BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

(1) Appeal No.06/2025

In : File No.F.15(286)RJ/RERA/C/2023

1. Anurag Sharma, S/o Shri G.G. Sharma, R/o House No. 4-K-18, Jawahar Nagar, Jaipur.

2. Apoorv Kotia, S/o Late Shri Kailash Chand Kotia, R/o House No. 4-K-17, Jawahar Nagar, Jaipur.

…Appellants

Versus

1. Rajasthan Real Estate Regulatory Authority, Jaipur.

2. Green Residents Welfare Society, Bearing Registration No.Coop/2020/Jaipur/201523, having its office at 4-K-17-18, Jawahar Nagar, Jaipur, Rajasthan, through its Presidents Sh. Anil Kumar Jain and Secretary Sh. Mohit Mendiratta.

…Respondents

(2) Appeal No.134/2025

In : Complaint No.RAJ-RERA-C-N-2024-6982

1. Late Smt. Kusum Kotia W/o Late Sh. Kailash Chandra Kotia, R/o 4-K-17-18, Jawahar Nagar, Jaipur, Rajasthan, through her legal representative Sh. Apoorv Kotia.

2. Sh. Anurag Sharma, S/o Shri G.G. Sharma, aged about 56 years, R/o 4-K-17-18, Jawahar Nagar, Jaipur, Rajasthan.

3. Sh. Apoorv Kotia, S/o Late Sh. Kailash Chandra Kotia, R/o 4-K-17-18, Jawahar Nagar, Jaipur, Rajasthan.

…Appellants

Versus

1. Green Residents Welfare Society, Bearing Registration No.Coop/2020/Jaipur/201523, having its office at 4-K-17-18, Jawahar Nagar, Jaipur, Rajasthan, through its Presidents Sh. Anil Kumar Jain and Secretary Sh. Mohit Mendiratta.

2. Rajasthan Real Estate Regulatory Authority, through its Registrar.

…Respondents

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

PRESENT:

For appellant : Mr. Gaurav Jain, Advocate
: Mr. Prashant Daga, Advocate

For respondent : Mr. Digvijay Singh, Advocate on behalf of
: Mr. Vikram Pratap Singh, Advocate for RERA
: Mr. Mohit Khandelwal, Advocated assisted by
: Mr. Harsh Khandelwal, Advocate for Association

O R D E R

Reserved on 08th October, 2026

Pronounced on 22nd October, 2026

Per : Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

The present two appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter be referred to as the "RERA Act, 2016") challenging the impugned-orders dated 25/11/2024 and 23/06/2025 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as "Regulatory Authority") in File No. F.15(286)RJ/RERA /C/2023 and in Complaint No.RAJ-RERA-C-N-2024-6982. The controversy involved in both the appeals is inter related therefore, is being decided by this common order for appreciation of factual and legal aspect of the matter.

In Appeal No.06/2025:-

2) The brief facts of the case are that the RERA Authority initiated suo motu proceedings against the Appellants on the basis of a complaint filed by the residents of "The Greens", alleging non-registration of the project under Section 3 of the RERA Act, 2016, non-obtainment of valid completion and occupancy certificates, execution of sale deeds without fulfilling statutory requirements,

violation of Sections 14 and 17 of the RERA Act, 2016, unauthorised commercial use of parking, store areas and illegal construction in deviation from the sanctioned plans. The complainants sought imposition of penalties under Sections 59, 60 and 61 of the RERA Act, 2016 directions for registration of the project and rectification of deviations and initiation of appropriate proceedings under Section 59(2), wherever applicable. The Appellants contested the complaint, contending that the property had been constructed out of their personal funds for residential and professional use and not as a commercial real estate project. Although plots bearing Nos.4-K-17 and 4-K-18 had been reconstituted and their combined area exceeded 500 square meters, the Appellants maintained that the individual plot areas and the construction of only 8 flats did not attract mandatory registration under Section 3(2) of the RERA Act, 2016. No advertisement, marketing, booking or sale had taken place during the development stage and that sale deeds for certain flats were executed only after obtaining a completion certificate from the architect. The project, being completed, did not require registration and that parallel writ petitions and civil suits were pending before other forums. The Appellants further challenged the improper admission and rejection of material evidence, contending that the same vitiated the adjudicatory proceedings. The RERA Authority vide its impugned order dated 25/11/2024 has imposed penalty of Rs.5,00,000/- for violation of Section 3/59 of the RERA Act, 2016 in File No. F.15(286)RJ/RERA/C/2023. The operative portion of the said order is reproduced hereunder: -

"7. *During the course of the arguments, the Green Welfare Residents Society has pointed out that the layout plan approved by Nagar Nigam in 2018 is for the merged plots which is more than 800 sq. mtrs. The completion certificate issued on 06/01/2019 is not issued by the competent authority nor any fee has been paid for completion certificate. The contention of the respondents that no funds have been taken from the allottees and the entire construction has been done from own funds is also misleading. Bank statements of State Bank of India have been furnished whereby payments have been made to late Smt. Kusum Kotia on 27/08/2018, 31/10/2018 and 19/12/2018 by Shri Parvinder Singh who is one of the allottees. This clearly indicates that money has been taken from the allottees.*

8. *Heard the arguments and perused the record. It is clearly established that the project was liable to be registered with the Authority and there is a clear violation of Section 3/59 of the Act. Hence, a penalty of Rs.5.00 Lakh is imposed for violation of section 3/59 of the Act. The respondent promoters are also directed to register the project with this Authority within 45 days and obtain completion certificate and occupancy certificate".*

3) Hence, this appeal with the following prayer: -

"*In light of the above facts and legal submissions, the appellants humbly pray that this Tribunal may be pleased to:*

1. Set aside the impugned order dated 25/11/2024 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur.

2. Declare that the project "The Greens" is exempt from registration under Section 3(2) of the Act.

3. Quash the suo motu proceedings initiated against the appellants.

4. Grant interim relief by staying the operation of the impugned order during the pendency of this appeal.

5. Pass any other relief that this Tribunal deems just and proper in the interest of justice in favour of Appellants.

4) Mr. Gaurav Jain, learned counsel appearing for the appellants has argued that the impugned-order is devoid of cogent reasoning and substantive justification. The Regulatory Authority erred in law by misclassifying the appellants as "Promoters" or "Developers" under the RERA Act, 2016 and imposing liabilities upon them that properly lie with contractors or third parties. It is further argued that the project is liable to be exempted from registration under

Section 3(2) of the RERA Act, 2016, as applicable and that the flats were sold only after obtaining a valid completion certificate. Reliance was placed on ***Suo Motu Vs. Shree Krishna Associates*** **(order dated 22/08/2022)**, wherein completed projects without pre-sale or marketing activities were held not to require registration under the Act. Learned counsel also argued that the appellants are professionals, namely a dietician and wellness expert and a practicing ophthalmologist and not professional real estate developers. The imposition of penalties under Section 59(1) was challenged as unjustified and disproportionate in the absence of a deliberate violation of the Act. Lastly, it was contended that the complainants had already initiated parallel proceedings before the Hon'ble Rajasthan High Court in S.B. Civil Writ Petition No.18993/2023 and before the District Court in Civil Suit No.98/2023, resulting in multiplicity of proceedings.

5) *Per contra,* Mr. Digvijay Singh, learned counsel appearing for Respondent No.1-RERA has argued that the project "The Greens," having a plot area of approximately 876 sq. meters (1050 sq. yards), which exceeds the prescribed limit of 500 sq. meters and is, therefore, required to be registered under the Act. Learned counsel argued that the appellants, being promoters under Section 2(zk) of the Act, are statutorily bound to comply with its provisions and any default by contractors or third parties does not absolve them of their liability. It is further argued that the evidence on record, including sale deeds and proof of funds received from allottees, establishes that the appellants undertook

sale-related activities. Moreover, no valid completion certificate was obtained from the competent authority. Accordingly, the impugned order dated 25/11/2024, directing registration of the project, was justified. It is contended that the penalty imposed under Section 59 of the Act is proportionate and that the appellants cannot escape from this liability on the ground of ignorance of law or bona fide belief, as the RERA Act, 2016 was enacted to protect the interests and rights of allottees.

Learned counsel appearing for the RERA has further argued that the appellants have failed to implead the Authority through its Registrar, as required under Regulation 21(1)(xv) of the Rajasthan RERA Regulations, 2024. The layout plan of the merged plot was approved by the Nagar Nigam in 2018, after the Act came into force. Therefore, the appellants' claim that the project was completed before May 2017 is untenable. The appellants have failed to produce a valid completion or occupancy certificate issued by a competent authority. Hence, the project cannot be treated as exempted from registration. The execution of sale deeds after the purported completion certificate dated 06/01/2019 does not absolve the appellants from their liability. The evidence regarding sale transactions and receipt of funds from allottees supports the allegation that the project was marketed and was sold without registration, in violation of Section 3(1) of the Act. The appellants' reliance on ***Shree Krishna Associates*** **supra** is misplaced, as that case involved a completed project with a valid completion certificate. In the present case, no valid certificate was issued, and the project

remained unregistered. The Society has also alleged unauthorised construction and encroachment upon common areas. The office order was issued to clarify the applicability of Section 3(2)(a), in light of the Authority's earlier decision in **Suo Motu v. Shivaaz Developer LLP*, dated 05/08/2020***. In any event, the project, having an area exceeding 500 sq. meters, is liable to registration under the Act. Under Section 59(1) of the Act, a promoter contravening Section 3 is liable to a penalty of up to 10% of the estimated project cost. Accordingly, the penalty imposed by the Authority is justified and within its statutory powers.

6) We have heard learned counsel for the parties and perused the material available on record and the written submissions filed by learned counsel for the parties.

In Appeal No.6/2025:-

7) Only one point of determination required to be considered and decided by this Tribunal in **Appeal No.6/2025** is, as under: -

> ***Whether the project was liable to be registered under Section 3 of the RERA Act, 2016 and Promoter violated the provisions of Section 3 and penalty imposed of Rs.5,00,000/-, is sustainable in the eyes of law?***

The impugned-order passed by the learned Regulatory Authority dated 25/11/2024 in suo motu proceedings by which the promoter was directed to register the project and a penalty of Rs.5,00,000/- was also imposed for violation of Section 3/59 of the Act.

Learned counsel for the appellant drew the attention of this Tribunal towards Section 3(1)(2)(a) and definition of Apartment under Section 2(e) of the Act and argued that the individual area of land is less than 500 meters and the number of flats did not exceed the limit of 8 apartments. It is further mentioned in the written submission that the unit layout plan enclosed with the sale-deed clearly depicts that the units hold are separate and self contend part; thus, constitute a "single apartment".

For the sake of brevity, the provisions of Section 3(1)(2)(a) of the RERA Act, 2016 may be reproduced, as under: -

> "***3. Prior registration of real estate project with Real Estate Regulatory***
>
> ***Authority****-(1) No promoter shall advertise, market, book,* ***sell or offer for sale****, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*
>
> *(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-*
>
> *(a) where the area of land proposed to be developed does not exceed five hundred square meters* ***or*** *the number of apartments proposed to be developed does not exceed eight inclusive of all phases:*
>
> *Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act".*

It is evident from the record that the project "The Greens" was constructed on a combined plot area of approximately 876 square meters (1050 square yards) after amalgamation of two plots as per layout plan approved by the Nagar Nigam in the year 2018. Learned counsel appearing for the respondents have drawn the attention of this Tribunal towards the sale deeds executed with the

allottees, which also categorically state the entire chain of events and documents executed by the Promoters to constitute their back chain. Attention of this Tribunal is drawn to internal page no.3 of the one sale deed. which clearly state as under:-

> *"तत्पश्चात् प्रथमपक्ष विक्रेतागण ने उपरोक्त वर्णित मकान नम्बर 4 क 17 एवं 4 क 18, जवाहर नगर, जयपुर का संयुक्त रूप से पुर्नगठन कने हेतु कार्यालय नगर निगम, जयपुर में आवेदन किया, तब कार्यालय नगर निगम, जयपुर के पत्र क्रमांक 956 दिनांक 22.01.2018 द्वारा उक्त वर्णित मकान नम्बर 4 क 17 एवं 4 क 18 का पुर्नगठन कर पुर्नगठित मानचित्र जारी कर दिया गया....."*

This fact is also not disputed by appellant that after reconstitution of two plots, the layout plan was sanctioned by competent authority. Therefore, the measurement of plot is more than 500 sq. meters.

Further, the layout plan for residential complex at Plot Nos.4K17 and 4K18 approved by the competent authority demonstrates that the promoter proposed four residential units on each floor with the provision of two bedroom, drawing room, kitchen, toilet and later on sale-deeds were executed in favour of allottees after amalgamation of 2 units as one apartment and this fact is supported by the averments of sale-deeds. For the sake of clarity, the language of some sale-deeds may be summarized, as under:-

1. One sale deed was executed by the appellant in favour of allottees – Mr. Anil Kumar Jain & Mrs. Sapna Jain on 09/08/2019, according to which, Flat/Unit No.101/102 of Super Builtup Area of 4000 square feet was sold categorically mentioning number of two units.

2. Further, as per sale deed of one allottee Mr. Nischal Bhandari for Flat/Unit No.301/302 of Super Builtup Area of 4000 square feet was sold and flat numbers were categorically mentioned in it.
3. One sale deed executed on 24/10/2019 for Flat/Unit No.303/304 were sold to Mrs. Nikita Burad and Mr. Nitin Kumar Burad.
4. One sale deed was executed on 10/01/2019 for Flat/Unit No.203/204, which were sold out to one Mr. Parwinder Singh.
5. One another sale deed was executed on 08/05/2019 for Flat/Unit No.201/202, which was sold to Mrs.Rashmi Kholi and Mrs. Abhira Kholi.
6. As per sale deed dated 10/01/2019, Flat/Unit No.103/104 was sold to Mohit Mendiratta and Mrs. Bhumika Mendiratta.

Meaning thereby, 2 flats and units were sold by the appellant-promoter to the purchasers with the provision of 2 separate kitchens then, it cannot be treated as only one apartment merely on the ground of single entrance, single electricity connection, single UDH payment and single drawing room on the basis of map attached with each sale-deed. It is pertinent that language of each sale-deed regarding mentioning of two unit numbers has been accepted by the appellants and there is no logical explanation available on record that why two unit numbers were mentioned in every sale-deed for a single apartment. We are of the considered view that the map attached with the sale-deed subsequently cannot override the provisions of sanctioned layout plan. Therefore, we may safely

conclude that the project was designed and constructed for 16 units instead of only 8 units.

Learned counsel for the appellant has relied upon one judgment of the Hon'ble Madras High Court in the matter of ***M/s.Devinarayan Housing and Property Developments Private Limited & Ors. Vs. Manu Karan & Ors. dated 20/09/2023*** and the Hon'ble Court in para 10.9 thereof has mandated, as under:-

> *"10.9. Thus, on perusal of Report of the Standing Committee, it is clear that the word 'or' used in Section 3(2)(a) of the RERA has to be read disjunctively. Further, this Court would like to point out herein, though the word 'OR' is a conjunction, and if it is read conjunctively, it would make legitimate intention to become redundant, which is not possible in law. Hence, in the present case, the appellants constructed Apartment consisting of eight flats, in an area, measuring 5935 square metres and out of the two criteria mentioned in Section 3(2)(a) of the RERA for grant of exemption, the appellants have fulfilled one of the criterias and therefore, they are not liable to get their project register under the said Act. Hence, this Court holds that the Real Estate project of the appellants is not required to be registered under the RERA as the same does not fall within the purview of the Act. Accordingly, the* ***Additional Substantial Question of Law d) is answered in favour of the appellants and as against the respondents".***

This judgment was approved by the Hon'ble Supreme Court in SLP(C) Nos.25976-25977/2024 : Manu Karan Vs. **Devinarayan Housing and Property Developments Pvt.Ltd. & Ors.** while rejecting review petition vide order dated 04/11/2024. We have also perused one decision of the Maharashtra Real Estate Appellate Tribunal, Mumbai in **Sanjay Jawaharlal Surana Vs. Kaushalya Developers dated 09/06/2026** in **Appeal No.11/2019.**

In all the pronouncements, the court mandated that out of two, there are mention in Section 3(2)(a) of the RERA Act, 2016 for grant of exemption and if a person fulfill one of the criteria's then, he is not liable to get their project registered under the said Act. It is noted that one office order

No.F.1(31)RJ/RERA/2019/550 dated 08/03/2022 was also issued by the Authority regarding interpretation of **"and/or"**. Learned counsel for the appellant has also relied upon one judgment of the Hon'ble Supreme Court in **Bengal Iron Corporation Vs. C.T.O. dated 27/04/1993** that such type of notification/circular cannot have binding effect but without going to the validity or legality of above notification issued by the Authority, all the pronouncements are not applicable in the present matter because in the present matter, the appellants did not fulfill even one of the criteria enumerated in Section 3(2)(a) of the Act.

The above Section 3(1) of the Act makes it clear that it prohibits advertisement, marketing, booking, **sell or offer for sale** and invitation to purchase any apartment in a project and no documentary evidence is available on record regarding advertisement, marketing or offer for sale and agreement for sale was also not executed between the parties but the learned Regulatory Authority in its impugned order had duly recorded that the funds have been received from the allottees in the bank account of the Promoter on 27/08/2018, 31/10/2018 and 19/12/2018. The bank statement of Mr. Parvinder Singh showing the payment of Rs.17,00,059/- to the Appellant Promoters on 27/08/2018 (placed on record at page No.298 of Appeal No.134/2025. Similarly, the bank statement of another allottee, Mr. Mohit Mendiratta, showing the payment of Rs.9,00,000/- to the Promoter Mr. Anurag Sharma on 21/12/2018 and similarly, the payment of Rs.15,00,000/- paid to Mrs.Kusum Kotia on 24/12/2018 (placed on record at page no.304 of Appeal No.134/2025). Thus, the Appellants have allotted the under-

construction units of the residential apartments to the allottees and the same was required to be registered under the RERA Act, 2016. Thus, the appellants allotted the under-construction units to the allottees and also received advance payment for the same although no Agreement for Sale was executed between the parties.

It is also not revealed from record that any completion certificate was furnished by the appellant issued by the competent authority/empaneled architect and deposited required fees for sale.

So far as status of the appellant as a promoter is concerned, according to the promoter, some flats are reserved for own residence of the appellants and they are residing in the same project but if in the project, more than 8 flats have been constructed on more than 500 square meters area with an intend to sale then, the appellants definitely will fall within the category of “promoter” as defined under Section 2(zk) of the RERA Act, 2016. More than 8 units were constructed with intend to sale is established from record then, the dispute cannot be treated as inter-se dispute between the allottees.

It is noted that the learned Regulatory Authority vide impugned order, imposed penalty of Rs.5 lacs under Section 3/59 of the RERA Act of 2016 but it is evident that the appellants are not professional builder and never advertised or marketed the project by issuing an advertisement/brochure. Though, the appellants were not professional legal estate developers but project is technically liable to be registered. It is pertinent that under Section 59 of the RERA

Act, 2016, a penalty may be imposed up to the extent of 10% of the estimated cost of real estate project. Looking to the facts and circumstances of the matter, the penalty of Rs.5 lacs is unjustified and disproportionate in the absence of any specific evidence. Therefore, it is appropriate to modify the direction regarding imposition of penalty of Rs.5 lacs. It is, therefore, appropriate to reduce the penalty of Rs.5 lacs to Rs.1 lac for violation of Section 3/59 of RERA Act, 2016.

Consequently, the direction regarding registration of project required no interference but the penalty part of impugned order required modification and penalty should be imposed upto Rs.1 lac instead of Rs. 5 lacs.

Question No.1 is decided accordingly.

8) <u>In Appeal No.134/2025</u>:-

The facts giving rise to the filing of this appeal in brief are that the Municipal Corporation sanctioned the building map on 16/02/2018. Six sale deeds were registered between 2019 to 2020 and the residents are in occupation of the building since 2019. The parties dispute the size of the project: the Appellants say only 8 apartments were sanctioned and built (two being retained by themselves), while Respondent No. 1 says the sanctioned plan shows 16 flats, each sale-deed covering two, on land of 865 sq.m. The procedural history that matters is this:

On 16/11/2023, residents filed Writ Petition No. 18993/2023 in the High Court, besides a civil suit and a Section 9 arbitration petition, all raising

common-area and amenity grievances. On 22/11/2023, the Authority issued a show-cause notice and began suo motu proceedings on non-registration. On 25/01/2024, respondent No. 1 (the Society) filed Complaint No.RAJ-RERA-C-N-2024-6982, which was tagged with the suo motu case on 04/03/2024. On 25/11/2024, the Authority directed registration of the project in the suo motu case. On 13/01/2025, the Authority held the complaint maintainable. On 04/03/2025, this Tribunal, in Appeal No.6/2025 against the registration order, granted interim protection. The Authority itself recorded that the order of 25/11/2024 stood stayed. On 23/06/2025, the impugned order was passed. A rectification application was dismissed on 28/07/2025. The operative part of the order dated 23/06/2025 is reproduced, as under:-

The directions and the penalty

> *"7. Consequently, in view of the violations of Section 17, 14(1) and 11(4) of the Act, this Authority gives the following directions to the respondent developer as follows:*
>
> *(1) The unauthorized structures, including the clinic, VRV plant, and commercial gym, shall be removed or modified to confirm with the approved layout plan within 30 days.*
> *(2) The respondents shall also construct the promised club house and store as per the sale deeds within 90 days.*
> *(3) The respondents are directed to restore access to the terrace and gym areas within 15 days.*
> *(4) To transfer the corpus fund and common areas to the complainant society within 30 days.*
>
> *7. Until compliance is fully achieved, the respondents are restrained from interfering with the Complainant society's rights to use common areas and amenities. The respondents shall file a compliance report with supporting documents within 30 days of the date of this order.*

> *8. A penalty of Rs.5.00 lakh is imposed under Section 61 of the Act for the above-mentioned violation to be deposited within 45 days of the uploading of this order.*

9) Hence, this appeal with the following prayer:-

> *"In the light of the above grounds, the appellant prays that this Hon'ble Tribunal may be pleased to call for the record of the Ld. Authority below and set aside and Quash the impugned order dated 23.06.2025 and consequential order 28-07-2025 passed by the Ld. RERA Authority and dismiss the complaint so filed by Respondent No.1-society".*

10) Mr. Gaurav Jain, learned counsel appearing for the appellants has argued that the project is outside the Act by Section 3(2)(a) and the Authority therefore lacked jurisdiction. Having itself held the registration question to be before this Tribunal, the Authority could not decide consequential issues on merit. The complaint duplicates the suo motu case and parallel proceedings before the High Court, civil court and arbitral forum, and is stale. The Authority exercised town-planning powers and ordered what amounts to demolition, which it cannot do. The Society has no locus to enforce individual contractual rights, and registered sale deeds excluding roof rights, record satisfaction and waiver. The order is unreasoned and the penalty was imposed without notice or identification of the provision breached.

11) *Per contra,* Mr. Mohit Khandelwal, learned counsel appearing for Respondent No.1 has argued that the sanctioned plan shows 16 flats and the land exceeds 500 sq. m., so registration was mandatory (relying on circular dated 08/03/2022). The interim-order passed in Appeal No.6/2025 did not bar adjudication of independent reliefs. The suo motu case was regulatory, whereas the complaint seeks distinct relief, and the violations are continuing, so there is no

delay. Sections 79 and 88 of the Act and Section 31 give the Society standing and oust parallel fora, and statutory rights cannot be waived by a sale-deed clause. No demolition was ordered, only compliance with the sanctioned layout.

12) Mr. Digvijay Singh, learned counsel appearing for respondent No.2-RERA has argued that the appellants have failed to implead the Authority through its Registrar, as required under Regulation 21(1)(xv) of the Rajasthan RERA Regulations, 2024. The layout plan of the merged plot was approved by the Nagar Nigam in 2018, after the Act came into force. Therefore, the appellants' claim that the project was completed before May 2017 is untenable. The appellants have failed to produce a valid completion or occupancy certificate issued by a competent authority. Hence, the project cannot be treated as exempt from registration. The execution of sale deeds after the purported completion certificate dated 06/01/2019 does not absolve the appellants of liability. The evidence regarding sale transactions and receipt of funds from allottees supports the allegation that the project was marketed and sold without registration, in violation of Section 3(1) of the Act. The appellants' reliance on *Shree Krishna Associates* is misplaced, as that case involved a completed project with a valid completion certificate. In the present case, no valid certificate was issued, and the project remained unregistered. The Society has also alleged unauthorised construction and encroachment upon common areas. The office order was issued to clarify the applicability of Section 3(2)(a), in light of the Authority's earlier decision in **Suo Motu v. Shivaaz Developer LLP*, dated 05/08/2020***. In any

event, the project, having an area exceeding 500 sq. meters, is liable to registration under the Act. Under Section 59(1) of the Act, a promoter contravening Section 3 is liable to a penalty of up to 10% of the estimated project cost. Accordingly, the penalty imposed by the Authority is justified and within its statutory powers.

13) We have heard learned counsel for both the parties and perused the written submission and record of the material available the following points are required to be determine by this Tribunal.

14) Points for Determination:-

(1) Whether the impugned order could rest on findings that depend on the registration issue pending in Appeal No.6/2025?

(2) Whether the complaint was barred by the Society's lack of locus, pending parallel proceedings, delay, waiver or estoppel?

(3) Whether the directions and penalty are sustainable in law?

15) Analysis

Point 1: Reliance on the sub judice registration question

The Authority's attempt to treat the remaining issues as independent does not hold. Whether the project is registrable under Section 3(2)(a) is a jurisdictional fact, and it is the very question in Appeal No.6/2025. The duties the Authority enforced, namely formation of the association, conveyance of common areas (Sections 11(4)(f) and (g), 17) and adherence to the sanctioned plan (Section 14), are obligations of a

promoter of a project under the Act. Their enforcement against these Appellants presupposes that the Act reaches this project. Judicial discipline required the Authority to await the outcome of Appeal No.6/2025. The fact that no *coercive* step was barred, does not authorise findings that overlap with a pending appeal.

This Tribunal expresses no view on the 8-versus-16 apartments or the 500 sq. m. question, which belongs to Appeal No.6/2025 when the impugned order was passed on 23/06/2025 but now the controversy regarding registration of project has been decided by this Tribunal in above discussion at point no.1 in Appeal No.6/2025 and the impugned order passed by the learned Regulatory Authority regarding registration of the project is affirmed. Consequently, Appeal No.6/2025 is liable to be dismissed. Therefore, an objection raised by the appellant does not require any further consideration and now this objection is not sustainable.

Point No.1 is answered accordingly.

Point 2: Maintainability objections

It is evident from the record that an application regarding maintainability of complaint filed by the appellant was rejected vide interim order dated 13/01/2025 and admittedly, separate appeal was not filed by appellant against earlier order but in appropriate cases, interim order also challenged in subsequent appeal filed against final order. The learned counsel for appellant has filed the judgment of

Hon'ble Apex Court in the matter of **Ramashankar Singh and Others (2005) 3 SCR 439 decided on April 11, 2005**. The legal objection can be raised by parties at appellate stage.

The learned counsel for appellants raised some legal objections regarding maintainability of complaint which may summarized as under:-

1. **Locus.** Section 31 permits "any aggrieved person" to complain, and the Explanation to that section expressly includes a registered association of allottees. Respondent No.1 is a registered society of allottees and has standing to complain of promoter defaults that affect all members, such as common areas, the corpus fund and sanctioned-plan deviations. It cannot enforce purely individual, in personam promises, such as a clubhouse allegedly promised to three named persons. That limit is relevant to the relief, not to maintainability.
2. **Parallel proceedings and forum shopping.** The suo motu case examined registration, a regulatory matter, whereas the complaint seeks relief for allottees. The writ petition, civil suit and Section 9 petition were instituted by individual residents. Section 88 makes the Act additional to other laws, and the Supreme Court has held in ***Imperia Structures Ltd. v. Anil Patni*** **(2020) 10 SCC 783 and** ***Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.*** **(2021) 18 SCC 1** that the statutory remedy is not displaced by other fora or by arbitration clauses. Res judicata does not apply because nothing has been finally decided between these parties.

The plea of election of remedies fails for the same reason, because the Society is not the party who invoked arbitration.

3. **Delay.** The Act prescribes no limitation for a Section 31 complaint. The grievances concerning conveyance of common areas and the corpus fund are continuing defaults, and the complaint filed in January 2024 is not barred.
4. **Waiver and estoppel.** The "as is where is" and no-objection clauses in the sale deeds cannot defeat obligations the Act imposes on promoters, such as conveyance of common areas and compliance with sanctioned plans. A contract cannot oust a statute. Whether any specific right, such as roof or terrace use, was excluded by a particular deed is a question that must be examined on the deeds and pleadings.

Point No.2 is answered accordingly.

Point 3:-

Learned Regulatory Authority found the violation of Section 17, 14(1) and 11(4) of the Act and accordingly, issued four directions and also imposes penalty of Rs. 5 lacs under Section 61 of the Act.

First direction pertains to the removal or modification in unauthorized structures including the clinic, VRV plant and commercial Gym. It is not revealed from the record and finding of the impugned order dated 23/06/2025 that the Clinic, VRV Plant and Commercial Gym were rented out or sold out to the 3rd person and at present, who is in possession of the same. It is also not revealed from the record

that the construction work was not approved by the competent authority and fall within the category of "unauthorized structures". The learned Regulatory Authority not only directed the Promoter about modification in the above-mentioned unauthorized structures but also directed to remove this structure. The learned Regulatory Authority has no power to order for demolition or to exercise town planning functions. The learned Regulatory Authority can direct a Promoter to comply with the sanctioned plan under Sections 14 and 37 of the RERA Act, 2016 but enforcement against "unauthorized construction" as such lies with the Municipal Corporation/JDA. This Tribunal already took a view in the matter of **M/s. Bagherwal Infraprojects Pvt.Ltd. Vs. Sunil Namamal Kriplani : Appeal No.118/2023** in paras 10 & 11, as under:-

> *10. For instance, if a building plan sanctioned by a local authority violates RERA Act provision the RERA Authority can penalise the promoter, revoke registration or order compensation to buyers under "Section 7, 18 or 38" of the Act. However, if the construction itself is illegal in the eyes of law or violates local laws / building norms or built without proper sanction or built beyond approved limits, the demolition would typically be ordered by the concerned local authority or a court but not RERA in any circumstances. There's key direction here: RERA's jurisdiction is limited to regulating real estate transaction and ensuring compliance with its registration and disclosure requirements, it does not override the powers of local authorities regarding physical construction matters. The RERA Act, operates in parallel with local laws and "Section 89" of the Act states that its provision have effect "In addition to, and not in derogation of" other existing laws. This means RERA Act does not supercede the authority of local bodies to sanction or modify plans in accordance with law and / or if necessary demolish construction under their own legal frame works.*
>
> *11. In conclusion, the RERA Act, 2016, does not empower the RERA Authority to order for demolition any construction even one not sanctioned by a local authority under local laws and in the instant case the construction is duly sanctioned by the local authority. The RERA Authority's role in regulatory and remedial, not punitive in the source of physical enforcement like ordering the demolition, that power remains with the local authorities to review and examine the construction plan and take actions in accordance with laws or with the judicial bodies but certainly not with the RERA Authority".*

Meaning thereby, the direction regarding removal of any construction, is not sustainable in the eyes of law. So far as modification is concerned this direction requires to confirm to the approved layout, without identifying the sanction layout, the deviation cannot be ruled out. The word "modification" denotes that the whole construction is not unauthorized only some modifications are required but what type of modification required as per sanctioned layout is also not cleared by Regulatory Authority in impugned order. The Authority may, on proper finding, direct a promoter to comply with the sanctioned planed under Sections 14 and 37. The basis of these findings is missing in impugned order.

The second direction pertains to the construction of the promised Club House and Store as per sale-deeds. We have perused the copy of the sale-deeds available on record and the relevant reference mentioned in written submission of Respondent No.1 regarding the same is reproduced, as under:-

Name of Allottee	Reference	Relevant Page of Sale Deed
Anil Kumar Jain	Basement includes club house Membership fees covered in total consideration	Page 164 of Appeal
Nishal Bhandari	Basement includes clubhouse	Page No.185
Nikita Burad	Terrace is a part of common amenities	Page No.207

It is evident from the above directions that in absence of any agreement for sale or brochure of the project only the sale deed executed in

favour of allottees may take into the consideration for promised amenities but the promised amenities including common areas not identical in every sale deeds. It is pertinent that the appellants plead that the Municipal notice and the plan deviation issues or before the Civil Court and High Court but no findings regarding parallel litigation is available on record to arrive at logical conclusion of these issues at appellate stage.

The third direction was issued to the Promoter to restore access to the Terrace and Gym areas whereas the fourth direction pertains to transfer the corpus fund and common areas to the complainant society. It is true that no objection clauses in the sale-deeds cannot defeat obligations of the Act imposed on the Promoter such as, convenience of common areas in compliance with the sanction plans. A contract cannot oust the statute but it is not evident from the record that prior to this direction the terrace and gym areas are accessible to all allottees which required restoration or the right was given by the promoter as per terms of sale deeds of allottees or terrace is always part of the common amenities even in absence of any specific contractual terms and conditions. The details of corpus fund was not taken on record and not demarcated/ identified common areas or amenities prior to issuance of such directions.

The Appellants are not replying on common areas, the terrace and the gym, and for offering no "satisfactory arguments". A default in pleading does not dispense with the Authority's duty to find, on the material, what was sanctioned, what was built, what was promised and by whom. The order contains no reference

to the sanctioned plan, the sale deeds, the extent of any deviation or the amount of the corpus fund. Paragraph 5 of impugned order declares violations without analysis. Such an order cannot be tested on appeal.

The directions on the clubhouse, terrace and gym access, and corpus fund and common areas, depend on contested contractual and factual material, such as the sale-deed clauses and the alleged promises, and on the applicability of the Act. Having no reasoned findings to review, this Tribunal cannot uphold or modify them. It also considers it undesirable to decide those disputes at the first instance itself.

16) Conclusion: -

(i) In Appeal No.6/2025:-

The Appeal is **partly allowed** and impugned-order dated 25/11/2024 passed in File No.F.15(286)RJ/RERA/C/2023 is modified to the extent of penalty. A penalty of Rs.1 lac (instead of Rs.5 lacs) is imposed for violation of Section 3/59 of the RERA Act, 2016. Rest of the directions regarding registration of the project are affirmed.

(ii) In Appeal No.134/2025:-

The appeal is **allowed**. The impugned-order dated 23/06/2025 in Complaint No.RAJ-RERA-C-N-2024-6982is **quashed &set aside**. The matter is **remanded** to the Authority on the terms that the Regulatory Authority shall decide the complaint afresh, by a reasoned and speaking order, after giving a sufficient opportunity of hearing to both the parties. The Authority may take assistance from

technical expert or any officers of competent authority who sanctioned layout plan. The parties are directed to remain present before the learned Regulatory Authority in Complaint No.RAJ-RERA-C-N-2024-6982 on 26/11/2026.

17) The Registry is directed to transmit the amount deposited under Section 43(5) of the RERA Act, 2016 into the bank account of the learned Regulatory Authority deposited in Appeal No.6/2025. This amount shall be adjusted against the modified directions of this Tribunal regarding penalty of Rs.1 lac. The amount deposited in Appeal No.134/2025 shall be refunded back to the Appellant-Promoter, after expiry of period of limitation of appeal.

18) Pending Interim application(s), if any, shall stand(s) closed.

19) There is no order as to costs.

20) A copy of this order be transmitted to the learned counsel for the parties and Raj-RERA, Jaipur.

Files be consigned to record.

Yudhishthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

Anil Goyal/PK Pandey/Suppl.1-2