

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR**

1. Comp. No. RAJ-RERA-C-2021-4204

Nirmala Saini, 8A13, LIC Road, Near JNV Police Thana, JNV Nagar, Bikaner, Rasthan-334003 Complainant

Versus

Unique Madhuban Homes Pvt.Ltd. Respondent
4th Floor, Unique Destination, Laxmi Mandir
Crossing, Tonk Road, Jaipur, Rasthan - 302015

2. Comp. No. RAJ-RERA-C-2021-4207

Rajendra Sharma, 61/46, Pratap Nagar, Sanganaer, Jaipur - 302033 Complainant

Versus

Unique Madhuban Homes Pvt.Ltd. Respondent

3. Comp. No. RAJ-RERA-C-2022-5279

Damodar Lal Saini & Others Complainant
D-9/41, Chitrakoot Scheme, Jaipur, Rajasthan - 302021

Versus

Unique Madhuban Homes Pvt.Ltd. Respondent
RDB Reality Pvt. Ltd., Bikaner building first floor
room no. 10, 8/1, Lal Bazar Street Kolkatta,
West Bengal 700001



Hon'ble Member, Sudhir Kumar Sharma

Present

1. Adv Prerit Goyal on behalf of the complainant no. 1 & 2 and Adv Mohit Khandelwal on behalf of the complainant no. 3
2. Adv Harshal Tholia on behalf of the respondent.

ORDER

02.01.2025

1. All the complaints are having identical facts and similar questions of law, therefore, being disposed of by a common order.

2. The complainants in their individual capacity have lodged complaints under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') with regard to the project "Unique City an initiative of Unique & RDB Group" situated at Village Bagree Khurd & Thikaria, Tehsil Sanganer, Main Jaipur Ajmer Express Way, Jaipur.

3. The factual matrix of the cases is that the complainants booked their respective units under the "Unique City an Initiative of Unique and RDB Group" project and Agreements to Sell were executed between the complainants and Respondent. The details of the complaints are mentioned in the table below: -



S.No.	Name of Complainant	Villa No.	Total Sale Consideration (in Rs.)	Amount Paid (in Rs.)	Date of ATS
1	Nirmala Saini	G-30 Villa	NA	50,02,713/-	20.01.2017
2	Rajendra Sharma	G-29 Villa	61,30,000/-	49,57,971/-	20.05.2014
3	Damodar Lal Saini	G-56	56,00,000/- + 2,00,000/- (Club charges)	45,65,808/-	19.11.2014

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4. As per Agreements to Sell, project was to be completed in 5 years along with 1 year grace period. Since the project is still not complete, therefore, all the complainants prayed for refund of their deposited amount along with interest.

5. The complainant Shri Rajendra Sharma in his complaint dated 23.03.2021 claimed that he was allotted Villa in "Unique City – Phase-II".



6. The counsel for respondent filed a preliminary submission in all the above three matters stating that he reserves the right to file detailed reply subject to the fate of this preliminary objection/submission. It was stated by him that a patta was issued by the JDA on dated 14.10.2016 and subsequently it was registered on dated 28.11.2016, which proves that Development Authority had already initiated the process for issuing a patta to the various allottee of the project. Therefore, the above mentioned project is not liable to be registered as an 'ongoing project' according to explanation (vi) of Sub Rule 5 of Rule 4 of the RERA Rules, 2017.

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7. The 'explanation' in this Rule defines ongoing project as under:-

"(vi) where competent authorities/local bodies have started issuing lease deeds for plots by organising camps or otherwise in township schemes;"

8. Later on, the counsel for respondent also filed an Additional Affidavit in all the three matters separately. The respondent stated that the project "Unique City Phase I" is exempted from registration as it falls under the ambit of **Explanation (vi) of Sub Rule 5 of Rule 4 of the RERA Rules, 2017**. The counsel for Respondent has also placed on record in this affidavit the communications exchanged by Respondent with the RERA Authority. Relevant part of para 3 of the Additional Affidavit is reproduced as under:-

".....

Therefore, when the process of issuing Patta(s) in competent authority/ local body from 14.10.2016, the humble respondent had written to the Hon'ble RERA Authority, Rajasthan vide letter dated 21.06.2017, e-mail dated 23.06.2017, letter dated 03.07.2017, e-mail dated 20.07.2017, and letter dated 06.12.2017. It is important to note here that it had been categorically mentioned in the said communications that the Project "UNIQUE CITY PHASE-I" of the humble respondent is a township scheme in which plotting scheme as well as villas are being constructed.

In reply to the aforementioned email & letters of the humble respondent, the RERA had provided clarification vide e-mail dated 20.07.2017 and the letter no. 385 dated 13.12.2017, stating that the Project UNIQUE CITY PHASE 1" being developed by the humble respondent does not fall under the category of "ongoing projects" and hence the same is exempted as per Explanation (vi) to Rule 4 of the Rajasthan RERA Rules, 2017."



9. Shri Damodar Lal Saini, one of the complainant, has filed rejoinder to the preliminary objection in which it was submitted that as per the best knowledge of the complainant the villa booked by him, was a part of the Unique City Phase II which is already registered with the Authority. As per the approved map uploaded on RERA portal by the promoter itself, it is evident that the maps of the 'Unique City Phase-I' were approved by the JDA on 16.08.2013. It further stated that

..... Now, it is pertinent to note that the bare perusal of the description of the property provided in the Agreement to sale (Annexure No 2 of the Complaint) executed between the complainant and the Respondent clearly shows that the map of the Unique City - Phase II (hereafter as "Project") in which the residential Villa of the Complainant was being developed, was also approved by the JDA vide letter No. JDA/ Additional/ Zone-15 / 2013/ D-1848 dated 16.08.2013, which sufficiently shows that the Villa booked by the Complainant is covered under Unique City Phase II and the same is already registered with the Hon'ble Authority and thereby, the present complaint is maintainable under the law.



It is further contended that the reliance on explanation (vi) of Rule No. 4(5) of the RERA Rules, 2017 is misplaced, misconceived and cannot be relied upon by the Respondent to escape from the obligation of Registering the Real Estate project under RERA. As per Section 3 of RERA Act, all the projects come into ambit of

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ongoing project till the completion certificate is issued. Moreover, this explanation (vi) cannot supersede the requirement under Section 3 of the RERA Act which is the parent statute. The respondent has not stated anything about the completion of the project and is merely trying to shed away from its liability to complete the project.

10. During the arguments the counsel for the complainant emphasized that as per brochure of the scheme there was no phasing of the project "Unique City an initiative of RDB Group". If there was a planning to develop the project in phases then it must have been represented by the respondent in the brochure of the project itself, based on which transaction for Villa was agreed upon. It was also argued that the respondent-promoter has segregated the project in phases to avoid registration under RERA Act. It is merely a foul act of the respondent that the project was segregated intentionally as the plan of development of the project in phases was never mentioned to the complainants. Further argued that no completion certificate or no occupancy certificate, till now not submitted by the



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respondent. This indicates that the project is still incomplete. The detail of JDA's approval for project land given by the respondent-promoter to RERA for registering its project "Unique City Phase-II" is the same as mentioned at para 7 above. This is mentioned in clause no. 2.4 (page 39 of complaint and at schedule-2) in the Agreement to Sell executed with him. This proves that his Villa was to be constructed on the land earmarked for phase-II of the project. He also stated that the Patta as claimed by the respondent is issued to the promoter not to the allottee in the project. The exemption for this project was given in the year 2017, whereas, Hon'ble Supreme Court's decision in the case of **Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP** came on 11.11.2021. This decision has emphasized that the project which are incomplete on the date on which RERA Act came into force for want of occupancy certificate/ completion certificate, will be treated as 'ongoing project'. Para 44 of Newtech's decision is also relevant in the matter. Similarly, he placed reliance on decision of REAT dated 19.07.2024 in the **Appeal No. 62/2021 and 63/2021 titled Sequin**



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Real Estate Vs Kailash Chand Gupta and Kailash Chand Gupta Vs Sequin Real Estate respectively wherein appeal of the allottee was allowed and respondent-promoter was directed to refund the amount deposited by the applicant.

11. On the other hand, the respondent placed his arguments solely on the grounds on preliminary submission and additional affidavit. He argued that JDA's approval as referred by the counsel for the complainant was for lay out plan of Unique City Phase-II and not for phase-I. Since RERA Act was not in existence in the year 2013 when approval of JDA was taken, the promoter can not anticipate the requirement of registration of a project by segregating the project in phases. Therefore, such phasing could not be mentioned in the brochure or Agreement to sell at that time. When RERA Act, 2016 came into existence and the rights and obligations created in favour of the promoter-respondent as per provision of Section 3(2), only then the project was separated in phase-I and phase-II. He also emphasized that as per Rule 4 (5) of RERA Rules, 2017 it is



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the discretion of the promoter to segregate buildings/ projects in phases. For this project, the promoter has submitted specific marking on map and details of Khasra related to phase-II at the time of registration of the project with the Authority. He further argued that RERA has exempted number of projects from registration under explanation of Rule 4 of RERA Rules, 2017. He further argued that the none of the issues decided by the Supreme Court in Newtech matter are applicable in the instant matter. Also, decision of REAT dated 19.07.2024 doesn't give any specific direction on validity of Rule 4 of RERA Rules, 2017. The letter from RERA Authority dated 13.12.2017 itself is sufficient so far as registration of phase-I is not required. And, RERA neither have inherent power to review its order dated 13.12.2017 nor any changes/ modifications and quashing of this order is possible under section 39 of RERA Act, 2016.

Finally the counsel sums up that the said project is exempted from the registration as an ongoing project. Thus, all the complaints must be dismissed as these do not come under the preview of RERA Act, 2016.

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12. Heard Counsels & perused the record.

13. First the Authority deems it fit to discuss filing of preliminary submission, by the Respondent instead of filing complete reply. The respondent in his preliminary submissions/ objections has mentioned that he reserves the right to file detailed reply subject to fate of these preliminary submissions. The respondent for himself has reserved and created a right which is over and above specific statute i.e. Code of Civil Procedure 1908. He cannot write down a separate procedure for himself as the intention of the statute is clear that Respondent is bound to plead all his defence simultaneously. The rules, as prescribed under order VIII of CPC 1908 cast upon a duty to plead all matters at a single point of time. The Rule 2 of this order mention that the defendant must raise by his pleadings **ALL MATTERS** which show the suit not to be maintainable, thus, it is very clear that defendant cannot plead his submissions in piece meals. Further, the rules 3 also provide that it is not sufficient for a defendant in his



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written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit. The denial by respondent must not be evasive but answer the point of substance. These Rules further prescribe that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted. Therefore, preliminary submission by respondent is now treated as complete reply, and the present complaints are being adjudicated on the basis of complaint, preliminary submission/ arguments/ additional affidavit/ rejoinder and material available on the record.

14. The issues which need consideration and conclusion thereon are as under:-

- i) *What was agreed to be sold? Plot or Villa?*
- ii) *How much payment was made to respondent for Villa?*
- iii) *What was the delivery period / completion period in Agreement to sell?*
- iv) *Whether project "Unique City, an initiative of unique RDB Group" was an integrated project?*

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v) Whether proper disclosure with respect to this project or unique city phase – I was made before the Authority?

vi) Whether exemption for phase-I granted by the Authority is relevant?

vii) Whether completion certificate / occupancy certificate was submitted by the promoter-developer?

viii) Whether refund is allowed to the complainants?

15. Observations & Conclusions:

Issue No. I : **What was agreed to be sold? Plot or Villa?**

On perusal of the record, particularly the brochure and agreement to sell it is a fact that a **VILLA** was sold in the project titled "Unique City an initiative of RDB Group." The 'Villa' has been defined in clause 2.1.4 of Agreement to Sell executed with the complainants, which is as under:-

"VILLA" shall mean a house building and land appurtenant thereto in the Residential Project "UNIQUE CITY AN INITIATIVE OF UNIQUE & RDB GROUP" duly earmarked and segregated from other villas by way of external walls, having separate, independent & exclusive existence and direct exit to common roads / streets meant for residential use only and more specifically described in Schedule 4 annexed herewith.

Conclusion: The Authority declared that the VILLAS were agreed to be sold.

Issue No. II: **How much payment was made to respondent for Villas?**

Conclusion: Since the respondent did not file set of complete reply, hence, as per discussion made at s.no. 13, the Authority decide it to be taken the



payment mentioned in chart at para 3 above, as admitted.

Issue No. III: **What was the delivery period / completion period in Agreement to sell?**

From the clause 19 of Agreement to Sell, it is clear that Villa was to be completed within 5 years plus grace period of one year.

Conclusion: The completion period of 5 years plus one year for completion of the premises of each complainant, is to be reckoned with date of ATS mentioned at column 6 of table at para 3 above.



Issue No. IV to VII

Whether project "Unique City, an initiative of unique RDB Group" was integrated project?

Whether proper disclosure with respect to this project or unique city phase - I was made before the Authority?

Whether exemption for phase-I granted by the Authority is relevant?

Whether completion certificate / occupancy certificate was submitted by the promoter-developer?

All the above four issues are inter-linked, therefore, being discussed together.

- a) Clause 2.1.7 of this Agreement to Sell submitted by the complainant defines the word 'PROJECT' as:-

*"PROJECT shall mean the **entire project** comprising of the combination of one or more of various kind of units such as Plots, Villas, along with common parts/ common spaces/ common area therein being constructed / developed on the Project Land for residential and commercial use and named as **"UNIQUE CITY AN INTIAVE OF UNIQUE RDB GROUP"**.*

From the above it can be said without any doubt that the project was planned as an integrated project as reflected in brochure and Agreement to Sell and no phasing was done or ever planned. Also, it was never told to complainants while accepting money towards Villas or executing Agreement to Sell. The receipts submitted by the complainant Smt. Nirmala Saini & Shri Damodar Lal Saini have been signed as "For Unique Madhuban Homes Pvt. Ltd. (Unique City). The Respondent even did not bother to communicate this fact of phasing later on to the complainants when he applied for registration of phase-II before the Authority.

- b) It is also on the record that the approval of maps of the project by the JDA vide letter dated 15.07.2013 & 16.08.2013 has been mentioned in Agreement to Sell

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at point no. 2.3 and schedule – 2. The same approval dated 16.08.2023 had been produced before the Authority for registration of the project "Unique City Phase-II having registration No. RAJ/P/2017/372. While applying for registration for Phase-II, project area was mentioned as 28,586.46 sq.mtrs., out of total area of 1,37,351.42 sq.mtrs. i.e. only 21% area out of integrated project was applied for registration. At this time also estimated and actual date of commencement was mentioned as 16.08.2013.

- c) Whether the Unique City Phase-I, as claimed by the respondent is liable to be exempted from the registration is now to be examined. The respondent has placed his reliance on RERA Rules 2017 and on the clarification issued by the Authority on 13.12.2017 to Shri Chandra Mohan Sharma, Unique Madhuban Private Limited, Jaipur. The emphasis by the respondent has been placed on Exemption (vi) of Explanation of Rule 4 of RERA Rules 2017.

The rule 4 of RERA Rules, 2017 cast upon a duty on the promoter of all ongoing projects, which have not

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received completion certificate to get the project registered and also to disclose all project details including the status of the project and the extent of completion. Further, the explanation to this rule define 'ongoing project' as the project where development is going on and for which completion certificate has not been issued. The project in certain categories have been exempted under this explanation.

- d) It is on record here that Agreement to Sell was executed for providing 'Villas; and not 'plots'. The exemption (vi) of Explanation in Rule 4 is related to projects where plots are being planned and sold. Whereas, in all the three complaints 'Villas' were agreed to be sold. The respondent, when exchanged communication with RERA as per detail in para 8 above only declared that the project Unique City Phase-I is a township scheme in which plotting scheme as well as Villas are being constructed and approximately 70% works have been completed. In this communication dated 21.06.2017 and also dated



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03.07.2017 to RERA the promoter failed to disclose as mandated in Rule 4 of RERA Rules, 2017 the area, details, phasing of entire land status and extent of completion which was under development or being planned by him. He never disclosed this data or detail to the Authority for seeking aforesaid exemption. Had the true facts been disclosed in the letters of the promoter-respondent the clarification given by the Registrar would not have been issued in that form.

- e) Hon'ble High Court of Madras in the matter Adinath Srinivasa Foundations LLP V. Secretary Serene Kshetra Owners Association where facts were almost similar with respect to the approval taken by the developer in two phases observed that:

"22. A reading of the entire materials placed in the typed set of papers clearly shows that the 1st documents in the typed set is given as 'Serene Kshetra' Layout which shows the entire Plan in both the phases named by the appellant as 'Serene Kshetra'. Even the Prospectus/ Brochures clearly show that it is 'Serene Kshetra' and nowhere it is stated there are two different projects and two different phases. Only at a later point of time, most probably, after smelting the new Act, noting that if 'Serene Kshetra' is registered under the Real Estate (Regulation and Development) Act, 2016, the appellant has to incur much expense and spend huge amount to give benefits to the purchasers and therefore, they invented Phase 2 as 'Adinath Kshetra'. It is further claimed that 'Serene Kshetra' Phase 1 project is completed, therefore, the said Phase need not be registered.

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23. A reading of the entire materials and in particular, the order passed by the Regulatory Authority and the Appellate Authority, would go to show that since the very inception, the Developer had not made it clear both to the Authority as well as to the buyers and shown as two phases. Merely because they have taken two different approvals, as the villages were different, even though the property remains adjoining, that by itself, cannot make them to say that they can split the very project."

- f) Most importantly, Exemption (ii) of the Explanation of Rule 4 is more relevant here:-

"(ii) where sale/lease deeds or possession letter of minimum sixty percent of the apartments /houses/plots in the phase/project have been executed; "

The respondent has himself admitted that **Villas** are being constructed along with plotting scheme. In such a scenario it was the duty of the promoter to share all the details and disclose particularly the aggregate data relevant to sale/ lease deed/ possession letter of minimum 60% of the apartment/ houses/ plots in the phase-I of the project for seeking exemption. This fact was never shared or disclosed with the Authority, therefore, instead of exemption at No. (vi) exemption (ii) is more relevant here. In absence of aggregate numbers of plots/ villas, the communication from the Authority dated 03.12.2017 has been obtained by the respondent by hiding relevant and material facts. The



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argument of counsel of respondent that this communication dated 03.12.20217 cannot be reviewed under section 39 of RERA Act is also not acceptable. The letter issued by the Registrar appear to be a clarification on a letter written by the promoter which cannot be treated as Exemption Certificate as such nor exemption registration has been given as per prevailed practice of the Authority.

- g) The legality of exemption given in RERA Rules, 2017 has been argued by the counsel of the complainants before the Authority and order dated 19.07.2024 by the REAT in Appeal No. 62/2021 & 63/2021 was also referred by him.

The order of REAT in Appeal No. RAJ-RERA-C-2018-2370 and Appeal No. RAJ-RERA-C-2018-2462 dated 09.10.2018 is more appropriate and operative part of that order is as under:-

- (a) *Provisions of Rule 4 of the Rules of 2017 are in conflict with the provisions of section 3 of the Act of 2016.*
- (b) *Provisions of section 3 of the Act of 2016 will prevail over the provisions of rule 4 of the Rules of 2017.*

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- (c) *Appropriate Government do not have competence under section 84 of the Act of 2016 to make such rules which are in conflict (divergent) to the provisions of the Act of 2016.*
- (d) *Complaint regarding any grievance covered by the provisions of the Act of 2016 is maintainable before the RERA.*
- (e) *The RERA has no power to decline any complaint or grievance on the basis that the project is not registered under the RERA.*
- (f) *Act of 2016 is applicable to all projects which are required to registered in terms of provisions of Section 3 of the Act of 2016.*
- (g) *If any project which comes within the purview of section 3 of the Act of 2016 is not registered than it is incumbent upon the authority to take appropriate action against such promoter; but in the guise of non registered project, a consumer of the real estate cannot be made remediless.*
- (h) *A remedy is always available to the consumer / promoter of the real estate section irrespective of the fact that project is registered under the RERA or not.*
- (i) *Since project under scrutiny of the JDA is required to be registered before the RERA in terms of provisions of Section 3 of the Act of 2016, therefore, this appeal is maintainable. Preliminary objection of JDA is rejected.*

h) The RERA rules were came into existence on 3rd May, 2017. Later on, Hon'ble Supreme Court of India in the



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decision dated 11.11.2021 in **Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP** observed as under:-

"36. Looking to the scheme of the 2016 Act and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stakeholders including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate Authority."

"44. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the 2016 Act in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Article 14 or 19(1)(9) of the Constitution of India. To the contrary, Parliament indeed has the power of legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest."



- i) Haryana RERA Appellate Tribunal in case of **Emaar MGF Land Ltd. Vs. Ms. Simmi Sikka (Appeal No. 188 of 2022)** wherein the Ld. Tribunal was also called upon to examine the validity of a similar exclusion in the definition of the ongoing project

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provided under the Haryana RERA Rules, and after perusing the intention behind the RERA Act, held as under:-

"38. First proviso to Section 3(1) of the Act provides that the projects which were 'ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, shall make an application to the learned Authority for registration of the said project within a period of three months from the date of commencement of the Act. The position further becomes clear from Section 3(2b) of the Act that the registration of the real estate project shall not be required where the promoter had received the completion certificate for the said project prior to the commencement of the Act. Thus, if we read Section 3 of the Act, between the lines, it is evident that only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration."



- j) It is also on the record that the respondent has not submitted any completion certificate or occupancy certificate in respect of any of the phases of the project.

Conclusion: Based on discussions from (a) to (j) above, it is very clear that the "Unique City, an initiative of Unique & RDB Group" was an integrated project. The project was spilt into phases later on without informing the complainants. Respondent has escaped from the obligation of registration the entire project in RERA by hiding crucial facts. The



clarification under category (vi) of explanation of Rule 4 of RERA Rules was taken by hiding relevant and material facts. The reliance claimed by the respondent on Exemption (vi) of Explanation of Rule 4 of the RERA Rule, 2017 is misplaced so far as grievances of the complainants are concerned. The respondent cannot take the plea that since the project is not registered; the Authority does not have any jurisdiction. The project, be it phase-I or phase-II are still not complete and comes in the category of ongoing projects. The project phase-I requires registration with the Authority under RERA Act.

Issue No. VIII : Whether refund is allowed to the complainants?

Because, in the instant case the complainant was waiting for the possession of the said villa, but the developer did not comply with the terms of the agreement and failed to provide possession to the allottee on time. It is settled preposition of law that the allottees of the flat should not wait indefinitely for the possession of the flat.

Instant

High reliance is placed on the case of **Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442**, wherein the Hon'ble Apex Court held that

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation."

Because, the non-completion of the project on time entitles the complainant to claim refund from the Promoters. High reliance is placed on **Pioneer Urban Lan & Infrastructure Ltd. V. Govindan Raghavan, (2019) 5 SCC 725** wherein the Hon'ble Supreme Court has observed that:

*The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service
....."*

In the case **"Rahul Arora versus Royal Living Homes Pvt. Ltd. (Complaint No. RAJ-RERA-C-2017-2106)**, it has been observed as under:

"We are of the considered view that under Section 31 of the Act, this Authority is empowered to hear complaints against any promoter, not merely against the promoters of registered projects. Under Section 2(zk), the term 'promoter' has been defined and there also, there is no prescription that the promoter of only a registered project will be taken as a promoter for purposes of the Act. But complaint can only be made for a violation or contravention of the Act. If some project is liable to be registered under the Act and is not

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registered, it is a contravention of the Act. As such, the Authority can not only hear complaints in relation to that project but the Authority has an additional power under Section 59 and a duty under clause (f) of Section 34 of the Act, of proceeding against the promoter of that project for non-registration, i.e., for failing to comply with his obligation of getting the project registered under the Act. Thus, no premium can be placed on non-registration of a project which is liable to be registered. If the claim that the Authority has jurisdiction over a project after, and only after, it has been duly registered, were to be accepted, it would result in an absurd situation. It would mean that having committed one default under the Act of ignoring the mandatory requirement of applying for and getting registration done, this very act of default would now protect the defaulter from any penal action and insulate him from the legitimate claims of aggrieved customers. Such an absurd reading of the law cannot be maintained."

Thus, in light of abovementioned finding the complainants are entitled to get refund of the amount paid, along with the interest.

16. In view of the observations and findings above, following directions are issued:-

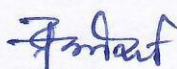
- 1) The letter dated 13.12.2017 from RERA to Respondent shall stand redundant and ineffective.
- 2) Consequently, the respondent is directed to get the phase-I of the project registered with the Authority under RERA Act.

- 3) The respondent is directed to refund the deposited amount along with the prescribed interest @ 9.10% highest MCLR of SBI + 2%, i.e., 11.10% per annum from each date of deposit till refund/payment is made excluding moratorium period, if any.
- 4) Compliance is to be made within 45 days of uploading this order on the web portal of this Authority.

The complaints stand disposed of in terms of above directions.

The copy of the order is to be placed in the respective files.




(**Sudhir Kumar Sharma**)
Member