AFR
RESERVED ON 15.07.2026
DELIVERED ON 25.08.2026

THE U.P. REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW

1. Appeal No. 332 OF 2025

VINAY KUMAR AGARWAL

Versus

EMAAR MGF LAND LIMITED

With

2. Appeal No. 331 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

3. Appeal No. 333 of 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

4. Appeal No. 334 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

5. Appeal No. 335 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

6. Appeal No. 336 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

7. Appeal No. 337 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

8. Appeal No. 338 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

9. Appeal No. D 339 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

10. Appeal No. 340 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

11. Appeal No. 341 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

12. Appeal No. 342 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

With

13. Appeal No. 343 OF 2025

VINAY KUMAR AGARWAL AND ANOTHER

Versus

EMAAR MGF LAND LIMITED

****

Hon'ble Mr. Justice Suneet Kumar, Chairman
Hon'ble Mr. Sanjai Khare, Judicial Member
Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri Md. Altaf Mansoor assisted by Ms. Pallavi Singh and Sri Harish Pandey, learned counsels for the appellant and Sri Pritish Kumar, Senior Advocate, assisted by Sri Prashast Puri and Sri Shikhar Mishra, learned counsels for the respondent and perused the record with their assistance.

2. The batch of appeals (thirteen in number) are being heard and decided together on the consent of the parties. The appeals arise from a common judgment and order dated 15.07.2025, passed by the U.P. Real Estate Regulatory Authority at Lucknow, (for short, "Regulatory Authority").

3. For the sake of convenience, Appeal No. 332/2025, arising from Complaint No. LKO162/03/106508/2023, is taken as leading case and the facts, noted therein, are being referred to.

4. The present appeal has been filed by the appellant-allottees assailing the composite order dated 15.07.2025, passed by the learned Regulatory Authority, whereby, dismissing thirteen similar complaints. The cancellation of the allotment of plot/unit by the respondent-promotor was upheld by the Regulatory Authority being in terms of the memo of understanding/agreement (MoU).

FACTS :

5. The facts giving rise to the present appeal, briefly stated, are that the respondent i.e. M/s Emaar India Limited (formerly known as Emaar MGF Land Limited) is the builder promotor of the Integrated Township Society,

developed and launched in October 2013, in the name and style, "Gomti Greens Integrated Township", (for short, 'project'). The project came to be launched on a parcel of land admeasuring 226.37 acres (91.609 hectares), situated in the revenue estates of villages Sarsawa, Ardonamau and Ahmamaun, Pargana – Lucknow, Tehsil – Sarojini Nagar, District, Lucknow, presently known as, Gomti Nagar Extension Sector- 7, Amar Shaheed Path.

6. The aforesaid project comprises of residential plots, group housing, commercial establishment, EWS/LIG flats, community sites, community facilities, semi-public facilities etc. The project came to be registered with U.P. RERA as an ongoing project on 11.08.2017, bearing registration no. UP RERA PRJ 5635. The appellant being interested in the project, on the persuasion of authorized agent of the respondent-promotor, booked 48 residential plots of different sizes, admeasuring 162 sq. mt./193.80 sq. yd., up to, 800 sq. mt./956.80 sq. yd. Out of 48 residential plots, 46 plots, including the plots in dispute, are situated in Sector C, D and E of the project, whereas, two plots are in Sector B and F.

7. The allotment of the plots came to be executed by the respondent through separate MoUs dated 19.06.2021. In terms of Clause 2.2 of MoU, on receiving application/earnest money at Rs. 2,00,000/- per plot, allotment letter for residential plot no. GGP-D-D07/19, came to be issued to the appellant on 19.06.2022. The respondent-promotor in respect of 35 out of 48 plots allotted, executed Plot Buyer Agreement, (agreement for sale) subsequently, transferred it by executing conveyance deed. In respect of the remaining thirteen allotted residential plots, respondent, however, did not act upon, but continuously assured the appellant that Plot Buyer Agreement would soon be executed, followed by conveyance deed. It appears that on sudden escalation of market price of the plots, the respondent promotor conveyed to the appellant for fresh negotiation to extract higher sale consideration of the plots.

8. The details of the plot number, area and sale price are as follows:

Sl. No.	Appeal No.	Complaint No.	Plot No.	Plot Area	Sale Price
1.	332/2025	LKO162/03/106508/2023	GGP-D-D07/19	189 sq. mt.	7,634,314
2.	331/2025	LKO162/03/106505/2023	GGP-D-D07/36	162 sq. mt.	6,102,850
3.	333/2025	LKO162/03/106511/2023	GGP-D-D06/34	200 sq. mt.	8,628,214
4.	334/2025	LKO162/03/106513/2023	GGP-D-D04/19	450 sq. mt.	16,657,006
5.	335/2025	LKO162/03/106515/2023	GGP-D-D04/12	450 sq. mt.	15,878,413
6.	336/2025	LKO162/03/106524/2023	GGP-D-D04/18	450 sq. mt.	15,878,413
7.	337/2025	LKO162/03/106528/2023	GGP-D-D01/42	162 sq. mt.	6,102,850
8.	338/2025	LKO162/03/106531/2023	GGP-B-B06/25	800 sq. mt.	36,411,766
9.	339/2025	LKO162/03/106532/2023	GGP-C-C05/06D	780 sq. mt.	29,616,526
10.	340/2025	LKO162/03/106534/2023	GGP-F-F01/06	800 sq. mt.	34,018,315
11.	341/2025	LKO162/03/106587/2023	GGP-D-D07/18	189 sq. mt.	7,634,314
12.	342/2025	LKO165/03/106588/2023	GGP-D-D06/32	200 sq. mt.	8,076,020
13.	343/2025	LKO/165/03/106589/2023	GGP-D-D06/33	200 sq. mt.	8,076,020

9. The respondent promotor instead of executing the agreement for sale, followed by conveyance deed, transmitted Rs. 29,23,102/- to the bank account of the appellant and the co-appellant, i.e. booking amount of the 13 plots, followed by impugned letter dated 06.01.2023, informing appellant that allotment of the residential plots (13 in number) has been duly cancelled. The amount was refunded along with interest at 9 percent from the date of deposit till the date of cancellation. The sole reason assigned for cancellation of the allotment was due to efflux of time as the "Long Stop Date" i.e. 30.06.2022, mandated in the MoU, had elapsed pending acquisition formalities of the land by the Government Agency/Lucknow Development Authority (LDA).

10. Aggrieved, by the alleged wrongful and illegal cancellation of plot, appellant instituted a complaint under Section 31 of Real Estate

(Regulation and Development) Act 2016 (for short, 'RERA Act 2016') on 14.03.2023, bearing Complaint No. LKO162/03/106508/2023, wherein, appellant primarily sought restoration of the cancelled plot.

11. The respondent appeared and contested the complaint by filing objections. The complaints came to be allowed by the Regulatory Authority by a composite order dated 09.06.2023, setting aside cancellation of the plots and directing restoration. The order came to be assailed by the respondent promotor before this Tribunal in Appeal No. 614/2023. The appellant appeared and filed objections. The appeal came to be allowed vide judgment and order dated 19.04.2024, remanding the matter to Regulatory Authority to decide the complaints afresh by strictly following the principles of natural justice. Pursuant thereof, learned Regulatory Authority, after providing opportunity to the contesting parties, passed the impugned order dated 15.07.2025, rejecting the complaints instituted by the appellant, holding that the cancellation of the allotted units is as per the terms and conditions of the MoU agreed by the parties. Hence, the present appeal.

SUBMISSION OF APPELLANT:

11A. The learned counsel for the appellant submits that respondent has indulged in fraudulent unfair practice. The allotted plots could not have been cancelled as the appellant was not in default. The respondent in terms of Section 13 of RERA Act 2016, was bound to execute the agreement for sale of the plots, by calling for ten percent deposit of the basic sale price of the plots.

11B. Further, MoU came to be executed post enactment and enforcement of RERA Act 2016. The mandate of Section 3 and 4 of RERA Act 2016, would apply. The respondent after registration of the project in August, 2017 cannot resile and take a stand that the allotment of the plot stood cancelled by efflux of the cut-off date/time stipulated in the MoU. Section 3 prohibits sale/marketing of the project without registration of the project with UP RERA.

11C. Further, Section 4 mandates that respondent has to make a declaration on an affidavit stating that it is the owner of the land of the project. The declaration is to be supported by sale deeds of the khasra/khatauni of the project land.

11D. It is further, urged that the Detailed Project Report (DPR) and the Development Licence clearly mandates that the project land has been purchased/assembled by the licensee/developer. The provisions of UP Urban and Development Act 1973, applies to the approval/sanction of the layout of the project. There is no provision under the said Act permitting any developer from seeking approval of the layout map in anticipation of procuring land by way of purchase/assembly in future. The Bylaws framed, thereunder, clearly provides that the person/developer must be owner of the project land on the date of submission of the map for approval to the Development Authority.

11E. It is further urged that project land was available with the respondent promoter but to extract extra money towards cost price of the plots, promoter fraudulently invoked Clause 2.3 (i) of MoU to cancel the allotment. The respondent could have agreed to book and allot plot in the project only on the parcel of land vesting with the respondent. The Long Stop Date/cutoff date contingent upon acquisition of the land by the Government Agency and at the same time respondent soliciting sale/invitation for sale, in anticipation of acquisition of land on some future date is void and not enforceable against the appellant.

11F. It is further urged that Clause 2.3(i) of MoU is not only void but illegal being in conflict with the provisions of RERA Act 2016, and UP Urban and Development Act, 1973. The one-sided void clause of an agreement, imposed by the respondent, to wriggle out of the allotment agreement is illegal in view of Section 23 of the Indian Contract Act, 1872.

11G. It is finally urged that the impugned order suffers from illegality and perversity. Clause 2.3(i) of MoU being void and illegal would not bind the appellant/allottee. The appellant is entitled to restoration of the plot for the reason that the plot was available and third-party right was created, thereon, by the respondent, despite injunction order being passed in appeal. The appeal, it is urged, is liable to succeed.

OBJECTIONS BY RESPONDENT

12. The respondent has filed objections to the memo of appeal and submitted that pursuant to Integrated Township Policy 2005, issued by the Government of UP on 21.05.2005, with an objective of promoting planned urban development through private sector participation. The respondent promotor was granted licence as a private developer on 28.04.2009, by the competent authority of the State Government for development of integrated township, namely, "Gomti Greens Integrated Township" (for short, 'Gomti Greens') admeasuring, 226.37 acres. Thereafter, Detailed Project Report (DPR) came to be approved by the competent authority on 22.06.2011, for development of the township.

13. Pursuant to the approval of DPR, layout map of the project was sanctioned by the Lucknow Development Authority (LDA) on 26.12.2011, which subsequently got revised by the promoter on 24.08.2016. Thereafter, the time for completion of the project, accordingly, was extended by LDA to 22.12.2019 and 22.12.2023 respectively.

14. It is submitted that LDA did not fulfil its land acquisition timeline by acquiring 40 percent of the land, the respondent promoter on its own effort acquired 85 percent of the land i.e. approximately 192 acres. It is, further, urged that in terms of Clause 2.3 (i) it was specifically provided that in the event the land was not made available, on or before the Long Stop Date i.e. 31.03.2022, subsequently, extended until 30.06.2022, the allotted residential plots would be earmarked as 'Unresolved Residential Plots', which shall stand cancelled and the money deposited by the appellant towards booking of the plot would be refunded.

15. It is, further, submitted that appellant was fully aware of the terms and conditions of the MoU, that in the event of failure of the contingency (acquisition) provided under the MoU, the allotted plots would stand automatically cancelled in terms of Clause 2.3(i) of the MoU. The respondent vide impugned communication dated 16.01.2023 informed the appellant that due to expiry of the Long Stop Date i.e. 30.06.2020, the MoU automatically came to be cancelled by efflux of time, for the reason

that the acquisition/resumption proceedings of the land remained pending until the said date.

16. It is further submitted that during the said period only 35 allotted plots were acquired within the cutoff time mandated under the MoU, which was duly transferred in favour of the allottee, but the remaining 13 residential plots, which is subject matter of the appeals, could not be acquired by the Government Agency/LDA until the said date. It is urged that respondent promotor, therefore, is not in a position to transfer the allotted residential plots to the appellants herein.

17. It is further urged that in view of Section 32/35 of Indian Contract Act 1872, the contingent event (acquisition/transfer) of the land, comprising the project, did not materialise within the specified timeline (30.06.2022), the contract/Mou for the remaining plots became void and unenforceable at behest of the appellant.

18. In short, it is urged that since promoter did not have the entire parcel of land, which was part and parcel of the project, 'Gomti Greens', the respondent, therefore, was not in a position to comply its commitment. It is further submitted that there is no illegality or infirmity in the impugned order, the appeal being devoid of merit is liable to be dismissed.

QUESTIONS/POINTS FOR DETERMINATION :

19. On perusal of the record and considering the rival submissions, following questions arise for consideration:

(i) whether cancellation of the allotted unit, vide letter dated 06.01.2023, invoking clause 2.3 (i) of MoU, rendering MoU void as LDA/Government Agency failing to acquire parcel of land by the Long Stop Date/Cut-off date was just, lawful and for sufficient cause;

(ii) whether respondent could have floated the project 'Gomti Greens', on a parcel of land which was yet to be acquired by Government Agency/Lucknow Development Authority on a future date, and/or, whether such project could have been registered under RERA Act 2016, its effect and consequence;

(iii) whether respondent promoter adopted unfair fraudulent or deceptive practice in launching and marketing the project 'Gomti Greens';

(iv) whether the impugned order is just, lawful, and sustainable in law;

(v) whether respondent has exposed itself for penal consequences under Chapter VIII of RERA Act 2016.

Question No. 1 and 2 :

20. The question that primarily arises, inter se parties, is as to whether the respondent promoter was justified in cancelling allotted unit for sufficient cause, and/or, whether cancellation in terms of Clause 2.3(i) of the MoU is just and lawful.

21. The relief of the appellant for setting aside cancellation letter dated 06.01.2023 and seeking restoration and possession of the allotted unit, is being resisted by the respondent, primarily, contending that termination is strictly as per terms and conditions of MoU dated 19.06.2021. It is submitted that allotment of the plot was subject to LDA completing the acquisition formalities and transferring the land to the promoter for the purposes of the project. It is urged that Long Stop Date/cutoff date as agreed between the parties, subsequently, extended to 30.06.2022, vide subsequent MoU dated 01.04.2022, the Government Agency/LDA failed to acquire/resume and supply the land, therefore, respondent promoter was unable to comply the terms of the agreement. In otherwards, it is urged that since the allotment lapsed by efflux of the stipulated time provided in the MoU due to non-supply of land by the Government Agency.

22. The stand and objection of the respondent promoter found favour with the learned Regulatory Authority, accordingly, issue no. 3 came to be decided in favour of the respondent and against the appellant. The cancellation of the plot was upheld being in terms of the MoU.

23. Pursuant to the MoU, a provisional allotment letter of the same date (19.06.2021) addressed to the appellant came to be issued by the respondent promoter. Plot No. GGP-D-D07/19, admeasuring 189 sq. mtrs., in the project came to be allotted. The allotment letter categorically

stated that possession of the plot shall be handed over to the appellant not extending beyond 31.03.2022 (Long Stop Date), subsequently, enhanced to 30.06.2022. The allotment came to be subsequently cancelled by the respondent vide impugned communication dated 06.01.2023, inter alia, for the reason that despite all possible efforts, including, liaisoning with LDA for acquisition and completion of formalities and transfer of land to the promoter company, however, the same remained pending completion.

24. The categorical stand of the respondent is that they have strictly acted as per terms of MoU which was binding upon the appellant allottee. It is therefore, submitted that termination/cancellation of the unit was strictly as per Section 11 (5) of RERA Act, 2016 i.e. being in terms of the agreement and for sufficient cause.

25. To appreciate and consider the submission of the respondent, it would be apposite to take note as to how respondent was to procure the project land.

Housing Policy

26. State Government had notified a housing policy on 21.05.2005, to attract private investment in urban/developed area for housing scheme. The scheme provided for acquisition of land and development thereof. The scheme, *inter alia,* provided that the developer should have acquired on its own not less than 60 percent of land and if necessary, remaining land would be acquired by the State Agency as per law. The licence to the developer would be granted under the relevant Act, in the given facts, the UP Urban Planning and Development Act, 1973. The developer would have to submit a Detailed Project Report (DPR) to the concerned Development Authority, wherein, layout plan, land use plan, infrastructure and service provisions and plan, which shall be executed and completed by the developer within five years.

27. The policy further, provided that developer would earmark 20 percent of the project land for EWS and low-income beneficiary. The scheme further provided mortgage of 25 percent of the land. The right of sale and purchase of the mortgage land and construction thereon would vest with the Government Agency to ensure payment of acquired land and development work by the respondent. As and when the developer

commences and progresses with the development work, and upon satisfying the dues of the Government Agency and other stakeholders, the mortgage property in the said ratio shall be transferred to the developer by the LDA.

28. Pursuant to the policy dated 21.05.2005, subsequently amended on 29.12.2005, the development agreement (Development Licence Model) dated 24.12.2011, came to be executed between LDA through its Vice-Chairman (Government Agency) with the respondent company. The licence evidences that the Government of UP has decided to grant licence to private developers to buy/assemble land for development and sub division into plots of different sizes as per layout plan for sale or lease for construction of buildings thereon. The respondent company (licensee) is registered under category-A with Government Agency for assembly and development of land and has been granted licence for purchase/assemble of 333.20 acres land. It is further, noted that the respondent licensee is the exclusive owner of land at Lucknow Sultanpur Road, mentioned in annexure thereto, which has been purchased from different Khatedars, land owners, free from all encumbrances for the purposes of developing colony within the developed area of Lucknow town. The provisions of UP Urban Planning and Development Act, 1973, is binding between the parties.

29. It is further noted that the land owned by the respondent licensee is not less than 60 percent of total land proposed to be assembled and there are certain other pockets “not more than 40 percent of the project area of 226.37 acres”, which are not as yet owned and possessed by the licensee and despite his best efforts, he is not able to buy/assemble the land. In view, thereof, the respondent licensee requested for acquisition of the land to the Government Agency and expressed its consent. Therefore, Government Agency assured the licensee that it will acquire the land and handover/transfer, as free hold to the licensee, for the purpose of development of the project.

30. Clause 2 provides that the licensee shall prepare a Detailed Project Report (DPR) after *‘purchase/assembly of the total land’* and the same would be submitted to the Government Agency (LDA) within 90 days from the date

of purchase/assembly of total land. Clause 3(i) provides that the date of start of work of this project shall be treated as a date of approval of DPR by the Government Agency. Clause 11 provides that the licensee shall complete development work within approved project period and obtain Completion Certificate (CC) from the Government Agency in accordance with Building Bye-laws. Clause 12 provides for performance guarantee, the licensee shall mortgage 25 percent of the total land of the property in favour of Government Agency or submit a bank guarantee equivalent to the 25 percent of land cost so as to compensate any liability pending against land acquisition or development works. The Licensee shall have rights to carry out the development works on such mortgaged land but cannot sell plots/flats/house and other properties built on such land. The land so retained shall be released in favour of the licensee in proportion to successful completion of various services to the functional stage and subject to clearance of all dues payable to the Government Agency. Clause 15 provides that without prejudice to anything contained in this Agreement, all the mandatory provisions of the Master Plan, Zoning Regulations, Building By-laws and other Regulations and Directions for the time being in force, shall be binding on the licensee.

31. On perusal of the Housing Scheme and the development agreement/license, the DPR and the layout is to be sanctioned by the Government Agency (LDA) in terms of U.P. Urban Planning and Development Act, 1973 and Building Bylaws, framed thereunder, after *'purchase/assembly of total land of the project'*. The licence was granted to the respondent to develop 226.37 acres of land situated at Village-Sarsawan, Ardonamau and Ahemamau, Pargana & Tehsil-Sarojini Nagar, Lucknow. The DPR of the above project was duly approved on 22.06.2011. Pursuant thereof, the layout was sanctioned by the Lucknow Development Authority on 26.12.2011, which was subsequently revised on 24.08.2016. The net project land was at 212.16 acres. The remaining 14.21 acres was to be utilized for Master Plan Road. It is specifically pleaded by the respondent that they were able to acquire 192 acres of land (85%), however, the remaining parcel of land (15%) was not made available by the LDA pending acquisition/resumption. Having regard to the DPR and licence/sanction layout map, respondent had probably

assembled net project land at 212.16 acres, less the land to be utilized for Master Plan Road (14.35 acres).

32. The project came to be registered as ongoing project with UP RERA on 462766 sq. mtr. (114.35 acres) of land on 11.08.2017 and the completion date declared therein was 22.12.2023. The original start date of the project was 01.10.2013. Further, respondents have placed on record communication dated 18.05.2024, issued by the Executive Engineer (Manchitra Cell), Lucknow Development Authority, addressed to the respondent, wherein, 25 percent mortgaged land admeasuring 13.15 acres land and construction thereon, came to be released on completion of seven sectors, out of eight sectors of the project. Further, the respondents have placed on record part completion certificate of Sector A & B (27.03.2023), Sector C (06.07.2024), Sector D (28.03.2024), Sector E (01.02.2024) and Sector G & F (27.03.2023).

33. Having regard to the material placed on record pertaining to the project, the following uncontroverted facts emerge-

(i) The DPR/layout plan for development on 226.37 acres came to be approved/sanctioned by LDA on 24.06.2011 and 26.12.2011 respectively.

(ii) The net project land approved is on 212.16 acres and the remaining 14.35 acres earmarked for Master Plan Road.

(iii) The project came to be registered with UP RERA as an on-going project on 11.08.2017 for 462766 sq. mtr. (114.35 acres), less than the net project land (212.16 acres).

(iv) The initial commencement date of the project declared by the respondent was 01.10.2013 and the completion date of the project is 22.12.2023 (revised).

(v) The allotment of the units came to be made by the respondent to the appellant on 19.06.2021 i.e. post RERA enactment.

(vi) The respondent promoter claim to have received part completion certificates of Sector A to G between March 2023 to July 2024 i.e. for more than the project area registered with UP RERA.

<u>Clause 2.3 of MoU</u>

34. It would be relevant at this stage, in the backdrop of admitted facts, to refer Clause 2.3 (i) of MoU dated 19.06.2021, which is the backbone of respondent's objection. Clause 2.3 (i) of MoU reads thus:

> *"2.3(i)* ***The company shall within eight (8) months*** *from the receipt of the Application Money or such time as may be extended by mutual agreement between the parties* ***which period shall not extend beyond March 31,2022 (Long Stop Date) do all acts, deeds and things as may be necessary including liaison with the LDA for the completion of the acquisition formalities and completion of allotment/vesting of all the rights, title and interest of the residential area due to be vested in/placed with the company*** *and all other actions so required to be undertaken by the company so that the issues with respect to the residential plots are settled/resolved/addressed and their remains no ambiguity regarding the residential plots.*
>
> *(ii)* ***In case issues with regard to such of residential plots*** *as comprised in the said residential plots or any number of them* ***cannot be resolved/addressed/settled by the Long Stop Date*** *("Unresolved Residential Plots") the Application Money in respect of the Unresolved Residential Plots shall be adjusted by the company towards payment of balance consideration for such of the said residential plots where all issues have been resolved by the Long Stop Date ("Clean Residential Plots")* ***and the allotment letter/s issued by the company for the Unresolved Residential Plot/s shall stand cancelled without any further obligation on the part of the company in this regard and the purchaser shall have no further subsisting claim, demand etc. in this regard and shall remained bound by the actions of the company.*** *It is clarified that no interest shall accrue on the Application Money in respect of the Unresolved Residential Plots or any part thereof. In case the issues with regard to none of the Residential Plots have been resolved/addressed/settled by the Long Stop Date such that all the Residential Plots may be*

categorised as Unresolved Residential Plots, then the Application Money in respect of the said Residential Plots/Unresolved Residential Plots shall be refunded to the purchaser and the allotment letter/s issued by the company for the Unresolved Residential Plots/Said Residential Plots, as the case may be shall stand cancelled without any further obligation on the part of the company in this regard and the purchaser shall have no further subsisting claim, demand etc. in this regard and shall remain bound by the actions of the company in this regard and shall remain bound by the actions of the company."

35. In Clause 23 (i), it has been provided that an endeavour would be made by the appellant company (promoter) with LDA to make available the deficit land of the project by completion and acquisition/resumption of land and *'completion of allotment/vesting of all the rights, title and interest of the residential area due to be vested in/placed with the company'.* The emphasis of the respondent, primarily, is that MoU/allotment was on the contingency provided therein i.e. acquisition and vesting of land with the respondent company on or before the cut-off date (Long Stop Date) i.e. 30.06.2022, which was a condition precedent for the allotment of the land. In the event, LDA was unable to acquire/resume/transfer land by the said date, to the appellant, the MoU automatically would stand cancelled/unenforceable rendering it void. Reliance was placed on Section 32/35 of Indian Contract Act 1872, providing for contingent contracts, to urge that MoU was a contingent agreement.

36. In our opinion the provision would not apply in the given admitted facts, nor, clause 2.3(i) stipulates any contingency, rather, the clause itself is void in view of Section 23/25 of the Indian Contract Act.

37. The respondent as per their own contention, admittedly, were not the owners of the land/plot which they agreed to allot and transfer to the appellant. The plot/parcel of land on the date of MoU never vested with the respondent promoter as categorically declared in clause 2.3(i) and Schedule 3 of MoU. Therefore, the said plot could not have been put to allotment/sale by the respondent having regard to the provisions of Section 3 of RERA Act, 2016. The allotment, as per MoU was made contingent

upon supply of land by LDA with the respondent company by stipulated date. The respondent, therefore, could have allotted only that part of parcel of land that vested with the promoter on the date of MoU. The contingency imposed in the MoU was void as the respondent company, admittedly, had no land to offer for allotment/sale to the appellant. The clause 2.3(i) declares that respondent is yet to have the parcel of the allotted land and upon vesting of the land the same would be conveyed to the appellant.

38. The respondent company has no control/authority or role under any law pertaining to acquisition/resumption of Gram Samaj land/chak road/ exchange of land. The acquisition/resumption/exchange falls within the domain of the statutory authority viz. State Government/ Collector/SDO/gram samaj/ court. The LDA/ Government Agency has no authority except to acknowledge the consent of the company to accept the land, whenever made available upon acquisition/resumption. It therefore, follows that acquisition/ resumption/ exchange cannot be made contingent to a contract between private parties, binding the Government Agency. The parcel of land as per MoU, was yet to vest with the promoter/company at some future date. The clause 2.3(i) of the MoU to that extent is void for want of consideration (land). Every promise and every set of promise forming the consideration for each other is an agreement. The consideration (land) has to be real and not illusory. [Section 2(e) of Indian Contract Act]. An agreement without consideration is void [Section 25 of Indian Contract Act]. The illustrations to Section 32 of the Indian Contract Act and the case laws relied upon by the respondent is of no assistance to the respondent. The party to the agreement was owner of the property and had the right to contract for transfer of the property/goods subject to the contingency noted therein.

39. In ***Nand Kishore Lal Bhai Mehta v. New Era Fabrics Pvt. Ltd. (2015) SCC 755***, and ***National Agriculture Co-operative Marketing Federation of India vs. Alimenta S.A. (2020) 19 SCC 260,*** (for short, NAFED), the Court held that the agreement was valid and lawful. The party executing agreement to sale of the property vested in the party, the executing agreement to sale of immovable property was, however, made subject to the seller being able to settle with its labour and the labour agreeing to the sale. Furthermore, permission of the suit property being

converted from industrial zone to residential use, where other conditions in the agreement (Nand Kishore (supra)).

In NAFED (supra), NAFED had permission to supply Indian HPS groundnut for three years, however, NAFED sought further permission which was not granted by the Government, hence, the agreement to sale could not be performed due to lack of requisite authorization. NAFED was unable to carry out contractual obligation, in view of the Government's refusal to export, as such, the contract became void and unenforceable.

40. In the given facts of the case at hand, respondent promoter did not have the land to allot/offer to the appellant for which MoU was executed. In other words, insofar as the respondent/promoter is concerned, respondent had no consideration (land) to offer to the allottee/appellant**.** The clause 2.3(i) of the MoU agreement is void for want of consideration. [Section 23/25 of the Indian Contract Act 1872].

Legality of MoU

41. The legality of Clause 2.3(i) of the MoU is further required to be examined in the backdrop of the statutory provision. The UP Urban Planning and Development Act, 1973 and the Bylaws framed thereunder, which is binding between the parties (government agency and the respondent), as clearly noted in DPR/Development licence and the sanctioned layout map. The Act prohibits any person to make or carryout any development, in a developed area, without prior approval of the competent authority and sanction of the map. The Bylaws mandate that promoter for the purpose of development, the parcel of land must vest in the promoter. The proposed layout submitted by the respondent to the development authority for sanction, must be duly supported by the conveyance deed and mutation entries of the land, prima facie, satisfying the competent authority that developer is the owner of the land on which the development is proposed on the date of submission of layout map. The layout map placed on record by the respondent clearly shows that the project came to be sanctioned on 226.37 acres, less Master Plan Road (14.35 acres), the net project land is at 212.16 acres. In other words, respondent on the date of sanction of DPR and the layout of the project was in possession and owner of the net project land. The project commenced on 01.10.2013 on the project land.

42. In other words, the plots that were put to allotment and sale by the respondent was available with them. On specific query, learned counsel for respondent is unable to show from the provisions of UP Urban Planning and Development Act 1973 and the Bylaws, that the developer can launch a project without having the parcel of land or on an anticipated acquisition of land in future point of time. The DPR and the license clearly mandates that the layout is to be sanctioned 'after purchase/assembly of total land of the project'. The respondents, in fact and law, are estopped from taking a plea, to non-suit the appellant, which is against the statutory law governing sanction and development of a project.

43. Further, project came to be registered with UP RERA in August, 2017 for 114.35 acres i.e. part of the project. Section 4 of RERA Act 2016, mandates prior registration of real estate with the Regulatory Authority. The application for registration of real estate project, every promoter shall enclose, inter alia, authenticated copies of approvals and commencement certificate from the competent authority; sanction application, layout plan and specification of the proposed project or the phase thereof and whole project as sanctioned by the competent authority. The promoter shall disclose the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries, including the latitude and longitude of the end points of the project.

44. Further, sub-Section 2 (l) of Section 4, promoter shall make a declaration duly supported by an affidavit signed by the promoter, clearly stating that he has *"legal title to the land on which the development is proposed"* along with, legal documents for authentication of said title and that the land is free from all encumbrances. In other words, declaration of a fact, by the respondent, could not have been made for a land that was yet to vest with the promoter on a future date.

45. In the backdrop of the statutory provisions, launch of the project on a parcel of land that did not vest with the respondent company on the date of sanction of the layout, and/or, registration of the project with UP RERA, the plots could not have been marketed for allotment/sale by the respondent, which was not available with them on the date of registration of the project, pending acquisition. The Clause 2.3(i) if permitted, would

set at naught, the provision of U.P. Urban Planning and Development, Act 1973 and RERA Act, 2016. If there is an express prohibition in law, then the promoter entering into an agreement, so prohibited, the agreement/contract is void ab initio. [***Refer: (1966 SC 1734), Gulabchand Vs. Kudilal and Ors.***)].

46. The consideration or object of an agreement is lawful unless it is forbidden by law, or is of such a nature that if permitted would defeat the provisions of any law or is fraudulent. A promise to pay commission to a person soliciting insurance business before his obtaining a license under the Insurance Act is contrary to law and, therefore, not payable. (Section 23 of Indian Contract Act). ***[Refer: LIC of India Vs. K.A. Madhav Rao: AIR 1972 MAD 112].***

47. In view of the terms of the agreement, a party who makes false allegations does not come with clean hands and is not entitled to the equitable relief. ***Lourdu Mari David v. Louis Chinnaya Arogiaswamy, AIR 1998 SC 2814.*** The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to a party. ***(P.V. Joseph's son Mathew vs. M. Kuruvilas son AIR 1987 SC 2328).***

48. The respondent allege that they did not have the parcel of land of the net project area at 212.16 acres, as per their own showing. In the same breath, it is admitted that the consecutive row plots situated along the allotted plots came to be conveyed, however, a single plot, from the row plots, was picked out by the respondent alleging that the land was pending acquisition, is untenable being contradictory and falsifying their stand that land was yet to be acquired.

49. It is not in dispute that the allotment of units came to be made post registration of the project with the UP RERA. In other words, provisions of RERA Act 2016, Rules and Regulations framed thereunder, are applicable and override the terms and conditions of the agreement which is in conflict with the statutory provision. Rule-2 of The Uttar Pradesh Real Estate (Regulation and Development) (Agreement for sale/lease) Rules 2018 (for short, 'Rules 2018') provides that any application, letter, allotment letter, agreement, any other document signed by the allottee in respect of a unit/plot prior to execution and registration of agreement for

sale for such unit/plot, shall not be construed to limit the rights and interest of an allottee under the agreement for sale or under the Act or Rules and Regulations framed thereunder.

50. In view thereof, it is not open to the respondent to submit that they did not have the entire land for the project pending acquisition by the Lucknow Development Authority/Government Agency. On registration of the project where longitude and latitude of the project land is to be disclosed and an affidavit is required to be filed by promoter clearly stating that it has title to the land of the project, it cannot be inferred and accepted to the contrary that respondent did not have the land of the project. Real estate project cannot be sanctioned or launched for sale, purchase, allotment on an anticipation that the project land would be made available to the promoter in the future by a Government Agency over which the respondent company has no control or authority whatsoever.

51. Section 3 of RERA Act 2016 mandates that no promoter shall advertise, market, book, sale or offer for sale or invite persons to purchase any unit or plot in a real estate project or part of it without registering the real estate project with UP RERA. Section 4 mandates that the promoter seeking registration of the real estate project must have legal title to the land on which the development is proposed, free from all encumbrances. Further, respondent has categorically stated (para-30) that the plots in issue came to be allotted to third party, meaning thereby, the plots were available with the respondent. The respondent, taking advantage of the one-sided imposed clause of the MoU, to non-suit the appellant, is not only a fraudulent act but to accept the submission would tantamount to enforcing a void and illegal clause of the MoU. Further, the clause enables the respondent/promoter to bypass the real estate regulator i.e. UP RERA. Clause 2.3(i) of the MoU is illegal and void having regard to the provisions of Uttar Pradesh Urban Planning and Development, Act 1973, read with, RERA Act 2016.

52. Further, submission of the learned counsel for the respondent that the cancellation of allotted unit/plot is in terms of Section 11(5) of RERA Act, 2016 is not tenable. Section 11(5) provides that the promoter may cancel the allotment in terms of the ‘agreement for sale’. The respondent in the

present case had not executed the agreement for sale in terms of Rules, 2018. It is not the case of the respondent that appellant was not willing to execute the agreement for sale. It, therefore, follows that the allotment of the plot could not have been cancelled on any other ground. The proviso to Sub-Section (5) that the allottee can challenge the cancellation alleging that such cancellation is not in terms of the agreement for sale, unilateral and without sufficient cause. The onus to prove the legality and validity of the such cancellation is on the promoter. In the facts of the case in hand, admittedly, there was no agreement for sale executed of the allotted plot, the cancellation was unilateral and lacked sufficient cause, therefore, unsustainable in a post RERA project.

53. In view thereof, in our opinion, Clause 2.3(i) of MOU, dated 19.06.2021, is void, as well as, illegal, hence cannot be enforced against the allottee. The cancellation of the allotment vide letter dated 06.01.2023, invoking Clause 23(i) of MoU is unsustainable in law. The allottee is entitled to restoration of the plots which is subject matter of the appeals. **Question nos.1 and 2 are accordingly answered**.

<u>Question No. 3 :</u>

54. The point for consideration that arises is whether respondent promoter has indulged in unfair fraudulent and deceptive practice and its consequence.

55. While answering questions 1 and 2 a finding has been returned that the stand/objection taken by the respondent was based on a contingency specified in Clause 23(i) of the MoU. It was urged that respondent has not received the parcel of land of the project form the government agency upon acquisition/requisition by the cutoff date noted in the MoU. In other words, taking the objection of the respondent on face value, admittedly, respondent did not have the land on the date of sanction of DPR/layout i.e. 24.06.2011 & 26.12.2011 respectively. Further, on the date of registration of the project with UP RERA i.e. 11.08.2017, respondent did not have the project land, so was the state of affairs while executing the allotment agreement with the appellant on 19.06.2021. The respondent, therefore, was not competent to enter into an agreement for a land that was yet to vest with them on a future date. The Clause 2.3 (i) was void for want of

consideration and its object, therefore, was hit by Section 23 of Indian Contract Act.

56. In the same breath, it is categorically pleaded by the respondent (para 30) that third party right was created on the allotted plots during pendency of the complaint. In other words, the allotted plots of the project were available with the respondent. Further, respondent allotted and transferred consecutive row plots but declined to convey the allotted plot, squeezed between the row/plots. Such a plea is self-contradictory and not tenable, taken on face value. The respondent has categorically pleaded that they had procured 85 percent of the project land i.e. 192.41 acres; registration was obtained from UP RERA on a much lesser parcel of land i.e. 114.35 acres. In other words, respondent was having the parcel of land on the date of allotment. It is a case of fraudulent misrepresentation, setup by the respondent. In the event, if plea of the respondent is accepted, it would perpetuate fraud and misrepresentation. The cancellation of the allotted plot is based on a void clause of the MoU, as already held, if permitted and accepted, would tantamount to unjust enrichment of the respondent by allotting/selling the plot on enhanced price. Such an act/conduct of the respondent is prohibited under RERA, Act, 2016. The purpose of the Act is not only for registration and promotion of real estate sector but to ensure sale of plot/apartment and building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers.

57. The Regulatory Authority, on a complaint or suo-motu, may revoke registration of the project granted under Section 5 after being satisfied that promoter is involved in any kind of unfair practice or irregularities and indulges in any fraudulent practice (Section 7). The registration of the project should have been suspended by the Regulatory Authority, on admission of the respondent, that they were yet to procure part of the parcel of project land. The Regulatory Authority committed an error in abdicating its primary function as a regulator of real estate project while hearing the complaint. The impugned order, if permitted to be sustained, would perpetuate fraud and misrepresentation. Fraud vitiates every action of the respondent. The respondent cannot take any advantage of its own admitted fraud.

58. The respondent, herein, has indulged in unfair practice/deception and fraudulent practice as per their own showing. **The question no.3 is accordingly answered**.

Question No.4:

Whether the impugned order is just and lawful, and/or, sustainable in law.

59. We have, while answering question nos. 1, 2 and 3, held that Clause 2.3(i) of MoU is not only void but illegal. Further, respondent has indulged in unfair, fraudulent and deceptive practice in launching and marketing the housing project 'Gomti Greens'. The Regulatory Authority by the impugned order committed an error in dismissing the complaint relying upon a clause [2.3(i)] of the allotment letter, which was void and illegal, therefore, hit by Section 23/25 of Indian Contract Act.

60. Further, as per the pleading/objections of the respondent promoter before the Regulatory Authority, as well as, in the appeal, a categorical stand taken was that the parcel of land on which project came to be floated did not vest with the respondent, in so far as it relates to the allotted units. On the contrary, on the very same parcel of land sanction of layout of the project was obtained from LDA. RERA registration was obtained by the respondent, which, already held was not permissible being against the statutory provisions. Further, the very same 'unacquired land/plot' was allotted to third party during pendency of the complaint. In the circumstances, the impugned order justifies the unlawful and illegal conduct of the respondent and perpetuates fraud and illegality. The impugned order is perse perverse on fact and law. **Question no. 4 is, accordingly, answered**.

Question No. 5

Whether respondent has exposed itself for penal consequences under Chapter VIII of RERA Act 2016.

61. Section 59 of RERA Act 2016, mandates punishment for non-registration, under Section 3. In case, any promoter contravenes the provision of

Section 3, he shall be liable to penalty which may be extend up to 10 percent of the estimated cost of the Real Estate Project. Further, Section 60 provides for penalty for contravention of Section 4. If any promoter provides false information or contravenes the provision of Section 4, he shall be liable to a penalty which may extend up to 5 percent of the estimated cost of the Real Estate Project.

62. In the given facts of the present case, the licence for the project was granted to the respondent to develop 226.37 acres of land for the Housing Project. The DPR of the project was duly approved on 22.06.2011, followed by approval of layout map by the LDA on 26.12.2011. The net project land was approved on 212.16 acres. As per the case set up by the respondent, they did not have title over part of the net project land which, however, came to be allotted to the allottees.

63. Further, project came to be registered with UP RERA as on-going project on 114.35 acres of land on 11.08.2017. The completion date declared, by the respondent was on 22.12.2023. The original start date of the project was 01.10.2013. In other words, admittedly only a part of the project came to be registered, whereas, according to the respondent the part completion certificate of the project for Sector A and B came to be received on 27.03.2023, Sector C on 06.07.2024, Sector D on 28.03.2024, Sector E on 01.02.2024 and Sector G and F on 27.03.2023. In other words, under the garb of part registration of the project, respondent have marketed/put to sale, the entire project for which they received the completion certificate as late as on 01.02.2024 i.e. beyond the completion time declared by the respondent. Further, in the event, part of the project came to be completed, on having received OC/CC, on 11.08.2017 i.e. the date of registration with UP RERA, there was no occasion for the respondent to have received part completion certificate of all the Sectors of the project commencing from 27.03.2023 until 01.02.2024.

64. In view thereof, respondent admittedly has flouted and contravened Section 3(1) of RERA Act 2016 by advertising the project for booking/sale without having got registered the entire project or part thereof. On the date of registration of the project, none of the Sectors of the project was complete, therefore, mandatorily requiring compulsory registration being

ongoing project. The respondent under the garb of part registration of the project (114.35) acres, marketed the entire project (226.16) acres as per their own showing.

65. Further, respondent has not disclosed all information and documents in support thereof, in compliance of Section 4 for registration of their real estate project, 'Gomti Green'. The authenticated copies of the legal title of the land owned by the respondent was falsely declared on the affidavit. Admittedly, as per stand of the respondent, on the said date part of the project land in various Sectors, which came to be allotted to the appellant did not vest with them. Hence, respondent was not competent to enter into an agreement in respect of the parcel of land not vesting on the date of allotment. The respondent has also violated the provision of Uttar Pradesh Real Estate (Regulation and Development) Rules 2016, in particular, Rule 3 (d) with regard to legal title to the land on which the project was proposed to be constructed by the respondent.

66. Further, application for registration made in Form-A, false declaration was made in Clause 1(ix)(iii)/iv/vi/vii/ix; Rule 22 (3a) mandates declaration of the nature of rights of the promoter to the land of the project. In view thereof, on admitted facts, pleaded and pressed by the respondent, the respondent promoter has exposed itself for penal consequences under Section 59 and 60 of RERA Act 2016. **Question No. 5 is, accordingly, answered.**

67. Having regard to the facts of the case and for the reasons and law discussed hereinabove, the appeals succeed, accordingly, **allowed** by passing following orders;

(i) The impugned composite judgment and order dated 15.07.2025, passed by Regulatory Authority, is set aside and quashed.

(ii) The impugned cancellation letter dated 06.01.2023 is quashed.

(iii) The respondent is directed to restore the allotted plot/units to the appellants in the project 'Gomti Greens' forthwith and execute agreement to sale within 45 days from the date order is uploaded on the portal.

(iv) The Regulatory Authority is directed to initiate proceedings against the respondent under Chapter VIII for imposition of penalty for violation of Sections 3 and 4 of RERA Act, 2016 after providing due opportunity.

(v) Cost of litigation is assessed at Rs.20,000/- to be paid by the respondent to the appellants in each of the appeals, within 45 days from the date order is uploaded on the portal.

68. It is clarified that no other ground or point was pressed by either of the parties.

69. Registry is directed to communicate this order to the Chairman, U.P. RERA for compliance.

(Rameshwar Singh) **(Sanjai Khare)** **(Suneet Kumar)**

Dated: 25.08.2026
Tanveer/Irfan/Nikita/-