Complainant as Smt. Prabha Jain and Ors. under the heading of 'Particulars of the Complainant(s)'. The complainant also gave her address for service of all notice as T-4/1607, Golf

- City, Plot No. 03, Sector-75, Noida. In the entire detailed complaint, no details of any other complainants were indicated. Further in the relief sought, an additional relief no. 2 has been added for seeking a sum of Rs. 5,00,000/- on account of mental harassment and trauma.
17. The learned counsel for the respondent further submitted that as far as appellant is concerned, his details are at Annexure-4, which indicate that Flat Allottee(s)'s Agreement was executed between Vaibhav Sharma and the respondent on 07.10.2017 with respect to Unit No. 205 in Tower-5 on Second Floor, 3BHK+2T at the cost of Rs. 68,45,775/- (page 106). A demand letter was issued to the appellant on 08.09.2019 (page 130) indicating the number of allotted units. The learned counsel for the respondent submitted that even in Form-M prescribed under Rule-33 of the Rules 2016, the name of Smt. Prabha Jain has been mentioned and word 'others' has been added with hand writing under the heading of Jurisdiction (page 135). The agreement was entered into between Prabha Jain and respondent on 26.10.2017 with respect to Unit No. 1607, Tower-4, 16th floor at the consideration of Rs. 50,32,800/-.
 18. The learned counsel for the respondent submitted that Smt. Prabha Jain in her complaint filed a document before the Regulatory Authority on 13.11.2019 (page 145) wherein a list of new RERA Members has been enclosed. The Verification at page 143 has been signed by only Smt. Prabha Jain. The respondent in pursuance to the complaint of Smt. Prabha Jain filed objections and in para-2 of the same the details of unit etc. of Prabha Jain (complainant) was mentioned. In the impugned order the Regulatory Authority taking into consideration the complaint of Smt. Prabha Jain clubbed three other similar complaints and vide composite order dated 02.03.2020, all the four complaints were disposed of. The perusal of the impugned order indicates that there is no adjudication of any other complaint of any allottee, as there was no other complaint of any other allottee before the Regulatory Authority. After judgment, the rectification of the order dated 02.03.2020 was filed on 05.10.2020 by the complainant (Prabha Jain) and on her request the order was rectified by the Regulatory Authority vide order dated 12.10.2021.
 19. The record of the complaint was summoned on the request of learned counsel for the parties. The learned counsel for the respondent drawn our attention towards inner page 3 of the rectification application, wherein it has been mentioned that

“The rectification application is preferred in view to rectify minor mistake i.e. “Others” which are missing from the order’s title. As these complaints were combined complaints by many complainants and their respective Vakalatnamas were also on record. Therefore, it is humbly requested to update “others” in the order”.

20. The Regulatory Authority by means of order dated 12.10.2021 on finding that the word “others” has not been mentioned in the impugned order directed for adding the same with the observation that the name of complainant will be read as Prabha Jain, Kuldeep Chand Jain and Others. Thereafter instant bunch of appeals has been filed and except (i) Appeal No.57/2022 (Prabha Jain and Kuldeep Chand Jain Vs. AIMS RG Angel Promoter Pvt. Ltd.), (ii) Appeal No. 338/2022 (Manu Ranjan Tewari and Others Vs. AIMS RG Angel Promoter Pvt. Ltd.) and (iii) Appeal No. 72/2022 (Neha Jain Vs. AIMS RG Angel Promoter Pvt. Ltd.), the rest of the appeals have been filed before this Tribunal without there being party to the complaint and without seeking leave of the Tribunal and explaining as to how they are being aggrieved by the order passed in complaint of others.
21. The learned counsel for the respondent in support of his submissions drawn our attention towards the provisions of Section 31 of the Act 2016 whereby any aggrieved person has been empowered to file complaint with the Regulatory Authority or Adjudicating Officer and the explanation of Section 31, provides that for the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. The sub-section (2) of Section 31 further provides that the form, manner and fees for filing complaint under sub-section (1) shall be such, as may be specified by regulations. The learned counsel for the respondent further drawn our attention towards the provisions of Section 43(5) of the Act and submitted that similar provision for filing appeal has been provided. The definition clause 2(zg) defines “Person” and as per sub-section (vi) of Section 2(zg) the ‘person’ includes an association of persons or a body of individuals whether incorporated or not. The learned counsel for the respondent submitted that under this clause an association of persons may be registered or un-registered, but for filing a complaint the association of allottees or any voluntary consumer association is to be registered under any law for the time being in force.

22. The learned counsel for the respondent in support of his submission on the issue of 'Association' placed reliance on the judgment of Hon'ble Supreme Court in ***Ramashankar Kaushik and Another Vs. Election Commission of India and Another: (1974) 1 SCC 271***. The relevant para-20 of the said judgment reads as follow:

“20.Two vital elements of an association are members and common purpose for which they associate. If an association is constituted under a statute, it can be dissolved only in accordance with that statute; if it is organized on the basis of a contract, then it can be dissolved only in accordance with the terms of the contract, commonly called the constitution. If the constitution provides for dissolution by the consent of all the members, the rule of decision by majority is excluded. There seems to be no evidence on these material aspects.”

23. The learned counsel for the respondent also placed reliance on paras 28, 29, 30 and 32 of the judgment rendered in the case of ***Ramanlal Bhailal Patel and Others Vs. State of Gujrat; (2008) 5 SCC 449***. The relevant paras 28, 29, 30 and 32 read as follows:

“28. The terms 'association of persons' and 'body of individuals' (which are interchangeable) have a legal connotation and refer to an entity having rights and duties. They are not to be understood literally. For example, if half a dozen people are travelling in a car or a boat, or standing in a bus stop, they may be a group of persons or a 'body of individuals' in the literal sense. But they are not an association of persons/body of individuals in the legal sense. When a calamity occurs or a disaster strikes, and a band of volunteers or doctors meet at the site and associate or co-operate with each other for providing relief to victims, and not doing anything for their own benefit, they may literally be an association of persons, but they are not 'an association of persons/body of individuals' in the legal sense. A mere combination of persons or coming together of persons without anything more, without any intention to have a joint venture or carry on some common activity with a common understanding and purpose will not convert two or

more persons into a body of individuals/association of persons. An 'association of persons/body of individuals' is one in which two or more persons join in a common purpose and common action to achieve some common benefit. Where there is a combination of individuals by volition of the parties, engaged together in some joint enterprise or venture, it is known as 'association of persons/body of individuals'. The common object will have some relevance to determine whether a group or set of persons is an association of persons or body of individuals with reference to a particular statute. For example, when the said terms 'association or persons' or 'body of individuals' occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profit or gain. [vide : Commissioner of Income Tax vs. Indira Balkrishna (AIR 1960 SC 1172), Mohammed Noorulla vs. Commissioner of Income Tax, Madras (AIR 1961 SC 1043, M.V. Shanmugam vs. Commissioner of Income Tax, Madras (AIR 1970 SC 1707)] and Meera and Company vs. Commissioner of Income Tax - 1997 (4) SCC 677. But the object need not always be to carry on commercial or business activity. For example, when the word 'person' occurs in a statute relating to agriculture or ceiling on land holding, the term 'association of persons/body of individuals' may refer to a combination of individuals who join together to acquire and own land as co-owners and carry on agricultural operations as a joint enterprise.

29. Normally, where a group of persons have not become co-owners by their volition with a common purpose, they cannot be considered as a 'person'. When the children of the owner of a property succeed to his property by testamentary succession or inherit by operation of law, they become co-owners, but the co-ownership is not by volition of parties nor do they have any common purpose. Each can act in regard to his/her share, on his/her own, without any right or obligation towards the other owners. The legal heirs though co-owners, do not automatically become an 'association of persons/ body of individuals'. When

different persons buy undivided shares in a plot of land and engage a common developer to construct an apartment building, with individual ownership in regard to respective apartment and joint ownership of common areas, the co-owners of the plot of land, do not become an 'association of persons/body of individuals', in the absence of a deeming provision in a statute or an agreement. Similarly, when two or more persons merely purchase a property, under a common sale deed, without any agreement to have a common or joint venture, they will not become an 'association of persons/body of individuals'. Mere purchase under a common deed without anything more, will not convert a co-ownership into a joint enterprise. Thus when there are ten co-owners of a property, they are ten persons and not a 'body of individuals' to be treated as a 'single person'. But if the co-owners proceed further and enter into an arrangement or agreement to have a joint enterprise or venture to produce a common result for their benefit, then the co-owners may answer the definition of a 'person'.

Question (iii) - Whether the ten purchasers constitute a 'person'?

30. We will now examine whether a group of individuals purchasing agricultural land jointly as co-owners, not with the intention of retaining the property in co-ownership and carrying on agricultural activities jointly, nor with the intention of managing it as a joint venture nor with the intention of holding it together to generate income, profit or gain, but solely with the intention of dividing the land so purchased and hold their respective shares separately and individually, can be considered as a 'person' for the purposes of the Ceiling Act. The Tribunal and the High court have proceeded on the basis that the ten purchasers constituted an 'association of persons' and therefore a separate juristic person. Let us examine whether the said conclusion is correct.

32. The Tribunal and the High Court were right in holding that the word 'person' in the Ceiling Act includes an 'association of

persons/body of individuals'. But they were not justified in treating the co-owners as an 'association of persons', or in holding that the ten co-owners will be entitled to own only one unit. Having regard to section 6(2) of the Act, the share of each couple (husband and wife) in the land, plus any other land individually held by them will have to be calculated to find out whether they held any land in excess of the ceiling limit. Therefore the share of each appellant in the lands jointly purchased, with the addition of the lands held by his spouse, and addition of any other land held by them, will give the basis for determining the surplus land. For example, if a husband's share as co-owner is 20 acres and wife's share as co-owner is 20 acres, and their other individual holding is another 10 acres (all of the same category in C class), the total holding of the family will be 50 acres (20+20+10 acres) and the surplus will be 14 acres."

24. The learned counsel for the respondent while dealing the issue of "person aggrieved" placed reliance on the judgment rendered by this Tribunal in the Appeal of Akhilesh Agarwal and Others Vs. Rohtas Projects Ltd.; 2021 SCC Online UP RERA 17 and while relying on paras 29, 30, 37, 43 and 50, submitted that the appeal could not have been filed without seeking leave of the Tribunal and admittedly there is no application for seeking leave and giving the fact that how appellant is prejudicially affected by the judgment. The learned counsel for the respondent, on the issue of seeking leave also referred paras 19 to 23 of the judgment of Hon'ble Supreme Court rendered in the case of ***V.N. Krishna Murthy and Another Vs. Ravi Kumar and Others : (2020) 9 SCC 501***. The relevant paras are quoted as follows:

"19. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (vide Shanti Kumar R. Canji Vs. Home Insurance Co. of New York and State of Rajasthan & Ors. Vs. Union of India).

20. In K. Ponnalagu Ammani Vs. The State Of Madras represented by the Secretary to the Revenue Department, Madras and Ors .7,

this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:- (SCC OnLine Mad)

“Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.”

21. Applying the above tests, we are of the considered opinion that appellants can neither be said to be aggrieved persons nor bound by the judgment and decree of the Trial Court in any manner. The relief claimed in the suit was cancellation of agreement to sell. On the other hand, the sale deeds which were the basis of the claim of the appellants were executed on the basis of General Power of Attorney, and had nothing to do with the agreement to sell which was subject matter of suit. The judgment and decree of the Trial Court is in no sense a judgment in rem and it is binding only as between the plaintiffs and defendants of the suit, and not upon the appellants.

22. Though it has been vehemently contended before us and also pleaded before the High Court that the judgment and decree of the Trial Court affects the appellants adversely. The appellants have failed to place any material or demonstrate as to how the judgment and decree passed by the Trial Court adversely or prejudicially affects them. Mere saying that the appellants are prejudicially affected by the decree is not sufficient. It has to be demonstrated that the decree affects the legal rights of the appellants and would have adverse effect when carried out. Facts

of the case clearly demonstrate that suit which has been decreed is confined only to a declaration sought in respect of an agreement to sell. Injunction was also sought only against the defendant-society or its officers or assigns. There is not even a whisper in the entire plaint or in suit proceedings about the sale deed executed in favour of the appellants by the General Power of Attorney holders or even for that matter in the judgment and decree of the Trial Court.

23. The appellants have thus failed to demonstrate that they are prejudicially or adversely affected by the decree in question or any of their legal rights stands jeopardized so as to bring them within the ambit of the expression 'person aggrieved' entitling them to maintain appeal against the decree."

25. The learned counsel for the respondent also drawn attention towards Rule-33 of the Rules 2016, wherein the manner of filing a complaint with the Regulatory Authority has been prescribed and on receipt of the complaint, the action to be taken by the Regulatory Authority has been explained in sub-rule 2 (e), (f) and (g) of Rule 33, which require the Regulatory Authority to satisfy on the basis of submissions made in the complaint and for further hearing into the complaint after production of document or other evidence as required. The Regulatory Authority also possessed the power to carry out enquiry on the complaint on the basis of documents and submissions and decide the issue on the basis of evidences produced before it and other record along with the submissions.
26. Smt. Prabha Jain has filled Form-M and under the signature of Complainant(s) only signed as complainant. A separate detailed complaint is at page 134, which contains only her signature. The learned counsel for the respondent submitted that by filing a list in the said proceedings, giving details of other allottees, will not become part of the pleadings. In array of the parties the names of all the applicants/plaintiffs/complainants along with other description is required to be mentioned with their grievances in details, but in the complaint only details of Smt. Prabha Jain has been mentioned. Therefore, by seeking correction in the description in the order by adding the word "Others" in the name of the complainants, the persons whose name given in the list, in any annexure or in synopsis cannot be treated as complainants before the Regulatory Authority.

Thus, the appeal against the impugned order by such allottees/persons in the bunch of appeal is not maintainable and deserves to be dismissed being non-complainant before the Regulatory Authority and further filing the appeal without seeking the leave of the Tribunal also goes against them.

27. Shri Prashant Kumar and Shri Kshemendra Shukla, learned counsels for the appellant submitted that list of allottees has been provided in the synopsis and the complaint also indicates that the complaint has been filed by the allottees and in the list, the details of all the appellants/allottees along with their allotted units and consideration amount etc. have been mentioned.
28. The learned counsel for the appellants on being asked as to how these appellants can become complainant in the garb of word "Others" mentioned in the order, admitted that in the complaint filed by Smt. Prabha Jain there are names of two persons i.e. Prabha Jain and Kuldeep Kumar Jain and the names of the other allottees/persons have been mentioned in the synopsis and in the list of new members filed as Annexure. At the end learned counsel for the appellants submitted that by filing the instant appeals against the impugned order of the Regulatory Authority dated 02.03.2020, their rights may not be closed, if it is held that their appeals are not maintainable against the impugned order.
29. We have examined the submissions of learned counsels for the parties and perused the record. First we proceed to examine the status of the respondent as much emphasis has been given by Sri Sudeep Seth, learned counsel for the respondent, that the project of the respondent does not fall under the category of on-going project as partial OC was issued by the competent authority for towers 1,2,6 and 7 on 27.10.2016. The unit of Prabha Jain falls in tower 4. The respondent applied for OC of the entire complex on 01.07.2017 and the OC was issued on 22.09.2017 by the competent authority for towers 3,4 and 5 after inspection on 21.04.2017 whereas the provisions of Sections 3 to 9 of the Act 2016 were enforced on 01.05.2017. Learned counsel for the respondent further submitted that the project was registered with U.P. RERA under Section 3 of the Act 2016 on 15.08.2017 giving 04.03.2011 as the start date of the project, proposed revised date as 06.06.2017 and date of completion as 31.12.2017, just in order to process the unsold inventories of the project, as the application for OC for the entire complex was filed on 02.01.2017, much before enforcement of the concerned provisions of registration of the Act 2016. The project of the

respondent does not fall in the category of on-going project in pursuance to the provisions of Rule 2(h)(iv) of the Rules 2016 which provides that where all development works have been completed and application has been filed with the competent authority for issue of completion certificate and hence the complaints as well as the instant appeals are not maintainable.

30. Learned counsel for the appellant submitted that the admitted fact is that the project of the respondent was registered under the provisions of Section 3 of the Act 2016 on 15.08.2017 giving completion date as 31.12.2017 and further on the complaint of the allottees dated 19.09.2019 the New Okhla Industrial Development Authority vide order dated 12.06.2022 suspended the OC of the respondent and thereafter vide order dated 28.06.2023 the same has been cancelled on the ground of various deficiencies and discrepancies in the external and internal development of the project and the respondent has been directed to rectify the same so that issue of restoration of OC may be considered as per rules. Hence, the fact is that the respondent does not have OC as on date, coupled with the fact that the respondent itself registered the project with U.P. RERA on 15.08.2017. On examination of the submissions of the learned counsel for the parties it is admitted fact that the respondent registered its project under Section 3 of the Act 2016 with U.P. RERA on 15.08.2017 with the completion date as 31.12.2017. On examination of the web portal of the RERA, we found that the project of the respondent still shown as on-going project, as no declaration has been uploaded/filed regarding completion of the project as per the provisions of the Act and Rules 2016.
31. Now we proceed to examine the status of appellants being complainant before the Regulatory Authority. The perusal of record reveals that the appellant has not filed any complaint under Section 31 of the Act, read with Rule 33 & Form M. A complaint can be filed only by any aggrieved person or registered association of persons. Form of complaint is prescribed in Rule 33 with the format as Form M. Form M indicates that though several complainants can join in a single complaint but particulars of all the complainants are required to be given and complaint to be signed by all the complainants. Even if the single complaint is filed by several complainants, every complainant is required to pay fee of Rs 1,000/ under Rule 33(1). Further under Rule 33(2)(e) (f)(g), RERA is required to enquire into the complaint on the basis of documents as well as submission and then pass an order.

32. From the perusal appeal, it is apparent that the Appellant has not filed any complaint with particulars and signatures in Form M, read with Section 31 and has also not deposited a fee of Rs 1,000/-. The Appellant has not given any particulars supported with documents in the complaint. It is apparent that the complaint dated 19.02.2019 was filed by Smt. Prabha Jain only though 'others' was written. Complaint Summary mentions Flat No T4/1607 pertaining to Prabha Jain. The Appellant was allotted flat no.T3/1002. The phrase 'Complainant, Smt. Prabha Jain' has been used in the complaint with details of only Prabha Jain's flat & sale consideration, as apparent from the complaint summary and relief sought. The complaint has been signed only by Prabha Jain. Even the list of enclosure pertains to Smt. Prabha Jain. Respondent filed reply only with respect to complaint of Prabha Jain regarding Flat No 1607.
33. RERA disposed of the complaint of Smt. Prabha Jain & 3 Other complainants, namely, Manju Ranjan Tiwari, Mohit Bansal and Neha Jain vide Order dated 02.03.2020. RERA enquired into and dealt with the case of Prabha Jain with respect to her Flat No. T4/1607 only and there was no whisper about the complaint and the factum of Appellant. As such, list of complainants annexed by Prabha Jain was not entertained & there were only 4 complaints before the RERA, duly decided by it. There was no adjudication with respect to Appellant as he had not filed any complaint. Rectification/correction order dated 12.10.2021 has no consequence since it pertains to correction of array of parties only & the same was moved only by Prabha Jain, not the Appellant. Averment in Paragraph 2 of the Appeal that the Appellant moved rectification application is wrong & made to mislead the Appellate Court.
34. Instead of 4 appeals, arising out of 4 complaints, 72 appeals have been filed even by those alleged appellants, who had not filed complaints & there being no adjudication by RERA Authority, Appeal has been filed under Section 44 of the Act with relief sought impugning RERA order & for setting aside letters/demands though neither the order of RERA has been passed against the Appellant nor any relief for setting aside demand letter dated 08.09.2019 was sought by the Appellant by filing any complaint.
35. Under section 31 of the Act, complaint can be filed by any aggrieved person alleging violation of Rules/Act as well as terms and conditions of the Agreement. 'Persons' shall include Association of Allottees or Voluntary

Consumer Association registered under any law for the time being in force, Form, Manner & Fees for filing complaint as prescribed by rules.

36. The Appellant has not appended any document constituting an Association of Allottees, duly registered with the complaint nor complaint is filed in the name of Association. The complaint filed is in the name of Prabha Jain giving her particulars, hence the complaint cannot be treated to be filed by an Association of Allottees.
37. "Person aggrieved" cannot be one who is a stranger or where judgment does not prejudicially affect the person, who is not a party to the proceedings. A person who is not a party to the suit/complaint may prefer an appeal with the leave of the Appellate Court & such leave could be granted if he would be prejudicially effected by the judgment and the appellant demonstrates that decree affects the legal rights of the appellant and would have adverse effect when carried out.
38. Hence, neither the Appellant is an aggrieved person, as the judgment of RERA pertains to Prabha Jain nor any association of allottees was constituted duly registered to prefer complaint. RERA judgment is a judgment in personam and not in rem, binding only between complainant & respondent of the complaint and not upon the Appellant.
39. The admitted position is that Smt. Prabha Jain filed Complaint before the Regulatory Authority along with Kuldeep Kumar Jain, giving details of allotted unit and the amount of consideration as well as date of Flat Buyer Agreement, proposed date of possession, but the complaint was signed by only Smt. Prabha Jain. Similarly, in the detailed complaint and in Form-M she is the only signatory. In our considered view, the appellant and other similar appellants were not complainant before the Regulatory Authority. Merely giving the name in some annexures or mentioning about combined/joint complaint in the synopsis, contrary to original complaint, is not permissible as the complainants were not the party in the complaint. No application seeking leave to file appeal against the impugned order has been filed, explaining as to how they are individually aggrieved by the said order of the Regulatory Authority.
40. We are of the considered view that the instant bunch of appeals filed by the appellants against the impugned order dated 02.03.2020 **except Appeal No. D 57/2022** (Prabha Jain and Kuldeep Chand Jain Vs. AIMS RG Angel Promoters

Pvt. Ltd.), **Appeal No. 72/2022** (Neha Jain Vs. AIMS RG Angel Promoters Pvt. Ltd.) **and Appeal No. 338/2022** (Manu Ranjan Tewari and Others Vs. AIMS RG Angel Promoters Pvt. Ltd.), is not maintainable and deserves to be dismissed being not maintainable in the eyes of law.

41. However, it will be open for the appellants/respective allottees to approach the Regulatory Authority in accordance with law, if they have any grievance.
42. Now we proceed to examine the above mentioned three appeals i.e. Appeal No. 57/2022 (Prabha Jain and Kuldeep Chand Jain Vs. AIMS RG Angel Promoters Pvt. Ltd.), Appeal No. 72/2022 (Neha Jain Vs. AIMS RG Angel Promoters Pvt. Ltd.) and Appeal No. 338/2022 (Manju Ranjan Tewari and Others Vs. AIMS RG Angel Promoters Pvt. Ltd.).
43. The examination of the impugned order reveals that four complaints were clubbed together by the Regulatory Authority and the same were disposed of by means of composite order dated 02.03.2020 and the appeal has been filed by only three complainants feeling aggrieved by the order of the Regulatory Authority and no appeal has been filed by Shri Mohit Bansal.
44. In the preliminary objection, Shri Sudeep Seth, learned counsel for the respondent submitted that the partial completion certificate was issued for Tower No. 1, 2, 6 and 7 on 27.10.2016. The promoter applied for Occupancy Certificate of entire complex on 02.01.2017. The competent authority of Noida made inspection on 21.04.2017 and issued OC on 22.09.2017, much before Section 3 of RERA Act came into force, which was notified on 19.04.2017 and commenced from 01.05.2017. On being filing application for issuance of completion certificate after completing all development work, the project ceased to fall in the category of ongoing project in pursuance to the provisions of Rule 2 h(iv), therefore, the project was not required to be registered and being unregistered project, no complaint was maintainable against the respondent.
45. On examination of web portal of the RERA, we found that the respondent filed application for registration on 15.08.2017, giving original start date of the project as 04.03.2011 and modified start date as 06.06.2017 with proposed date of completion of the project as 31.12.2017 and this project of the respondent is still shown as ongoing project on the web portal of RERA, as the same has been registered. Section 4(2)(ℓ)(C) of the Act 2016 mandates the promoter/developer

to file a declaration supported by an affidavit and the time period within which he undertakes to complete the project or phase thereof, as the case may be. The sub-section 3 of Section 5 provides that the registration granted under this section, shall be valid for a period declared by the promoter under sub-clause (C) of clause (ℓ) of sub-section (2) of Section 4 for completion of the project or phase thereof as the case may be. On examination, we found that no such declaration has been uploaded/filed by the respondent regarding completion of the project. However, as per registration on 15.08.2017, the completion dated was 31.12.2017. The respondent itself registered the project and the status of the same is still shown as ongoing project.

46. The learned counsel for the respondent submitted that this registration was done only in order to facilitate the sale of the unsold units/inventories and it appears that the project was registered under wrong impression and advice.
47. Shri Prashant Kumar, and Shri Kshemendra Shukla, learned counsels for the appellants submitted that on the complaint of the allottees to the Noida Authority, the Completion Certificate issued on 22.09.2017 was suspended vide order dated 12.06.2022 and subsequently vide order dated 28.06.2023 the same was cancelled on finding various deficiencies and defects including internal and external development work and the respondent has been directed to rectify the same so that the restoration of the Occupancy Certificate be considered as per Rules.
48. Taking into consideration the factual position that the registration of the project was done on 15.08.2017 and there is no declaration regarding the completion of the project to enable the Regulatory Authority to close the registration of the respondent and today the position is that on the complaint of the allottees with respect to defects and deficiencies in the internal and external work, the occupancy certificate has been cancelled by the competent authority vide order dated 28.06.2023, therefore, we are of the considered view that till date the project is still ongoing project as such, we do not find any force in the submission of learned counsel for the respondent regarding non-maintainability of the complaints before the Regulatory Authority. The reliance placed by the learned counsel for the respondent on para-54 of the judgment rendered by Hon'ble Supreme Court in the case of M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors (Civil Appeal No(s). 6745-6749 of 2021) will

not help to the respondent as the Hon'ble Supreme Court observed that the projects where the completion certificate has been granted are not under its fold. Therefore, the complaints as well as instant appeals are maintainable before this Tribunal. We hold that complaints of these three appellants were maintainable before the Regulatory Authority.

49. The learned counsel for the appellant submitted that the issue involved in these appeals has already been examined by this Tribunal of the allottees of the same Project of the respondent vide judgment and order dated 03.07.2021 passed in bunch of appeals, leading Appeal No. 213 of 2019 (Vishnu Kumar Gupta and Pratibha Gupta Vs. M/s AIMS RG Angel Promoters Pvt. Ltd.) therefore, the benefit of the said judgment be also extended to the appellants of these three appeals.
50. Learned counsel for the respondent submitted that the issued has been decided by this Tribunal, but the same has been challenged before appellate forum at Hon'ble High Court and is pending consideration. The learned counsel for the respondent on being asked as to whether any interim order has been passed in the appeal filed by the respondent, to which learned counsel for the respondent submitted that no interim order has been passed by the Hon'ble High Court.
51. Shri Atharva Arya, learned counsel for the appellant submitted that the allottees have also challenged the order of the Tribunal before the Hon'ble High Court wherein the liability with respect to VAT has been stayed and in the appeal of the respondent the parties refrained from creating third party right.
52. The learned counsels for the parties informed that the claim of appellants Neha Jain & Anr. falls in the category of (2), Prabha Jain and Kuldeep Chand Jain falls in the category (1) and Manju Ranjan Tewari & Ors falls in category no. (3).
53. The issue has been examined by this Tribunal in depth vide judgment and order dated 03.07.2021 passed in Appeal No. 213 of 2019. The learned counsels for the parties also admitted that the issue raised in the instant three appeals is squarely covered by the judgment rendered in appeal no. 213/2019, therefore, **we extend the benefit of judgment and order passed in Appeal No 213/2019 (Vishnu Kumar Gupta and Pratibha Gupta Vs. M/s AIMS RG Angel**

Promoters Pvt. Ltd.) to the appellants of Appeal No.57/2022, Appeal No. 72/2022 and Appeal No. 338/2022 also. Rest of the appeals are dismissed.

54. No order as to costs.

Dated: 21.09.2023
Tanveer/Shakir

(K.K. Jain)

(D.K. Arora)