AFR
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Court No. - 10

1. Case :- RERA APPEAL No. - 1 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

Alongwith

2. Case :- RERA APPEAL No. - 2 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

3. Case :- RERA APPEAL No. - 3 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

4. Case :- RERA APPEAL No. - 4 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority Regional Office And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

5. Case :- RERA APPEAL No. - 5 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Bal Mukund Singh

6. Case :- RERA APPEAL No. - 6 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

7. Case :- RERA APPEAL No. - 7 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority Regional Office And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Bal Mukund Singh

8. Case :- RERA APPEAL No. - 8 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood

9. Case :- RERA APPEAL No. - 9 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

10. Case :- RERA APPEAL No. - 10 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

11. Case :- RERA APPEAL No. - 11 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

12. Case :- RERA APPEAL No. - 12 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood

13. Case :- RERA APPEAL No. - 13 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Bal Mukund Singh

14. Case :- RERA APPEAL No. - 14 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Rera And Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Bal Mukund Singh

15. Case :- RERA APPEAL No. - 15 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

16. Case :- RERA APPEAL No. - 16 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

17. Case :- RERA APPEAL No. - 17 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatry Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

18. Case :- RERA APPEAL No. - 18 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

19. Case :- RERA APPEAL No. - 19 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

20. Case :- RERA APPEAL No. - 20 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another

Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

21. Case :- RERA APPEAL No. - 21 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

22. Case :- RERA APPEAL No. - 22 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

23. Case :- RERA APPEAL No. - 23 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

24. Case :- RERA APPEAL No. - 24 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

25. Case :- RERA APPEAL No. - 25 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

26. Case :- RERA APPEAL No. - 26 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority Regional Office, And Another
Counsel for Appellant :- Ashish Kumar Singh,Ajay Kumar Singh
Counsel for Respondent :- Wasim Masood,Nar Singh

27. Case :- RERA APPEAL DEFECTIVE No. - 1 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

28. Case :- RERA APPEAL DEFECTIVE No. - 2 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

29. Case :- RERA APPEAL DEFECTIVE No. - 3 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

30. Case :- RERA APPEAL DEFECTIVE No. - 4 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

31. Case :- RERA APPEAL DEFECTIVE No. - 5 of 2022
Appellant :- Air Force Haval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

32. Case :- RERA APPEAL DEFECTIVE No. - 6 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

33. Case :- RERA APPEAL DEFECTIVE No. - 7 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

34. Case :- RERA APPEAL DEFECTIVE No. - 8 of 2022
Appellant :- Air Force Naval Housing Board Air Force Station
Respondent :- U.P. Real Estate Regulatory Authority And Another
Counsel for Appellant :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- Wasim Masood

Hon'ble Rohit Ranjan Agarwal,J.

1. This bunch of appeals filed under Section 58 of Real Estate (Regulation and Development) Act, 2016 *(hereinafter referred to as "Act, 2016")* assails the orders passed by Uttar Pradesh Real Estate Appellate Tribunal *(hereinafter referred to as "Appellate Tribunal")* as well as order passed by Uttar Pradesh Real Estate Regulatory Authority *(hereinafter referred to as "Regulatory Authority")* directing the appellant to pay interest @ MCLR + 1 on the amount paid by the allottee from 01.7.2012 till obtaining of CC/offer of possession, whichever is later.

2. The present appeal has been preferred on the ground that the appeal filed before the Appellate Tribunal was dismissed on the ground of non compliance of Section 43(5) of the Act, 2016 and appellant not being a promoter is not required to comply condition of predeposit.

3. The present appeal was admitted by this Court on 22.12.2021 on the following question of law:

> *"Whether in the context of the objects clause and the Memorandum of Association of the present appellant and in the context of the activities engaged by it, the appellant is included in the meaning of the word"Promoter" as defined under Section 2(zk) of the U.P. Real Estate (Regulation and Development) Act 2016 as may enforce on the appellant the condition of pre deposit the entire disputed amount for the purpose of maintaining the appeal under Section 43(5) of the Act against the order dated 10.4.2019 passed by the Real Estate Regulatory Authority."*

4. Counsel for both the sides have jointly agreed to argue the matter on the question of law framed herein above, thus with the

consent of counsel for the parties, all these connected appeals are being heard and decided today. Leading appeal being RERA Appeal No.1 of 2022 wherein challenge has been made to the order dated 10.04.2019 passed by Regulatory Authority and the order dated 28.02.2020 passed by Appellate Tribunal.

5. Facts in brief are that the appellant before this Court known as Air Force Naval Housing Board *(hereinafter referred to as "AFNHB")* is a welfare organization formed with the efforts of Senior Officers of Air Force and Navy with an object to provide suitable and affordable houses to the Air Force and Naval personnel on 'no profit no loss' basis. The appellant formed a Society by serving senior officers of Air Force and Navy which was registered on 16.11.1979 under the Societies Registration Act, 1860 *(hereinafter referred to as "Act, 1860")*. The Board of Directors is comprised of serving officials of Air Force and Indian Navy on the ex officio basis. AFNHB, Meerut is a project launched in the year 2008. The land was allotted by Meerut Development Authority. Thereafter lay out was approved and contract for civil work for initial 5 towers were awarded on 05.05.2010. In the said project, 545 flats was to be constructed.

6. Act, 2016 came into force from 01.05.2016 after receiving presidential assent on 25.03.2016 and was made applicable in the State of U.P. as well. On the date of enforcement of the Act, 2016, the project launched by the appellant was going on, hence its registration under proviso to Section 3 was mandatory and the appellant registered the same with the RERA on 15.08.2017.

7. According to appellant, out of 545 flats, 523 flats have been sold and 418 allottees have already taken possession. Twenty-two flats are lying vacant. As there was delay in completion of project, some of the allottees approached RERA and were awarded interest on their deposited amount and in some cases refund of deposited amount with

interest was awarded. RERA on 10.04.2019 on complaint being made by the contesting respondents, who are the allottees, passed following order :

> *"1.* विपक्षी को आदेशित किया जाता है कि वह जुलाई *2019* तक, यदि कोई देय बकाया है, तो उसे प्राप्त कर, कब्जा देना सुनिश्चित करे और देय स्टाम्प शुल्क प्राप्त कर यूनिट का पंजीकरण कराना सुनिश्चित करें।
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> *2.* विपक्षी, शिकायतकर्ता को *1.7.2012 (*प्रत्येक शिकायत कर्तागण के अनुबन्ध के अनुसार*)* से ओ.सी./सी.सी. अथवा कब्जा आफर किये जाने, जो भी बाद में हो तक, *MCLR+1* प्रतिशत ब्याज सहित अदा करना सुनिश्चित करें। साथ ही यह भी स्पष्ट किया जाता है कि ब्याज की यह धनराशि अंतिम भुगतान की धनराशि में समायोजित की जायेगी। यदि ब्याज की धनराशि देय धनराशि से अधिक है, तो वह नियमानुसार शिकायतकर्ता को वापस की जाये।
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> *3.* विपक्षी, जिन शिकायतकर्तागण के टॉवर अपूर्ण हैं, उन्हे शिकायतकर्तागण की सहमति से तैयार टॉवर में बुकिंग किये गये क्षेत्रफल के नजदीक, बुकिंग के समय तय दरों पर यूनिट उपलब्ध कराना सुनिश्चित करे।
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> *4.* विपक्षी, यदि शिकायतकर्तागण को जुलाई *2019* तक कब्जा देने में असफल रहते हैं, तो शिकायतकर्तागण की धनराशि, जमा करने की तिथि से वास्तविक भुगतान की तिथि तक *MCLR+1* प्रतिशत की दर से ब्याज सहित दो किस्तों में अदा करना सुनिश्चित करें। विपक्षी *50* प्रतिशत धनराशि दिनांक *31.7.2019* से *45* दिन के अन्दर व शेष, *50* प्रतिशत धनराशि दिनांक *31.3.2020* अथवा यूनिट विक्रय होने, जो भी पहले हो, तक अदा करना सुनिश्चित करे।
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> *5.* आदेश की एक एक प्रति सम्बंधित पत्रावलियों पर रखी जाये एवं इस आदेश में प्रतिपादित सिद्धान्त के अनुरूप धनराशि व ब्याज की प्रत्येक मामले में गणना की जायेगी।
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> *6.* इस आदेश का उल्लंघन उ०प्र०भू-सम्पदा *(*विनियमन तथा विकास*)* अधिनियम,*2016* की धारा-*63* तथा अन्य सुसंगत प्राविधानों के अन्तर्गत दंडनीय होगा। आदेश पोर्टल पर अपलोड किया जाये।"

8. Against the said order, appellant filed appeal before Appellate Tribunal under Section 44 of the Act, 2016. Accordingly to appellant, they deposited Rs.6,33,000/- on 24.10.2019. The Appellant Tribunal on 24.10.2019 passed an order taking on record the said amount and further directed the appellant to file calculation sheet for total compensation amount certified by Chartered Accountant and fixed 02.12.2019. On 28.01.2020, the Appellate Tribunal recorded its

dissatisfaction to the effect that appellant has not complied provisions of Section 43(5) of the Act, 2016 and not deposited the balance amount. As the balance amount was not deposited, the appeal was dismissed on 28.02.2020 hence the present appeal.

9. Sri Ashish Kumar Singh, learned counsel appearing in all the connected appeals filed by the same appellant submitted that AFNHB is a welfare organisation comprising of senior officers of the Air Force and Navy for providing affordable houses to the serving and retired Air Force and Naval personnel on no profit no loss basis. The Board of Management comprises of officers of Air Force and Navy as ex-officio members. According to him, memorandum of Association describes its object and welfare status of the appellant Society. He further submitted that the appellant liaises with Central and State Government authorities for acquiring suitable area for developing housing colonies. These housing projects are self financed, which was developed on the contribution made by the allottees. These housing projects are developed for specific class and not for general public to earn profit. In case of under-subscription of the project, the Board of Management has power to dilute the scheme to Army, Coast Guard, Para military personnel, central and State Government employees so that the project is not stalled in midway due to poor subscription. However, according to him, the Master Brochure of 2012 makes provisions for meeting the expenditure on the staff, Board and project office and 6% project cost is charged which includes 1.5% of reserve fund for the project.

10. According to him, the present project, which was conceptualized and initiated in the year 2008 was an ongoing project when the Act, 2016 was implemented after the presidential assent in the State, and the appellant got the same registered with the RERA. Due to the delay caused by the Contractor, the project was delayed.

According to Sri Singh, to ascertain real meaning of the term 'promoter', Section 2(zk) has to be read with Section 4(2)(*l*)(D) of the Act, 2016. The 'promoter' necessarily means the acts to be done by a person or cause to be done by him with the intent and purpose of selling of flats/plots/houses, as the case may be. According to him, from reading of Section 4(2)(*l*)(D), it transpires that 70% of the amount realized from real estate project from the allottees is to be deposited in an escrow account to cover the cost of construction including cost of land with stipulation that the same shall be used only for that purpose.

11. The true intention of the aforesaid Section finds support from reading of Rule 5 of Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 *(hereinafter referred to as "Rules, 2016")* framed by virtue of exercise of power conferred under Section 84 of Act, 2016.

12. According to him, the said provision and rules only speaks about the promoters spending the amount from escrow account which would be to the tune of total 70% of the collection right from the procurement of land till the finish of construction and does not speak anything about rest 30% of the amount and its utilisation by promoter. According to him, the balance 30% of the amount and its utilization by promoter is the profit enjoyed by the promoter.

13. Thus, in the present scenario as the appellant is an organisation running on no profit no loss basis, there is no generation of 30% of this amount, which is enjoyed by the organisation as profit. According to him, this provision was introduced by the legislature to curb unjust enrichment of the builder and reduce fraud and delay alongwith to curb the high transaction cost. He has placed reliance upon the decision of Bombay High Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. And Anr. vs. Union of India and Ors. 2017**

SCC OnLine Bom 9302. According to him, the Court had held that as the promoter has enjoyed 30% of the amount, therefore, in case of any financial liability, he is also under an obligation to pay the awarded amount/compensation/interest from the said 30%.

14. He then contended that the appellant do not have any such funds as per Section 4(2)(*l*)(D) of the Act, 2016 read with Rule 5 of Rules, 2016. According to him, the appellant do not fall within the definition of promoter as per Section 2(zk) *stricto senso* as they do not have any profit motive to the extent of 30% rather the appellant board is a zero profit welfare organisation.

15. According to him, the appellant organisation do not fall within the definition of 'promoter' and thus provisions contained under Section 43(5) of the Act, 2016 are not attracted and are not applicable upon the appellant. He then contended that the primary intention of the legislature while enacting Act, 2016 was to curb and put restriction on the unjust enrichment of builders and colonizers.

16. Since appellant organisation do not fall under the said categories of builders or colonizer, they are not attracted under the definition of promoter under Section 2(zk) of Act, 2016. He lastly contended that the Act, 2016 takes into consideration for registration of two types of project, one after implementation of the Act, 2016 and those which were ongoing when the Act was implemented. In the case in hand, it was ongoing project as such 70% of the amount, as mandated under Section 4(2)(*l*)(D) of Act, 2016 was not deposited as the project was in an advanced stage and thus the Tribunal was wrong in rejecting the appeal on the ground that mandatory provisions of Section 43(5) of Act, 2016 was not complied with. In fact, Rs.6,33,000/- was deposited in the appeal under consideration and flats amounting to Rs.6.23 crores have already been kept as security and further account of organisation having 2.56 crores has already

been attached, the appeal should have been heard on merits rather being dismissed on the ground of non compliance of mandatory deposit.

17. Sri Anil Tiwari, learned counsel for the Regulatory Authority at the very outset placed before the Court Real Estate (Regulation and Development) Bill, 2013 *(hereinafter referred to as "Bill, 2013")* as it was introduced in the Rajya Sabha. In Section 2(zf) of the Bill, 2013 the word 'promoter' was defined. According to him, when the bill was passed and enacted, the words "also includes a buyer who purchases in bulk for resale" was removed. Relevant definition of word 'promoter', as defined in the bill is extracted as under :

> *"(zf) "promoter" means,—*
>
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees and also includes a buyer who purchases in bulk for resale; or*
>
> *(ii) a person who develops a colony for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon; or*
>
> *(iii) any development authority or any other public body in respect of allottees of—*
>
> *(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
>
> *(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
>
> *(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
>
> *(v) any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the*

owner of the land on which the building or apartment is constructed or colony is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a colony for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters."

18. He then placed Section 38 of the Bill, 2013, which was in regard to provision of appeal before the Real Estate Appellate Tribunal. Sub-section (5) of Section 38 of the Bill, 2013 is extracted hereas under :

"38. (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form, and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of ninety days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit."

19. Sri Tiwari then placed the statement of object and reason, why the bill was introduced by the Central Government. The reason for introduction of the Bill, 2013 was that previously the real estate sector was largely unregulated and only the Consumer Protection Act, 1986 took care of the buyers. The said Act was not adequate to address all concerns of buyers and promoters in the sector. The statement of object and reasons, as stated in the Bill, 2013 is extracted hereas under:

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate

Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

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

20. He then placed the draft report of the Standing Committee of the Lok Sabha dated 12th February, 2014 on the Real Estate (Regulation and Development) Bill, 2013 which states that as the demand for housing has increased manifold, taking advantage of situation, the private players have taken over the real estate sector with no concern for the consumers. Though availability of loan both through private and public banks have become easier, the high rate of interest and the higher EMI has posed additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently, the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. Thus, it was felt badly for establishing an oversight mechanism to enforce accountability of Real Estate Sector and providing adjudication machinery for speedy dispute redressal.

21. The draft report further provides that the Bill impose an obligation upon the promoter not to book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project without registering the real estate project with the Authority. In the Bill, it was provided that where the area of land proposed to be developed exceeds one thousand square

meters or number of apartments proposed to be developed exceed twelve, registration of project is compulsory. Further, the bill provided to impose an obligation upon the promoter to impose liability to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case he fails to discharge any obligations imposed on him under the proposed legislation. The Bill further provided for punishment and penalty for contravention of the provisions of the proposed legislation and for non compliance of orders of Authority or Appellate Tribunal.

22. He then invited the attention of the Court to the Draft Committee report on the bill, which states that the Committee had sought public opinion through a press release and analysed the memoranda/suggestions received from various stakeholders/experts such as CII, FICCI and Associations working in the field of real estate on various provisions of the Bill. He then placed Chapter II of the Draft Report of the Parliamentary Committee wherein the Ministry of Housing and Urban Poverty Alleviation submitted a reply and requested for reconsidering the deletion of the words “in a real estate project” in the definition of “real estate agent”. The Committee recorded that such a deletion was desirable as it would enable to regulate the role of estate agents in case of sale of secondary market properties also. Chapter III of the Draft Parliamentary Committee report states that small projects have been exempted from the purview of Bill where the area of the land is less than 1000 sq meter or where a building does not have more than 12 flats. An apprehension has been raised that large number of small housing projects will escape the purview of this law on inquiry about the apprehension, the Ministry of Urban Housing and Poverty Alleviation submitted that, initial draft of the Bill had earlier provided for registration of properties above 4000 sq.m. only. However, on suggestions and consultation with

stakeholders, it was modified to provide for 1000 sq.m. or 12 apartments.

23. The Parliamentary Committee further noted the requirement of the promoter for enclosing certain documents with the application for registering the project. The Committee took note of the fact that Builder/Developer initially invests huge amount for procuring the land either by purchase or development. Moreover, huge amount are being paid towards payment of fees to the authorities for sanctioning and other statutory clearances. Hence, instead of restricting 30% of amounts to be used, the clause amended to 50% or more. Ministry of Urban Housing and Poverty alleviation suggested that limit of 70% is only indicative to cover "the cost of construction" and the percentage can further be reduced by the State/UT Government through a notification.

24. The Committee further noted on the reply furnished by the Ministry that 30% of project cost includes land and approval cost and the developer/promoter shall be allowed to withdraw 30% upfront as it may already have been incurred by him towards land cost, relevant approval etc. Cities such as Delhi and Mumbai, the land costs could be much higher in comparison to smaller cities. Hence, flexibility has been given to the States to determine the percentage of project cost.

25. Sri Tiwari then placed before the Court the report of Select Committee on the Bill, 2013 wherein the deliberations and general observation of the Committee are recorded. He tried to impress upon the fact that when the bill was introduced, a series of deliberations had taken place with different stakeholders, which were divided into 5 categories. The relevant extract of the report of the Select Committee is extracted hereas under :

> *"5. The Select Committee as per its decision taken in its first meeting on the 12th June, 2015 visited Kolkata, Bengaluru, Mumbai*

and Shimla with a view to have wider consultations with various stakeholders on the provisions on the Bill. The Committee also interacted with various stakeholders in Delhi. For the sake of convenience, the stakeholders were divided into following five categories:-

(i) Consumers and Resident Welfare Associations;

(ii) Promoters/Builders and Real Estate Agents;

(iii) Banks and other financial institutions including RBI and NHB ;

(iv) Representatives of State Government concerned with real estate / housing including Development Authorities;

(v) Legal firms, NGOs and others."

26. According to him, the Government while introducing the Bill had tried to take suggestion from people across the Board who were in some way or the other related or linked to the Real Estate Sector.

27. In regard to Clause 38 of the Bill, the observation and recommendation of the Committee was that while filing an appeal against an order of penalty, imposed by the authority before the Appellate Tribunal, the promoter was required to deposit 30% amount and other liabilities. Relevant recommendation is extracted hereas under :

"The Committee recommends that the promoter, while preferring an appeal to the Appellate Tribunal, should deposit with the Tribunal at least 30% of the penalty amount and other liabilities, if any, imposed on it by Authority so that the realization of the penalty imposed on the promoter is not delayed for a long time."

28. Sri Tiwari then placed the amendments and omission suggested by the Select Committee to the Real Estate (Regulation and Development) Bill, 2015 *(hereinafter referred to as "Bill of 2015")*. According to him the term 'promoter' was defined in Section 2(zk) of the Bill of 2015 wherein the Select Committee indicated its amendment and omission. Relevant definition is extracted hereas under:

"(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees (***); or

(ii) a person who develops (***) land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; and

(iii) any development authority or any other public body in respect of allottes of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; and

(b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots, or

(iv) an apex State level co-operative housing finance society and a primary cooperative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by an other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or (***) plot is developed for sale; and

(vi) such other persons who constructs any building or apartment for sale to the general public.

Explanation:—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a (***) plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder."

29. According to Sri Tiwari, after great consultation and deliberation, Parliament enacted Act No.16 of 2016 wherein the word

'promoter' has been defined in Section 2(zk) is a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some part of the apartments to other persons and includes his assignees. It also includes a person who develops land into a project, whether or not the person constructs structures on any plots, for the purpose of selling to other persons all or some plots in the said project. The definition is extracted hereas under :

> *"(zk) "promoter" means,—*
>
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
>
> *(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
>
> *(iii) any development authority or any other public body in respect of allottees of—*
>
> > *(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
> >
> > *(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
>
> *(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
>
> *(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from*

the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;"

30. Further Section 2(n) defines "real estate project", which is extracted hereas under :

"(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto."

31. According to him, reading of definition 'promoter' with 'real estate project' would mean that any person developing a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or development of land into plots or apartments, as the case may be, for the purpose of selling all or some of said apartments or plots or building, as the case may be, by any person would include a promoter developing a real state project.

32. Section 3 takes care of registration of real estate project with the Authority. Proviso to Section 3 provides for registration of ongoing projects on the date commencement of the Act, 2016.

33. Thus, the Act takes care of both types of project which are launched subsequent to the enactment of Act, 2016 and those which are already ongoing, leaving no room for any person carrying out the activity of development of land, constructing of apartments or building, as defined under the Act, 2016 but not to register the same.

34. Thus, the appellants before the Court have launched the project in the year 2008 for constructing apartments for its members and their project having been registered under proviso to Section 3 are covered in the definition of 'promoter', which leaves no room for any organization or association to claim that it is out of the purview of the Act. Once the project is registered, no promoter can escape the provisions of the Act.

35. Further, Section 4(2)(*l*)(D) is a provision to safeguard the money of the allottees who have deposited the money with the promoter, and it provides the mechanism and manner in which the money shall be used by a promoter.

36. According to him, the deposit of 70% amount in an escrow account does not mean that 30% of the remaining amount is the profit of the promoter. It has been only been provided to put a safeguard on the deposits of home buyers so that money collected is used for purchase of land, construction and necessary clearance fees to be deposited with authorities. Nowhere was the intention of the legislature to say that 70% was the cost of project and 30% was the profit amount of a promoter.

37. Sri Tiwari then tried to place link between deliberation of the Standing Committee of Lok Sabha and the report of the Select Committee of the Rajya Sabha on the Bill, 2013 wherein all the stakeholders were taken into confidence and suggestions were invited and further after the suggestion from the Ministry of Housing and

Urban Poverty Alleviation, the report was submitted giving leverage to the State and Union Territories to fix the amount to be deposited by promoter in an escrow account securing for purchase of land and construction.

38. Sri Tiwari then invited the attention of the Court to the decision of Bombay High Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. And Anr. (supra)** wherein a challenge to the legality and constitutional validity of certain provisions of the Act, 2016 was put to. In the said petition, proviso to Section 3(1), 4(2)(*l*)(D) was prayed to be declared as unconstitutional, illegal, ultra vires and without authority of law. The Bombay High Court upheld these provisions along with other provisions of the Act.

39. In regard to proviso to Section 3(1) of the Act, 2016, he has relied upon paras 88, 90, 91, 92, 93 and 94 of the judgment wherein the contentions of the petitioners were negated by the Court, upholding the validity of the provisions. Relevant paras 90, 91 and 92 are extracted hereas under :

> ***"90.*** *The important provisions like Sections 3 to 19, 40, 59 to 70 and 79 to 80 were notified for operation from 1/5/2017. RERA law was enacted in the year 2016. The Central Government did not make any haste to implement these provisions at one and the same time, but the provisions were made applicable thoughtfully and phase-wise. Considering the scheme of RERA, object and purpose for which it is enacted in the larger public interest, we do not find that challenge on the ground that it violates rights of the petitioners under Articles 14 and 19(1)(g) stand to reason. Merely because sale and purchase agreement was entered into by the promoter prior to coming into force of RERA does not make the application of enactment retrospective in nature. The RERA was passed because it was felt that several promoters had defaulted and such defaults had taken place prior to coming into force of RERA. In the affidavit-in-reply, the UOI had stated that in the State of Maharashtra 12608 ongoing projects have been registered, while 806 new projects have been registered. This figure itself would justify the registration of*

ongoing projects for regulating the development work of such projects.

91. *On behalf of the petitioners it was submitted that Parliament lacks power to make retrospective laws. Series of judgments cited above would indicate a settled principle that a legislature could enact law having retrospective/retroactive operation. It cannot be countenance that merely because an enactment is made retrospective in its operation, it would be contrary to Article 14 and Article 19(1)(g). We find substance in the submissions advanced by the learned counsel appearing for the respondents that Parliament not only has power to legislate retrospectively but even modify pre-existing contract between private parties in the larger public interest. No enactment can be struck down merely by saying that it is arbitrary and unreasonable unless constitutional infirmity has been established. It is settled position that with the development of law, it is desirable that courts should apply the latest tools of interpretation to arrive at a more meaningful and definite conclusion. A balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6). The application of the principles will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.*

92. *Legislative power to make law with retrospective effect is well recognized. In the facts, it would not be permissible for the petitioners to say that they have vested right in dealing with the completion of the project by leaving the proposed allottees in helpless and miserable condition. In a country like ours, when millions are in search of homes and had to put entire life earnings to purchase a residential house for them, it was compelling obligation on the Government to look into the issues in the larger public interest and if required, make stringent laws regulating such sectors. We cannot foresee a situation where helpless allottees had to approach various forums in search of some reliefs here and there and wait for the outcome of the same for indefinite period. The public interest at large is one of the relevant consideration in determining the constitutional validity of retrospective legislation."*

40. As far as Section 4(2)(*l*)(D) is concerned, the relevant para of the judgment are 97, 98, 99, 100 and 101, which are extracted hereas under :

"97. *Section 4(2)(l)(D) mandates that 70% of the amount realized for the real estate project from the allottees from time to time shall be deposited in separate account in a scheduled bank to cover the cost of construction, land and shall be used only for that purpose. This is an important provision under the scheme of RERA. It was submitted during the course of argument that throughout the country and more so in Mega Cities like Delhi and Mumbai number of cases are coming to light, that huge projects are left incomplete by the builders without giving timely possession to the allottees as proposed in the agreement. Allottees have approached the Apex Court/High Courts. Several stringent actions have been initiated by the courts. The purpose behind framing this provision is to see that amount collected from the allottees by the promoter is invested for the same project only. The promoter shall not be entitled to divert the said fund for the benefit of other project or for utilization as per desire of the promoter. Such practices have been curbed under the scheme of RERA and one of such move is to introduce such provision wherein one is bound to deposit 70% amount collected from the allottees to be invested on the project. This is again a legislation in the larger public interest of the consumer and allottee. We do not find any arbitrariness in this provision.*

98. *It was submitted that, (a) there is no guidance prescribed in respect of deposit of 70% of the amount realized from the allottees. In a given case, the said amount could have been invested or spent on the project by the promoter; (b) it is possible that promoter would have invested or spent 50% of the amount out of 70% on the said project; (c) it is possible that the allottees fail to deposit according to the terms of the agreement or the promoter could not receive 70% of the amount from the allottees; (d) it is possible in a given case that allottees are at fault in not contributing their share with the promoter and due to their default the promoter is unable to collect the amount. Various situations were deliberated upon during the course of hearing of these petitions. We hasten to add here that legislation cannot be drafted by keeping in view all the possible eventualities, questions and answers. Merely on academic basis it would not be possible to consider the challenge to an enactment. We will have to wait and see how the Act is implemented by testing the provisions of the Act in the real fact situation emerging from case to case.*

99. *However, the doubts expressed on behalf of the petitioners can be very well explained. The Union of India has clarified that in case 70% amount was invested or spent by a promoter on the*

project, then such a promoter need not deposit 70% amount realized from the allottees while getting the project registered. It is sufficient if necessary certificate is furnished to the authority concerned to their satisfaction that amount realized from the allottees was spent on the said project. Even if 50% amount was collected from the allottees and spent accordingly, then the authority under RERA would look into the same and deal with the fact situation and pass necessary orders. In case the allottees default in payment, the it would be for the authority to issue necessary instructions and directions so that allottees are made to deposit the amount with the promoter. A promoter would remain always a promoter under RERA. What is registered under Section 3 of RERA is a project and not a promoter. This is a crucial distinction which needs to be understood while analyzing the scheme of RERA. In a given fact situation of the case, the authority may ask the promoter to sell already constructed flats for generating finances so that one is not put to any loss and the remaining development work is carried out. We cannot encompass all the situations for all the times to come at this stage. It is left to the wisdom of the authority concerned, which is expected to deal with the facts of each case while discharging its obligation in implementing the provisions of RERA in letter and spirit.

100. *The amount realized by the promoter would remain his money and in no case expropriated or taken over in any way by authority under RERA. The amount is merely sought to be deposited in a separate account to ensure timely completion of the project. The deposit made by the promoter can duly be withdrawn upon certification and under the instructions of the authority. There is no restriction upon the right of the promoter. The money is to be deposited for ensuring that it is utilized for the purpose of project and not misused.*

101. *The provisions of Section 4(2)(l)(C)(D) states that 70% of amount realized for the real estate project from the allottees to be deposited in a separate account, which means that 30% of the amount realized shall remain with the promoter/developer, which would be to the benefit of the promoter. In that way, the provision balances rights of promoter and the allottee."*

41. Coming to provisions of Section 18, Sri Tiwari submitted that the Act specifically provides for return of amount and compensation if the promoters fails to complete or is unable to give possession of an apartment within the time agreed. The Bombay High Court judgment

in para 129 has taken note of the said fact and held that the amount realized and deposited under Section 4(2)(*l*)(D) utilized by the promoter in construction, leaving 30% of the amount retained by him, is to be used in such contingencies where the promoter defaults to hand over possession to the allottees in the agreed time limit. Relevant paras 129, 310, 311 are extracted hereas under :

> ***"129.*** *Under the provisions of Section 4(2)(l)(D), the promoter would deposit 70% of the amount realized for the real estate project from the allottees in a separate account which means that 30% of the amount realized by the promoter from the allottees will be retained by him. In such case, if the promoter defaults to hand over possession to the allottee in the agreed time limit or the extended one, then the allottee shall reasonably expect some compensation from the promoter till the handing over of possession. In case the promoter defies to pay the compensation, then the same would amount to unjust enrichment by the promoter of the hard earned money of the allottees which he utilized. Such provisions are necessary to be incorporated because it was noticed by the Select Committee and the Standing Committee of the Parliament that huge sums of money collected from the allottees were not utilized fully for the project or the amounts collected from the allottees were diverted to other sectors than the concerned project. We do not notice any constitutional impropriety or legal infirmity or unreasonableness in incorporating these provisions under the RERA."*
>
> ***"310.*** *In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period. Even under Section 8 of MOFA on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount*

and interest thereon is refunded. In other words, the liability under Section 18(1)(a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

311. *As far as interest under Section 18(1)(b) is concerned, it was submitted that under Section 8 the Authority appoints facilitator/agency for carrying out remaining development works. After ouster of the promoter, he cannot be held responsible on account of delay in handing over possession by the facilitator/agency so appointed by the Authority. It was contended that it is quiet possible that the amount of 70% deposited under Section 4(2)(l)(D) may have been utilized by the promoter for carrying out construction. In that event, it will be extremely harsh and unreasonable to direct the promoter to pay interest till handing over possession after his ouster. The provisions of Section 18(1)(b) are, therefore, violative of Articles 14, 19(1)(g) of the Constitution of India. I do not find any merit in this submission. The promoter is liable to pay interest on account of suspension or revocation of the registration under the Act or for any other reason. The basic presumption is that the promoter was unable to complete the construction despite prescribing the time period under Section 4(2)(l)(C). The amount of 70% is already credited in a dedicated bank account under Section 4(2)(l)(D). The promoter has retained 30% paid by the allottee to him. Thus the allottee has parted with entire consideration for purchasing the apartment and still he is not given possession. The allottee cannot be said to be acting gratuitously. The promoter enjoying the benefit is bound to make compensation to the allottee. In other words though it is a case of unjust enrichment on the part of the promoter, still he is not liable to compensate the allottee by paying interest on the amount retained by him. In view thereof, it cannot be said that Section 18(1)(b) is violative of Articles 14 and 19(1)(b) of the Constitution of India. It also cannot be said to be a penal provision."*

42. Sri Tiwari then placed before the Court judgment of Apex Court in case of **M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others, 2021 SCC OnLine SC 1044** wherein the Apex Court while hearing bunch of appeals framed following questions to be decided which are as under :

"1. Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?

2. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

3. Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?

4. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

5. Whether the authority has power to issue recovery certificate for recovery of the principal amount under Section 40(1) of the Act?"

43. Question No.4 was in regard to whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining an appeal was sustainable under the law. The Apex Court dealt with this question in depth and held as under :

"128. *It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allotee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to*

the allottee at a later stage could be saved from all the miseries which come forward against him.

129. *At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for re-appraisal of the evidence on record provided substantive compliance of the condition of pre-deposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage."*

"136. *To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.*

137. *It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question.*

138. *In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India."*

44. Sri Nar Singh, learned counsel appearing on behalf of respondent No.2 submitted that the argument of appellant that the appellant is a registered society and is a welfare body of Air Force and Navy personnel and that it works on "no profit no loss basis" is not correct and is denied. According to him, though the Society was

registered in 1980, but, it stopped following regulations of a registered organisation. It is not forwarding its audited annual balance Sheets nor informed the Registrar of any change in its policies. Further, its functioning without any Government Regulatory Authority monitoring its functioning.

45. According to respondent No.2, the appellant has now started venturing into more and more bigger projects making flats more than required to sell to civilians at higher rates and also started making projects such as Farm houses etc. Bigger projects are with an intention to make more profit. According to him, there are number of service personnel and civilian staff who were regularly buying flats from the appellant and selling it to the civilians. The character of the appellant has changed from welfare organization to commercial organization. It is further contended that representatives of allottees have time and again sought information regarding expenditure of the money on the Project Fund but no information has been provided and huge amount of money has been advanced to contractors without any bank guarantee or work executed on ground. According to respondent, the appellant till date has not been able to get Completion Certificate and possession have been given in Tower B, C, D and E without Occupancy Certificate/Completion Certificate. According to him, the possession offer was issued only after allottees went to the authority and demanded justice and appellant was compelled to freeze cost and offered possession after obtaining Completion Certificate.

46. Reliance has been placed upon decision of coordinate bench of Lucknow Bench of this Court in **Second Appeal Defective No.237 of 2019 Air Force Naval Housing Board vs. Mohit Anand** as well as decision rendered in batch of appeals filed by the appellant before the Appellate Tribunal in **Appeal Defective No. 233 of 2020 (Air Force Naval Housing Board vs. Satish Kumar Sharma)** wherein the

Appellate Authority had held that the appellant was covered under the definition 'promoter' and the mandatory requirement under sub-section (5) of Section 43 was to be complied with before the hearing of the appeal.

47. Apart from this, no other argument was raised.

48. I have heard the counsels for the parties and perused the material on record.

49. The sole question, on which the appeal was admitted was, whether appellant is included in the meaning of the word 'promoter' as defined under Section 2(zk) of the Act, 2016, as may enforce on the appellant in condition of pre-deposit the entire disputed amount for the purpose of maintaining appeal under Section 43(5) of the Act against the order passed by the Regulatory Authority.

50. The term 'promoter' is of the great significance. It has to be seen not only from the definition given under the Act, 2016 but the object and reasons why the Act, 2016 was enacted by the parliament and the various deliberations made before introduction of the bill in the Parliament and its discussion in both the Standing Committee and the Select Committee after inviting suggestions and objections and consulting all the stakeholders connected with the real estate sector.

51. The Statement of Object and reasons of the Act, 2016 itself provides that with growth of population and people shifting towards urbanization, demand for houses has increased manifolds. Government also introduced various housing scheme to cope up with the increasing demand but the experience shows that demand of the housing sector could not be meted out by the Government at its own level for various reasons to meet the requirement. The private players entered into the real estate sector in meeting out the rising demand of houses. The availability of loans both from public and private banks

becoming easier, still high rate of interest at EMI has posed additional burden on the people. The real estate and housing sector was largely unregulated and consequence was that consumers were unable to procure complete information for enforced accountability towards builders and developers in the absence of an effective mechanism in place. The Consumer Protection Act, 1986 *(hereinafter referred to as "Act, 1986")* was available to cater the demand of home buyer in real estate sector but the experience shows that this mechanism was inadequate to address the needs of home buyer and promoters in real estate sector. The object and reason indicates that the bill was introduced to regulate real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoter.

52. The definition provided under Section 2(zk) of the Act, 2016 finds place after great deliberation by the Standing Committee of the Lok Sabha as well as Select Committee of the Rajya Sabha, which now defines that a person who constructs or poses to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartment for the purpose of selling all or some of the apartments to other persons and includes his assignees. Further, the definition includes a person who develops a land into project whether or not the person constructs structure on any of the plots for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structure on them.

53. The definition of word 'promoter' not only includes a person but also apex level housing financial society and a primary cooperative housing society which constructs apartment or building for its members. The definition further adds, any other person who act himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power

of attorney from the owner of land on which the building or apartment is constructed or colony is developed for sale, or such other person who constructs any building or apartment for sale to general public.

54. Thus, the Parliament was clear that any person, who ventures into the field of real estate by constructing a building or an apartment or launches a project by selling plots, shall be termed as ‘promoter’. The Act does not make any distinction or leaves any room not to include any organisation, society and association.

55. The Act, 2016 itself defines the word ‘person’ in section 2(zg), which is extracted hereas under :

> *“Person” includes,—*
>
> *(i) an individual;*
>
> *(ii) a Hindu undivided family;*
>
> *(iii) a company;*
>
> *(iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;*
>
> *(v) a competent authority;*
>
> *(vi) an association of persons or a body of individuals whether incorporated or not;*
>
> *(vii) a co-operative society registered under any law relating to co-operative societies;*
>
> *(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf.”*

56. The word ‘a person’ is of wide connotation and includes any company or association or body of person, whether incorporated or not, as defined under Section 3(42) of the General Clauses Act (10 of 1897).

57. Under the Income Tax Act (43 of 1961), Section 2(31), "person" includes— (*i*) an individual, (*ii*) a Hindu undivided family, (*iii*) a

company, (*iv*) a firm, (*v*) an association of persons or a body of individuals, whether incorporated or not, (*vi*) a local authority, and (*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses.

58. Similarly, a person has been defined under the Standards of Weights and Measures Act, (60 of 1976) and includes (i) every department or office, (ii) every organisation established or constituted by Government, (iii) every local authority within the territory of India (iv) every co-operative society, (v) every other society registered under the Societies Registration Act, 1860.

59. Similarly, Section 2(m) of Consumer Protection Act, (68 of 1986) defines 'person', which includes — (i) a firm whether registered or not; (ii*)* a Hindu undivided family; (iii*)* a co-operative society; (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not.

60. Section 87 (k) of Finance Act (No.2) (21 of 1998) defines 'person', which includes- (i) an Individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of Individuals, whether incorporated or not, (vi) a local authority, (vii) every artificial Juridical person, not falling within any of the preceding sub-clauses, (viii) assessee, as defined in rule 2 of the Central Excise Rules, 1944, (ix) exporter as defined in clause (20) of section 2 of the Customs Act 1962. (x) importer as defined in clause (26) of section 2 of the Customs Act, 1962, (xi) any person against whom proceedings have been initiated and are pending under any direct tax enactment or indirect tax enactment;

61. Section 2(*l*) of Competition Act, 2002 provides for the definition of 'person' which includes, — (i) an individual; (ii) a Hindu

undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956; (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to co-operative societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

62. Likewise, Section 2(s) of the Prevention of Money-Laundering Act, 2002 (Act 15 of 2003) provides for 'person', which includes—(i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

63. Thus, from the reading of definition of word 'person', as defined under Act, 2016 as well as under various Acts, which have been extracted above, it is clear that it connotes to include wide range of persons, including individuals, Hindu Undivided Family, Company, Firm, Authorities, associations, corporative societies etc.

64. Use of word 'a person' at the outset of the definition clause of word 'promoter' clearly signifies that it embraces all type of individuals, association, corporations and authorities dealing in the real estate sector and does not exclude any organization.

65. Its' impact is vast covering all who are there in this game of launching projects by constructing buildings and flats as well as developing plots. The legislature does not leave any individual, association or organization as exception to the word 'promoter' so as to give benefit to any person claiming himself to be ousted from the arena of the Act of 2016.

66. In the present case, it is an admitted case of the appellants that the project was envisaged in the year 2008 and started in 2010. When the Act was enforced in the year 2016, the project was ongoing, pursuant to which in terms of proviso to Section 3, the project was registered with the authority. Once there is no denial of the fact that appellant approached authority and got the project registered, they cannot at this stage shirk out from a rigours of provision of Sections 18 and 43(5) of the Act, 2016.

67. The argument of Sri Tiwari, Senior Advocate, that after much deliberations by the Standing and Select Committee of the two houses of the Parliament, the Bill was introduced and in 2016, and the Act came into force after consultation with all the stakeholders in connection with the real estate sector, has force. The very purpose and object for enacting Act, 2016 was to safeguard the interest of the home buyers from the project which were launched by the promoter and was not completed in time and there being no mechanism for saving the home buyers that Government came up with this Act. Not only this, the promoters have also been protected under various provisions. The penal provisions have been provided so as to see that promises made by the promoter/developers in the brochure to a home buyers is actually brought on ground in time and is not a false promise.

68. The argument raised at the behest of the appellants that being a ‘no profit no loss’ organization, the appellant should be exempted from complying provisions of sub-section (5) of Section 43 does not hold ground, as proviso to the sub-section (5) clearly provides that in case promoter files an appeal, he has to deposit with the Tribunal at least 30% of the penalty or such higher amount determined by the Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him.

69. Section 4 of Act, 2016 requires for making an application by a promoter for registration of real estate project. The said application has to be made to the authority in a prescribed manner within the prescribed time accompanied by fees, as may be prescribed along with the documents mentioned in sub-section (2) of Section 4 of Act, 2016.

70. Once it is an accepted case of appellants that they got their project registered with the Authority on 15.8.2017, they cannot resile from the fact that their application for registration of the project was made claiming to be ‘promoter’ of the project. It is clear from the reading of Section 4 that registration of a project is to be done by a promoter and by no one else.

71. The appellants having complied the provisions of the Act, 2016, cannot pull back themselves at the stage of compliance of mandatory requirements for filing an appeal with the Tribunal on the strength of denial of their title as ‘promoter’.

72. The Act is very clear that whosoever ventures into the real estate sector by developing area of land, which is more than 500 sq.mts. and the apartment proposed to be developed exceed 8 in number, has to get his project registered with the Authority.

73. The word ‘promoter’ has been deliberately used by the legislature in the proviso to sub-section (5) of Section 43, as sub-section (5) provides a remedy of statutory appeal to any person aggrieved by the direction or decision of an authority to file appeal before the Tribunal, but in case of a ‘promoter’ the mandatory deposit has to be made prior to the entertainment of the appeal by the Tribunal.

74. The purpose of insertion of such provision is to safeguard the innocent home buyer who has deposited his hard earned money with the developers/promoter and in case of failure of the project or the project getting delayed and on his complaint, the authority directing for refund of the amount with interest, the promoter is obliged to deposit the same before his appeal is heard. In **Neelkamal Realtors Suburban Pvt. Ltd. And Anr. (supra),** Bombay High Court while upholding the validity of the provisions of Sections 3, 4, 4(2)(*l*)(D), and 18 had clearly observed and held that these provisions are there for safeguard of the home buyers.

75. Sri Ashish Singh has tried to impress upon the Court that the present project was an ongoing project and 70% amount, as was required to be deposited under Section 4(2)(*l*)(D) was not done as it was to be complied in case of fresh registration after enforcement of the Act, 2016 does not help his case, as in the present case the order passed by the authority was under challenge before the Appellate Tribunal and mandatory requirement of proviso to sub-section (5) of Section 43 was not complied with and the Tribunal rejected the appeal. The Act nowhere makes distinction between requisite and mandatory deposit in case of filing an appeal by a promoter whose project was ongoing at the time of implementation of the Act, or it

was a case of fresh registration of the project subsequent to the enforcement of the Act. The insertion of proviso to Section 3 was to safeguard the interest of the home buyers, who had deposited their hard earned money with the developer/promoter prior to enforcement of the Act that project was required to get registered with the authority in case of non issuance of Completion Certificate / Occupancy Certificate.

76. Had the promoter got the Completion Certificate from the local authority, as provided under the Act, there was no need for getting the project registered after enforcement of the Act, 2016. But, as the project was not completed, the legislature required the promoter for registration of project to safeguard the interest of the home buyers. Had not the Government enacted Act, 2016 and required the promoter to get his project registered, the contesting respondents in these bunch of appeals would have been running from pillar to post to get possession of their flats or for refund of the money. The litigation before the Civil Court would have taken years to get their hard earned money back. It is through this legislation that the Government had restricted the arbitrary actions of the builders/developers.

77. It is an admitted case of the appellants that they have formed society for providing affordable houses to the serving and retired Air Force and Naval personnel. Further in case of under-subscription of the project, the scheme is diluted and the flats are sold to Army personnel, Coast Guard, Para military personnel, Central and State Government employees. Further, there is no embargo upon the flats being sold to the civilians/ public once it is allotted and sold to the serving and retired Air Force and Naval personnels. Moreover, there is

no denial to the fact that the appellants are venturing into bigger project and making flats and Farm Houses.

78. Similar issue in regard to statutory compliance under sub-section (5) of Section 43 was under consideration by this Court in Second Appeal Defective No.237 of 2019, which was filed by the appellants. The Court while dismissing the second appeal of the appellants held that the appellants were bound to comply the statutory provision of Section 43(5) of the Act, 2016.

79. While dealing with Section 43(5) of the Act, 2016 the Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. (supra)** had categorically held that pre-deposit, as envisaged under Section 43(5) of Act, 2016, in no circumstances can be said to be onerous, as prayed for, or in violation of Article 14 or 19(1)(g) of the Constitution of India.

80. Thus, the question framed as to whether appellant is included in the definition of word 'promoter', as defined under Section 2(zk) of Act, 2016 as may enforced upon the appellant in condition of pre-deposit, the entire deposit amount for the purpose of maintaining appeal under Section 43(5) of the Act, 2016 against the order of Regulatory Authority stands answered in affirmative i.e. the appellants have to comply the mandatory provisions of Section 43(5) of the Act, 2016 and are included under the definition of 'promoter'.

81. Thus, considering the facts and circumstances of the case, this Court finds that as the appellants are working in real estate sector and their project having been registered on 15.8.2017 after enforcement of Act, 2016, comes under the purview of 'promoter', as defined under Section 2(zk) of Act, 2016, and necessary compliance of pre-deposit, as enshrined under Section 43(5) of Act, 2016, has to be made before

the Tribunal before entertainment of their appeal. Furthermore, the law is settled as far as mandatory compliance of Section 43(5) of Act, 2016 is concerned in view of the judgment of Apex Court in the case of **M/s Newtech Promoters and Developers Pvt. Ltd. (supra)**.

82. I, therefore, find that no case for interference is made out in the orders impugned. The appeals fail and are hereby **dismissed**. Interim orders stand discharged.

83. However, no order as to costs.

Order Date :- 12.4.2022
Kushal