THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY, JAIPUR

Complaint No. RAJ-RERA-C-2019-3169

Hyde Park Flat Owners Association,
Hyde Park Project, Behind Dalda
Factory,Durgapura, Jaipur ...Complainant

Versus

1. Adarsh Buildstate Ltd., Jaipur
2. Shree Seco Pvt. Ltd., B-135, Vijay Path, Tilak Nagar, Jaipur.
3. DKG Township and Developers, B-135, Vijay Path, Tilak Nagar, Jaipur.
4. Directorate of Enforcement, Government of India, Jaipur ...Respondents

Present

Shri Shailendra Agarwal, Hon'ble Member

1. None present on behalf of the respondent No. 1
2. Adv Anant Kasliwal, Adv Shashank Kasliwal and Adv Kritika Singh, on behalf of the complainant
3. Adv Prakul Khurana, Adv Kundan Singh and Adv Ankit Sareen, on behalf of respondents No.2 and 3 - landowners
4. Adv Jitendra Singh Poonia and Assistant Director Rishabh Sharma, on behalf of the Directorate of Enforcement, Bhawani Singh Road, Jaipur

Date of Order: 10.02.2021

ORDER

1. The facts of the case are as under:

Case of the Complainant Association:

2. The complainant, Hyde Park Flat Owners' Association, claiming that they are the sole representative Association of more than 150 allottees of Hyde Park project, resolved unanimously in their meeting held on 8th September 2019 to file a formal complaint with this Authority against the promoter of the project by the name, "Hyde Park", registered with this Authority bearing project registration number RAJ/P/2018/604. Filing this complaint under section 31 of The Real Estate (Regulation and Development Act 2016 (hereinafter called the Act), they stated that the project "Hyde Park" was launched in the year 2014 by the respondent Adarsh Buildestate Limited (ABL) (hereinafter called 'Promoter Respondent') as developer promoter. The project was proposed to be constructed on the land owned and provided by the respondents No.2 and

3, namely, Shree Seco Private Limited and DKG Township and Developers respectively (hereinafter, called the 'landowners') under a development agreement signed between the Promoter Respondent and the landowners on 24th October 2013. The said agreement was valid till 31.3.2017, which was extended further till 31 March 2021 through an addendum on 21 March 2018. This extension, they alleged, was done without any intimation to them. The Complainant Association further stated that a total of 889 flats along with allied facilities were proposed to be constructed in 2 phases (593 flats in phase 1 and 296 flats in phase 2) and the scheduled date of completion of the project as per development agreement was 48 months from 1.4 2013, i.e. is 31st March 2017. The approval of the building plan for this project was given by the competent authority, namely, Jaipur Development Authority (JDA) on 4 July 2014. According to the Complainant Association, a total of 164 flats were booked by ABL and subsequent written agreements were signed with the allottees in some cases.

The construction was started by the Promoter Respondent which proceeded at a good pace till 2016 but slowed down during 2017 and came to a hard stop in 2018.

3. The Complainant Association further alleged and the promoter of 'Hyde Park' project, M/s ABL, have made multiple defaults in compliance of the Act in terms of not providing updated information about the number of bookings, number of garages booked, status of the project, not providing correct information about its directors, audit of accounts by a Chartered Accountant and providing false affidavit and misrepresenting facts while obtaining registration of the project from this Authority. It was also alleged that the promoter developer accepted more than 10% of the cost of the flats without entering into agreement for sale with the allottees thereby violating section 13 (1) of the Act.

4. The Complainant Association further alleged that the Promoter Respondent has been involved in multiple unfair

and fraudulent practices and irregularities as they came to know from newspapers. Providing other relevant information to this Authority, ABL is reflected as a non-compliant company on the website of the Ministry of Corporate Affairs and has not filed its balance sheet or the Annual Report after the financial year 2016-17. The company has only 2 directors on record as against a mandatory requirement of 3 Directors in respect of a Public Limited Company. They also alleged that there has been a frequent change in the name of directors during the last 23 years and the previous directors have been allegedly involved in various frauds, for which they have been sent behind the bars for quite some time. It was further alleged that criminal cases and proceedings have been initiated and pending against most of the active directors of ABL and proceedings have also been initiated against ABL in the National Company Law Appellate Tribunal for serious irregularities. The Complainant Association brought forward the fact that the website of the Respondent Promoter is not accessible, and the telephone numbers provided by the promoters while obtaining registration of their project in this authority are also non-existent. Similarly, the email ID does not respond to any emails sent to them and no employee or contact person was available at the site of the project or at the office of that promoter. They further alleged that the majority shareholding in ABL is with Adarsh Credit Cooperative Society Limited(ACCSL), which itself is involved in various serious frauds and an Investigation Agency is investigating charges of money laundering against them. It was also brought to the notice of this Authority that the Hon'ble Supreme Court of India vide Criminal Appeal No. 538-539 of 2019 have also upheld investigation by the Serious Fraud Investigation Office against ABL and its erstwhile directors.

5. Similarly, there is another application on record made by the Complainant Association/Allottees, seeking indulgence of this Authority to examine the development agreement between the Promoter Respondent and the

landowners, which was initially coming to an end on 31.03.2017, but was extended to 31.03.2021 through the addendum executed between the Promoter Respondent and the landowners. This application sought the cancellation of this agreement and be declared as void, as it having become incapable of being executed and acted upon by the Promoter Respondent and the landowners.

6. In view of circumstances mentioned above, the Complainant Association lists that the company does not have any financial or other resources available to complete the project nor does it have managerial skill or experience for completing the project in which they have invested their hard earned savings of several years and prayed for the following relief:

(a) RERA Project Registration No. RAJ/P/2018/604 be revoked under section 7 (1) of the Act;

(b) Promoter Adarsh Buildestate Ltd. be put under the list of defaulters under section 7 (4)(a) of the Act;

(c) Co-promoters of the project Shree Seco Pvt. Ltd. and DKG Township and Developers be directed to fulfil obligations of the promoter to complete the project under supervision of the Association of allottees as per section 7(4)(b) read with section 8 of the Act;

(d) Co-promoters of the project Shree Seco Pvt. Ltd. and DKG Township and Developers be directed to pay damages and interest for delay in project by adjustment of the same in the cost of flats as per section 13(2) of the Act;

(e) Co-promoters of the project Shree Seco Pvt. Ltd. and DK G Township and Developers be directed under section 7 (4)(d) to not to alter the title of the land of project and to not create any charge on the land of project;

(f) Co-promoters of the project Shree Seco Pvt. Ltd. and DKG Township and Developers be directed to open an Escrow account and operate the same under the supervision of the Association of allottees under section 7(4)(b) and 7(4)(d) read with section 8 of the Act;

(g) Hyde Park Flat Owners Association be allowed to present its case through its office bearers personally and produce additional documents which are deemed fit to bring justice to allottees;

(h) Further directions be issued by the Authority to protect the interest of the allottees as it may deem necessary under section 7(4) of the Act.

Case of Respondent No. 3

7. The**Respondent No.3, namely,** DKG Township and Developers in their reply submitted that, primarily, all allegations made in the entire complaint from the complainant side are against the promoter, i.e., Adarsh Buildestate Ltd., who should be solely responsible and answerable to the allegations and averments made in the complaint. They further submitted that no breach of any terms and conditions under the development agreement

dated 24.10.2013 has been made by the respondent No.3. According to them, the respondent No.3 does not fall under the definition of the term "Promoter" defined under section 2(zk) of the Act because the promoter is a person who constructs or causes to be constructed an independent building or apartments for the purpose of selling all or some of them. The Respondent No. 2 along with the Respondent No. 3 has entered into a development agreement only with the intent of maximising the value of the project land and accordingly agreed to the proposal of the Promoter Respondent for the development of a Group Housing Project upon that land. As per the respondent No.3, the sole obligations of the development agreement was to provide permission to do construction over the project land while the obligation of the construction and development of the project was entirely and solely that of the Promoter Respondent. The role of the Respondent No.3 was only to make the land available for the project and all other obligations in respect of conversion of the land, obtaining various permissions or approvals or the licences followed by developing and marketing of the project, was that of the Promoter Respondent, Adarsh Buildestate Ltd.

8. In their reply, the respondent No.3 further averred that they were also a victim just like the complainant and had suffered huge monetary losses and other consequential damages due to the breach of the terms and conditions by the Promoter Respondent. In fact, the respondent No.3 approached this Authority and filed an application on 05.08.2019 under section, 7, 8, 35, 36 and section 37 of the Act even before the complaint was filed by the Complainant before this Authority and prayed for removal of Promoter Respondent as promoter of the project, appointing any other developer to complete the project and allowing the new developer to develop and sell apartments in at least four towers in order to accommodate all the allottees and allow making necessary modifications in the RERA registration documents of the project.

9. The respondent No.3 further stated that the respondent No.2 Shree Seco Pvt. Ltd. and respondent No.3 DKG Township and Developers are the lawful owners of the land measuring 13,796 sq. meter and 11,524 sq. meters respectively at village Durgapura, Tehsil Sanganer, Jaipur. The Jaipur Development Authority (JDA) had approved the project on this land after 3372 sq. meters were surrendered for widening of the road. According to them, the Promoter Respondent approached the Landowners to develop a Group Housing Project. The land owners with the intent of maximising the value of the project land, entered into a development agreement dated 24.10.2013 for the construction and development of the project by the promoter. As per the development agreement, the project was to be developed into two stages - Phase I consisting 593 flats and Phase II consisting 296 flats. The entire project was to be completed within a period of forty eight months commencing from 01.04.2013. The promoter registered the project with this Authority bearing Registration

No. RAJ/P/2018/604 and without taking the consent of landowners, gave the completion date of the project to the RERA as 31.03.2021, which was way beyond the agreed completion time for the whole project under the development agreement. The Promoter Respondent, according to them, approached the landowners, cited the poor state of affairs in the real estate sector and requested for the completion of the projectunder the development agreement till 31.03.2021. The landowners relying upon the assurances of the Promoter Respondent and in view of the impossibility of inducting any other developer at this late stage, agreed to extend the time limit for completion of the project for all the Towers till 31.3.2021. This was added to the development agreement on 21.03.2018, as an addendum and was executed between the Promoter Respondent and the landowners.

10. They further stated that they came to know from the newspapers that Promoter Respondent is allegedly involved in a fraud of thousands of crores which is being investigated

under various Agencies. It was also noted by them that there was no progress in the construction work at the project site for more than a year and the contractor appointed by the Promoter Respondent had removed all the materials and equipment from the project land. Thus, all the assurances given by the Promoter Respondent turned out to be false and in fact, the promoter was unable to be contacted for any discussion on the fate of the project as no contact person was available at the office of the promoter. This has adversely affected the goodwill of the landowners and has forced them to terminate the development agreement as well as addendum agreement and appoint any other contractor for completion of the development of at least four towers so that the allottees who have paid the advance money, could be accommodated. They further denied the allegation made in the complaint that the development agreement was valid till 31.03.2017 only because, as stated earlier by them, the development agreement was extended till 31.03.2021, for which an addendum agreement was signed between the Promoter Respondent and the landowners.

11. The respondent No.3 also denied that they had any information about the exact number of units booked by the Promoter Respondent and clarified that the marketing and sale of the units in the project was under the sole and exclusive domain of Promoter Respondent and the landowners had no role in the sale or marketing. The payment for the bookings of the units in the project were also made by the allottees to the Promoter Respondent and the landowners had no knowledge about it. They further stated that the landowners were kept in the dark either about the stoppage of construction of work on the project land or about raising of demand notes to the allottees. They vehemently opposed the prayer in the Complaint Association that the landowners could be classified as co-promoter in view of what has been said above and in section 2(zk) of the Act. According to respondent No.3, the relief sought by the Complainant Association, is attributable

only to the Promoter Respondent because it is solely because of misrepresentation, inactions, disturbances and omissions caused by the Promoter Respondent, which has caused irreparable harm to the financial and mental health of the respondent as well. In view of this, the Promoter Respondent Adarsh Buildestate Ltd. shall be responsible for the default of non-completion of the project and the Respondent No. 3 could not be held accountable for the breach of the provisions of the Act.

Case of Respondent No. 2

12. The respondent No.2, namely, Shree Seco Pvt. Ltd., have also submitted a separate reply, the contents of which are, however, more or less the same as that submitted by the respondent No.3, namely, DKG Township and Developers. They have also emphasised that all the allegations and averments made by the Complainant Association, are against the Promoter Respondent Adarsh Buildestate Ltd., who should be solely answerable to the allegations made in the complaint and that they are not

liable in any manner for the alleged actions or inactions of the promoter.

13. In effect, the landowners - Shree Seco Pvt. Ltd. and DKG Township and Developers respectively, are represented by the same Director Vijay Khemka and to that effect, the interest of the landowners are one and the same. In fact, there is a joint application on record, from the landowners, namely, Shree Seco Pvt. Ltd. and DKG Township and Developers praying for removal of the Promoter Respondent as promoter/developer of the project and appointment of any other developer to complete the project, allowing the new developer to first develop and then sell four towers in the project in the first phase, directing the allottees to deposit balance consideration in a new bank account and modifying the registration of the project in this Authority.

<u>Case of the Promoter Respondent No. 1</u>

14. The Promoter Respondent, M/s Adarsh Buildstate Ltd did not appear before this Authority from the very beginning either in person or through their legal representatives. Notices issued to Promoter Respondent were undelivered for about an year. The legal representatives of the Complainant Association and the landowners informed that Promoter Respondent was arrested and behind bars in connection with a multi crore scam and fraudulent activities under investigation by different investigating agencies.

Other Facts:

15. In another significant development, in the same matter, a complaint was filed by an allottee Raman Paliwal and Rama Parwal, against the Promoter Respondent in which this Authority had passed an order dated 19.06.2019, vide which, the Promoter Respondent was directed to pay the balance amount of Rs. 47,40,218/- along with interest at the prescribed rate of SBI Highest MCLR (8.65%) + 2%, i.e., 09.65 percent as provided in the Rajasthan Real Estate (Regulation and Development) Rules, 2017 from 15.10.2018

upto the date of realisation. Upon non-compliance of this order by the Promoter Respondent, another order was passed by this Authority on 16.01.2020 imposing a penalty of Rs. 200 per day on the Promoter Respondent, under section 63 of the Act, recovery of the ordered amount of monies as arrears of land revenue through the District Collector, Jaipur. The most significant part of this order dated 16.01.2020 was that the registration of the Promoter Respondent company project 'Hyde Park', which was granted registration vide No. RAJ/P/218/604 was revoked with all consequences provided in section 7 (4) and section 8 of the Act. The Registrar of this Authority was directed to issue the intimation of this revocation of registration in Form 'D' prescribed under Rule 8 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017.

16. On 29.09.2020, the complainants again represented to this Bench that they had requested the Authority to cancel the development agreement dated 24.10.2013 and allow bringing a new developer to complete the project which was

lying idle for the last three years, because the Promoter Respondent was behind the bars in a case relating to financial scam. The landowners agreed with the proposition of the Complainant Association and sought to identify a new developer to complete the project and sought the Authority's permission to devise a new scheme to be submitted to the Authority. In effect, the Complainant Association and the landowners submitted to this Authority their complete agreement between them to club the applications of the Complainant Association and that of the landowners and to allow the Complainant Association and the landowners to submit a scheme to this Authority for approval.

17. On 03.11.2020, the Complainant Association and the landowners together with an agreement between both of them, submitted a scheme to this Authority, whereby the incomplete project left over by the Promoter Respondent ABL was proposed to be completed by involving a new builder R.G.Colonizers Pvt. Ltd. The advocates, as well as the different office bearers of the Complainant Association

present in the Court averred that the agreement was being submitted in complete consensus between the landowners and Promoter Respondent and sought approval for this scheme.

18. The Complainant Association and the landowners further pleaded that in order to value and evaluate the investment made by the Promoter Respondent and to find out the correct valuation of the work done by the Promoter Respondent so far, an independent valuer should be appointed by the Authority. This request of the Complainant Association and the landowners was found acceptable by this Authority and they were directed to furnish to the Authority, a panel of three Government approved valuers, who are also on the panel of the Income-tax Department, Government of India.

19. Still further, the Complainant Association through their advocates pleaded to summon the Enforcement Directorate, Government of India, who have registered a case against the Promoter Respondent Adarsh Buildestate Ltd. and on

whose charges under investigation, its directors were behind the bars. They pleaded that the Enforcement Directorate had directed the Sub Registrar of the area not to register the sale deeds and transfer the property without permission from them. In such circumstances, it is important to summon the Enforcement Directorate in order to bring the aforesaid scheme to a success. Accordingly, the Enforcement Directorate was summoned to this Authority so that they can represent their case before this Bench.

20. In yet another development, an application was made by Tectonic Engineers, under order 1 rule 10 CPC and pleaded before this Authority to make them a party to this case because they had done the civil construction work on the work orders given by the Promoter Respondent and have not been made payments by the Promoter Respondent. This application was heard and the same was rejected vide an express detailed order passed by this Authority on 01.12.2020.

21. In compliance of the directions from this Authority, the Complainant Association and the landowners submitted a panel of three Government of India approved valuers, who were also independent Income-tax approved valuers. The Authority chose one valuer, namely, Triangle Building Trust represented by Er Nagender Choudhary to value the extent of work done by the Promoter Respondent and submit their report. They submitted the valuation report to this Authority on 15.12.2020.

22. The Enforcement Directorate also appeared before this Authority through their representative Sharat Kumar, Assistant Director on 01.10.2020, to whom the case of the Complainant Associationand that of the landowners, was explained. The Enforcement Directorate was also offered to test the credentials of this valuer appointed by this Authority as valuation made by this valuer would determine the amount invested by the Promoter Respondent in this project, which could be of interest to the Enforcement Directorate in their case against the Promoter Respondent.

The Enforcement Directorate, instead, submitted a written factual statement in response to the summons served on them in the matter on 4.12. 2020.

Factual Statement submitted by ED:

23. In the written Factual statement, presenting their case, ED argued that the Enforcement Directorate has filed a case No. ECIR/01/JPZO/2019 on 22.03.2019 on the basis of a FIR No. 24/2018 dated 28.12.2018 registered with the SOG, Rajasthan Police, Jaipur. The case was filed under the Prevention of Money Laundering Act, 2002 against Shri Mukesh Modi, son of Shri Prakash Raj Modi and Shri Rahul Modi, son of Shri Virendra Modi, Founder and Managing Director respectively (and Promoter Respondent in this case) for the offences punishable under section 120B, 420, 406, 409, 467, 468, 477 and 477A IPC, the allegation being that the accused persons have misappropriated the funds of Adarsh Credit Cooperative Society Limited (hereinafter called 'ACCSL') and not paying the money to the depositors on maturity. It was alleged in the FIR that ACCSL, controlled

by Shri Mukesh Modi and Shri Rahul Modi and their family members, have diverted the funds deposited by millions of small investors to their own companies under the garb of loans thereby cheating the investors/members of the ACCSL and siphoning of the money collected from them. The SOG, Police Department, Jaipur, on the basis of the said FIR No. 24/2018, and after completing the investigation, has filed an interim charge sheet No. 11/2019 dated 20.07.2019 under IPC, section 5 of the Prize Chits Money Circulation Scheme (Banning) Act, 1978 and section 65 of the Income-tax Act. The SOG also arrested Shri Mukesh Modi, Rahul Modi and twelve other persons, who were the members of their family and their associates. The SOG charged that ACCSL controlled by Shri Mukesh Modi and Shri Rahul Modi, their family members and Associates have diverted the funds so collected from millions of small investors in the guise of loans, share money, commissions, etc. and siphoned the money so collected into Companies, Directors, Firms and LLPs etc. Violating various provisions of the Multi State Cooperative Societies Act, 2002 (hereinafter called 'the MSCS Act'), the accused and the Promoter Respondent diverted the funds of ACCSL in an illegal manner with malafide intention to cause wrongful loss to the Society and corresponding gains for themselves. The ACCSL created a liability to pay Rs. 11,174.04 crores to pay to the investors with interest, but the Society is not in a position to pay back to the investors. They further argued that as a result of investigation made so far, the movable and immovable properties around Rs.1,489 crores have been attached provisionally under section 5 of the Prevention of Money Laundering Act, 2002 and several constructed and under construction projects having trail of tainted funds from ACCSL fraud have been provisionally attached by the Enforcement Directorate and this attachment order had been confirmed by the learned Adjudicating Authority, PMLA, New Delhi vide its order dated 31.03.2020. They further argued that the provisional attachment and subsequent confiscation of unsold stocks constructed and under construction project, was essential to prohibit the accused from acquiring money from gullible investors or purchasers.

24. With this general background, the legal representative of the Enforcement Directorate dwelled on the issues involved in the present case and argued that huge amounts of funds were also diverted by the ACCSL to the Promoter Respondent in the form of loans without collateral guarantee and these loans have still not been paid back even though the scheduled repayment period has elapsed. The accused Shri Mukesh Modi and Shri Virendra Modi were the Directors in the Promoter Respondent company initially, but later resigned when the networth of the company turned negative due to wasteful expenses and the ownership of the company was transferred to ACCSL and employees of the Society were appointed as Directors. One of the many construction projects, which the Promoter Respondent has undertaken, is the subject matter of the instant case, namely, 'Hyde Park', which was a joint venture project of

Promoter Respondent and the landowners. The land of this project belongs to the land owners and the project development was the responsibility of the Promoter Respondent. The Enforcement Directorate summoned the Directors of the respondents No.2 and 3, who are the landowners of the project and recorded the statement of Shri Vijay Khemka, the Director of respondents No.2 and 3. It was admitted by Shri Vijay Khemka that the joint venture agreement between the landowners with the Promoter Respondent signed on 24.10.2013, provided 51 percent of the constructed inventory of the project to the land owners, landowners and the remaining 49 percent of the constructed inventories to Promoter Respondent. The Director of respondents No.2 and 3 also admitted having received Rs. 20 Cr in the name of two companies - respondents No.2 and 3 from the Promoter Respondent.

25. The Enforcement Directorate has argued that the development agreement signed between the Promoter Respondent and the landowners puts the onus of the entire

construction work on Promoter Respondent and alleged that the entire project of 'Hyde Park' has been constructed out of the funds of ACCSL by illegally diverting it in this project in the form of purported loan and, therefore, all the flats and units under construction at 'Hyde Park' are to be considered as proceeds of crime, because of which the Enforcement Directorate has issued a prohibitory order dated 23.04.2019 prohibiting the Sub Registrar of Stamps and Registration Department from registering any unit of this project in order to safeguard its proceeds of the crime allegedly diverted to this project.

26. The Enforcement Directorate further argued that the cumulative amount of Rs.461.36 crores as loans and Rs.4.99 corres as share money was diverted to Promoter Respondent by the ACCSL during the period comprising 2011-2016 and the entire proceeds of this siphoned money was utilised by Promoter Respondent for the purchase of land or development of its project including that of 'Hyde Park'. Apart from transferring Rs. 20 cr to the land owners, a

sum of Rs.296 crore has been spent on construction and development of this project as per the books of accounts of Promoter Respondent. They argued that the funds of ACCSL diverted as loan or share money and utilised for the execution of the project, comes within the definition of the proceeds of crime under section 2 (1)(4) of Prevention of Money Laundering Act, 2002 and, is therefore, liable to be attached provisionally in terms of section 5 of the Prevention of Money Laundering Act, 2002. According to the Enforcement Directorate, 51 percent and 49 percent stake for the landowners and the Promoter Respondent as provided for in the agreement between the two, shall remain the same in the incomplete project also and the sum of Rs. 20 crore transferred by the Promoter Respondent to the landowners as refundable security deposit, would also be deducted from 51 percent of the share of the landowners. They also argued that the various other charges paid to the Government authorities, like, land conversion and licensing charges borne by the Promoter Respondent, would also qualify as proceeds of crime and should, therefore, be added to the total amount spent by Promoter Respondent on this project, which according to the Enforcement Directorate, is 296.36 crore.

27. The Enforcement Directorate has strong objection to the complaint filed in this Authority by the Complainant Association as this would exclude the interest of the Enforcement Directorate. They also argued against the appointment of a Government approved valuer to assess the value of construction as spent by the Promoter Respondent on the ground that the Prevention of Money Laundering Act, 2002 does not provide any such provision. According to them, section 5 of the Prevention of Money Laundering Act, 2002 provides that *"if any person is not in possession of any proceeds of crime and such proceeds of crime are likely to be concealed or transferred, which may result in frustrating any proceeding relating to the confiscation of any proceeds of crime, the competent authority may provisionally attach such property"*.

28. Invoking section 2(1)(zb) of the Prevention of Money Laundering Act, 2002, which defines the term "value", "*as the fair market value of any property on the date of its acquisition by any person or if such date cannot be determined, the date on which such property is possessed by such person*", the Enforcement Directorate argued to make a case that the actual amount of proceeds of crime invested in this project cannot be determined because the accused Promoter Respondent has made various unproductive and hidden expenses, such as, expenses towards obtaining licenses from Government authorities, security to the land owners, towards temporary electricity connection, security, salary to the employees, miscellaneous expenses etc., which are liable to be considered while determining the value of proceeds of crime placed in this project. They also argued that the Directors, the owners and controllers of Promoter Respondent, are in jail and the staff and employees of the Promoter Respondent, have left the job because of which, the actual

investments made by the Promoter Respondent in this project, cannot be authentically obtained and the investigation is still in progress. In view of this, the Enforcement Directorate argued that the Complainant Association should approachthe PMLA Court under the Special provisionof the PMLA Act to claim their interest after the Enforcement Directorate has filed the charge sheet in that Special Court.

29. The Enforcement Directorate alleged that the present case would frustrate the proceedings under the Prevention of Money Laundering Act, 2002 and may eventually aid the accused Promoter Respondent, who may transfer the liability of siphoned funds upon the complainants. Arguing about the jurisdiction of various Courts, the Enforcement Directorate stated that section 71 of the Prevention of Money Laundering Act, 2002 establishes an overriding effect of provisions of this Act notwithstanding anything inconsistent with any other law for the time being in force.

Further, section 41 of the Prevention of Money Laundering Act bars the jurisdiction of the Civil Court.

30. With these arguments, the Enforcement Directorate concluded their arguments by stating that the investigation in the case is still incomplete and, therefore, they cannot accept the value of construction as proceeds of crime or for that matter, any other proposal or proceedings before this Authority, would be inappropriate and unlawful and prayed that the Enforcement Directorate should not be dragged in the proceedings before this Authority and no alteration in the project should be allowed.

31. A rejoinder to the factual statement filed by the Enforcement Directorate was also submitted by the Complainant Association and landowners.

32. The Enforcement Directorate was issued fresh summons to appear before this Authority and submit the reply to the submissions made by the landowners. In the meantime, the valuer appointed by this Authority also

submitted a valuation report, a copy of which was given to the Complainant Association, landowners as well as to the Enforcement Directorate on 29.01.2021.

33. In the meantime, following the commitment given by them in the court and subsequent directions given by this Authority, the Complainant Association and the landowners, submitted a joint application along with a Scheme in terms of the order of this Authority dated 29.09.2020. Under the scheme, the Complainant Association and the landowners, proposed to revise the Phase-I of the project to be developed and constructed by a new developer who, according to them, has given his consent to complete the left-over work of the revised Phase I from the balance amount to be received from the existing allottees. As per the terms of the scheme submitted, the Complainant Association and the landowners would enter into a fresh tripartite agreement with the new developer to ensure the completion of revised phase I.

The Scheme - salient features:

34. As per the new scheme submitted jointly by the Complainant Association and the land owners, the Complainant Association and land owners have mutually agreed to revise the existing Phase-I of the registered project by reducing the number of towers in Phase1 from 8 to 4 and to accommodate all existing allottees of tower number 5 to 8 in towers number 1 to 4. The two sides agreed that the allocation of the new flats in tower number 1 to 4 would be done through mutual consent of allottees and would be as far as possible of similar size and on the same floor. The revised Phase comprising tower number 1 to 4 would have 265 2 bhk, 3 bhk and 4 bhk flats along with a clubhouse, the details of which were given in an annexed schedule. The scheme further states that the new developer has made a preliminary assessment of the balance work and an estimated cost for completion of the revised phase I which comes out to rupees 55 crore approximately, the details of which have been given in part D of the scheme. It

is also agreed between the Complainant Association and the landowners that the balance work of the revised phase I shall be completed from the balance sale proceeds to be received from the existing allottees while the landowner or the new developer would not be under any obligation to invest anything from their sources. The new developer has agreed to complete the 4 towers with the same quality and specifications as per the original scheme and the allottees would be charged the same amount at the same rate at which an individual allottee had booked his respective flat. The Complainant Association has agreed to obtain an undertaking from all its members for timely payment of dues and to abide by the terms and conditions of this new scheme. The landowners, on their part, agreed to defer their share in the revenue from the project till the completion of the revised phase I in the interest of the project. As per the scheme, the landowners will be solely entitled to deal with all the remaining flats and /or revenue after the allotment of flats to the allottees and neither the Complainant

Association nor the developer shall have any claim over that. The scheme further reiterates that the role and obligation of the land owners under this scheme shall be restricted to making the project land available for completion of revised phase I subject to the terms and conditions of this scheme.

35. Some important terms and conditions agreed to by the Complainant Association and the landowners in the scheme, included the following:

(i) The new developer, landowners and the Complainant Association will enter into a tripartite agreement wherein the rights and responsibilities and obligations of all the three parties in respect of completion of revised Phase I shall be recorded;

(ii) The new developer will take over the development work of revised Phase I on 'as is where is basis';

(iii) The new developer and the landowners will not be liable to discharge any obligations or claims or dues of Promoter Respondent Adarsh Buildestate Ltd. to any parties/agencies or allottees for the period prior to the restart of the work of revised Phase I.

(iv) A new bank account will be opened by the new developer in the name of revised Phase I, which shall be jointly operated by the authorised signatory of the landowners and the new developer. All the revenues received from all the allottees existing or any other, shall be deposited in this account and the amounts received in this account, will be utilised only for the completion of the revised Phase I, clubhouse and construction of EWS/LIG flats for handing over to Jaipur Development Authority or for payment of GST and any other taxes, dues or expenses pertaining to the construction. Any payment exceeding Rs. 5,00,000/- shall be preverified and approved by a Project Management Consultant. The details of this bank account will be given to this Authority and any amount remaining in this account after completion of the revised Phase I shall be transferred to the landowner's bank account. All the existing allottees shall make the payment of sale consideration and other amounts as mentioned in their allotment letter or agreement for sale along with applicable taxes as per following schedule:

(a) 50% of sale value plus GST (less amount already paid till date) within thirty days of execution of definitive agreement;

(b) 10% of sale value plus GST (subject to maximum 60% of sale value) within three months of execution of definitive agreement;

(c) 10% of sale value plus GST (subject to maximum 70 per cent of sale value) within six months of execution of definitive agreement;

(d) 15% of sale value plus GST within nine months of execution of definitive agreement; and

(e) 15% of sale value plus GST plus other amounts as mentioned in allotment letter/agreement for sale (originally signed with ABL) at the time of offer of possession of flats in the revised Phase I.

(v) The new developer will be at liberty to cancel the allotment in consultation with the Complainant Association if there is a default in payment of two continuous instalments by any allottee and any amount to be refundable to such allottee, shall be refunded only after the sale of such a unit. Any two authorised representatives of the Complainant Association, shall have the right to inspect the complete books of accounts of revised Phase I and to ensure that all funds received from the allottees are used only for the purpose of the completion of the proposed revised Phase I. Any delayed payment by any allottee, would attract interest at the rate mentioned in the Rajasthan Real Estate (Regulation and Development) Rules, 2017, as penalty.

(vi) The new developer shall complete the development work of the revised Phase I only to the extent of receipt of revenues from the existing allottees and any delay or stoppage in payment of such amounts by any of the allottee, may result in delay or stoppage of the work of construction of revised Phase I, for which the existing allottees will be solely responsible.

(vii) No request for cancellation of booking/refund shall be entertained by the new developer till such time the revised Phase I is completed. However, the allottees shall be at liberty to sell/transfer their flat to any other party subject to the condition of the new buyer agreeing to comply with the terms and conditions of this revised scheme, new development (or definitive agreement) and new agreement for sale.

36. The arguments of all the three stakeholders, Complainant Association, Landowners and the Enforcement

Directorate (ED) were heard on 10.02.2021.The following were present on the last date of arguments:

(i) Adv Anant Kasliwal, Adv Shashank Kasliwal and Adv Kritika Singh, on behalf of the Complainant Association.

(ii) Adv Prakul Khurana, Adv Kundan Singh and Adv Ankit Sareen

(iii) Adv Jitendra Singh Poonia, on behalf of the Enforcement Directorate along with representative of the Enforcement Directorate Rishabh Sharma, Assistant Director.

37. All the three stakeholders also preferred to submit the written statement in support of their arguments presented by them before this Bench, for which each one of them was allowed one week time.

Oral Arguments of Complainant Association:

38. The legal representative of the Complainant Association argued that the Promoter Respondent ABL and the landowners had executed a development agreement in the year 2013 for the development of a residential project by the name "Hyde Park", which, according to the agreement

entered into between the Promoter Respondent and the landowners, was to be completed by 31.03.2017. They argued that the Promoter Respondent, ABL was not given any ownership in the land as part of this agreement. In the year 2019, the Promoter Respondent got involved in an investigation proceedings by the Enforcement Directorate, for their alleged involvement in one of the biggest financial scam of the country involving thousands of crores for cheating innocent members of the public and siphoning of funds. The Promoter Respondent is presently in huge financial crisis and is facing several legal cases pertaining to the alleged laundering of money and being investigated by the Enforcement Directorate and other Agencies. In the circumstances, the Promoter Respondent is in no situation to complete the project in question as a huge amount of work at site is left incomplete and the members of the Complainant Association having paid about Rs.35 crores to the Promoter Respondent from their hard earned income and savings for retirement, have been left hanging in mid air.

39. Looking at the enormity of the financial scam alleged against the Promoter Respondent and the investigation by the various investigating agencies including the Enforcement Directorate is likely to take years before the Phase I is finally completed and due punishment given to him, the Complainant Association has approached this Authority and prayed for revocation of registration of "Hyde Park" project granted by this Authority - Revised Phase I, bringing in a new developer and opening up a escrow account to facilitate the completion of the project and save financial stake and the future of hundreds of innocent home buyers. The Complainant Association further argued that they do realise the possibility of a certain amount of alleged illicit money that may have been used by ABL in the construction and development of the project "Hyde Park", which is a subject matter of this case. With this in mind, the Complainant Association requested this Authority for the

presence of the major Investigating Agency, the Directorate of Enforcement (ED). This was also important because the Enforcement Directorate, Rajasthan had issued a prohibitory order dated 23.04.2019 directing the Sub Registrar, Jaipur not to undertake any registration for any of the units in the "Hyde Park" project. They argued that while the Enforcement Directorate has taken all the necessary steps to implicate their accused Promoter Respondent, it was shocking for them to see that nothing has been suggested or done for the protection of innocent home buyers, who had made payments to buy the apartments in this project. It is, therefore, of utmost importance that the requisite work must be carried out to complete this project and protect the rights and interest of the home buyers. They further argued that this was the only way out whereby the landowners after accommodating all the existing allottees, would be able to sell out the flats and would be able to recover the monies that could take care of any reasonable claim by the Enforcement Directorate against their accused Promoter Respondent in this case.

40. Their argument is that the Real Estate (Regulation and Development) Act, 2016 is a Special Act, specially enacted for the protection of the home buyers and the members of the Complainant Association do not have any other Court or Forum, from which they can seek justice and they have no other adequate efficacious remedy available with them and so pray to this Authority to take necessary action to protect the rights and interests of the home buyers. Extending their arguments further, the legal representatives of the Complainant Association stated that home buyers cannot be denied their right to get the project completed in case of default by a promoter as provided for in section 8 of the Act whereby it has been made incumbent upon this Authority to take such action as it may deem fit including carrying out of the remaining development works by a competent authority or by an Association of allottees, as may be determined by the Authority upon the revocation of the registration of the

project under this Act. They stated that this Authority has already revoked the registration of this project vide order dated 16.01.2020 with all consequences provided in section 7 (4) and section 7(8) of the Act and directing the Registrar of the Authority to initiate all necessary action pursuant thereto in accordance with said section 7 (4) and section 8 of the Act. Their argument was that it is a settled law that in case of such serious defaults the home buyers may be allowed to carry out the construction activities in order to protect their rights and interests and in doing so, the Complainant Association has approached this Authority for the protection of its rights and interests by allowing the landowners and the new developer to complete the apartments allotted to the members of the Complainant Association.

41. Arguing about the claim of the Enforcement Directorate in this case, they stated that the Complainant Association is aware of its national duty to first ascertain the extent of illicit funds that may have been or allegedly laundered by the said

Promoter Respondent and which may have been used by the Promoter Respondent in the construction work so far done by him. It was with this intent that the Complainant Association has requested this Authority to appoint an independent valuer who would objectively and transparently assess the valuation of the entire construction work so far undertaken by the Promoter Respondent. The valuation report has since been submitted by the Government of India approved valuer, who is also on the panel of valuers of the Income-tax Department and has assessed the valuation of the construction activities to the tune of Rs.64.29 crores. They argued that the claim of the Enforcement Directorate of over Rs.296 crore, is imaginary as Rs.186 crores in the claim of Enforcement Directorate is mentioned as an interest on cash credit, which is a completely imaginary and made up figure and has been transferred under the head "Interest to another Entity", under the Adarsh Group of Companies. However, this money as claimed by the Enforcement Directorate may be laundered money, but cannot be attributed to this project, which is a subject matter of this present case. They further stated that the valuers' report from an independent valuer, makes it clear that the valuation of the property has been done on the basis of standing order No. Ex-3/2015, PWD, Govt. of Rajasthan and CPWD and the valuation report, therefore, reflects the correct amount invested in the incomplete construction of this residential complex and as such, the interest of the Enforcement Directorate in this residential complex cannot go beyond four corners of this formula.

42. The legal representatives of the Complainant Association further argued that the Real Estate (Regulation and Development) Act, 2016 is a Special Law and an Act later than Prevention of Money Laundering Act, 2002, and therefore, has an overriding effect over the Prevention of Money Laundering Act, 2002. They further stated that the statement of objects and reasons attached to the RERA Act and the Preamble of this Act clearly bring out that the said law has been made specifically for the protection of rights of

flat owners and purchasers. The reading of the Act also makes it abundantly clear that it is a Special Law which has an overriding effect over all other existing Laws and is notified with an object to protect the rights of home buyers and this power has been upheld time and again by various courts apart from the statement of objects and reasons and preamble of this Act. They cited section 79 and section 89 of the Act in support of their claim that this Act has an overriding effect and bars the jurisdiction of any other Court including the Civil Court. They further cited three judgments, namely, (i) judgment of the Hon'ble Supreme Court in the case of Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd. and others - Civil Appeal No. 3760 of 1995 - judgment dated 07.02.2001; (ii) Judgment of the Hon'ble Kerala High Court in the case of Suresh Babu Vs. Assistant Superintendent of Police - W.P. © No. 23476 of 2005 - judgment dated 12.01.2006; and (iii) Judgment of this Authority in the case of RakshitBisaria Vs. MVL Ltd. - Comp. No. RAJ-RERA-C- 2018-2221.

43. Extending their arguments further about the Prevention of Money Laundering Act, 2002, they stated that even though the learned Adjudicating Authority under the Prevention of Money Laundering Act has powers to make provisions for the protection of homebuyers, such as, creation of escrow account till the completion of an investigation, no action has been proposed by the Enforcement Directorate for the protection of the homebuyers, who are members of the Complainant Association. According to them, the property in question is not yet attached by the Learned Adjudicating Authority under the PMLA Act - 2002 and any proposal for attachment of this property by ED under the Prevention of Money Laundering Act would amount to irreparable loss to the home buyers and would be a direct contravention of the very object of Prevention of Money Laundering Act i.e protection of rights and interests of defraud investors.

44. They rounded up their arguments by saying that they are aware of the ongoing investigation against the Promoter

Respondent. The Complainant Association and landowners have come together before this Authority and have suggested suo moto that an escrow account be created to avoid any confusion and take care of the interest of not only innocent home buyers but also of any reasonable claim by the Enforcement Directorate against their accused and Promoter Respondent in this case. They contended that the investigation by the Enforcement Directorate has been going on for such a long time and still the property has not yet been attached by the Enforcement Directorate and only the Sub Registrar, Jaipur has been directed not to register any unit in this project. Summing up their arguments, the Complainant Association prayed for adjudication of claim of the Enforcement Directorate, acceptance of valuation report, directing the creation of an escrow account to safeguard the interest of innocent home buyers and that of the Enforcement Directorate, directing the Enforcement Directorate not to intervene in the registration of the flats and withdrawing the direction of the ED to the Sub

Registrar and finally a direction to the new developer and landowners to recommence the construction of the work and hand over the possession of the completed apartments to the innocent home buyers.

Oral Arguments of Enforcement Directorate

45. The Enforcement Directorate, represented by Advocate Shri Jitendra Singh Poonia and Assistant Director Shri Rishab Sharma, argued their case on the basis of their investigation against the Promoter Respondent and others under the Prevention of Money Laundering Act, 2002. They presented their oral arguments before this Bench on 10.2.2021 followed by submitting their written submissions on 03.03.2021 as an addendum to the factual report submitted by them on 4 December, 2020.

46. In the oral argument submitted by the Enforcement Directorate their legal representative argued that since the landowners have also received a share of money from the Promoter Respondent and from the Complainant

Association their land can also be attached under the Prevention of Money Laundering Act, 2002. They further argued that the development agreement signed between the landowners and the Promoter Respondent is inconsequential for the Enforcement Directorate as it is concerned only with the money trail which can be traced to this project as well. They again emphasised that the diversions of proceeds of crime by the Promoter Respondent in this project for construction, security deposits to the landowners, statutory expenses, financial expenses, licences and others, are logically justified and within the parameters of law and since all these expenses have added the value to the project, the proceeds of crime diverted to this project in the garb of such expenses, are also attachable in this project only. They also raised the issue of time value of these funds for arriving at the value attachable in this project. According to them the current value of the proceeds of crime invested in the project out of proceeds of crime invested in the project cannot be considered. They also brought up the issue that the victims of the fraud committed by ACCSL, had invested their hard earned savings in ACCSL and their value of money is also legally attachable.The Enforcement Directorate has argued further that the landowners have 51 percent stake in the project upon completion and 51 percent of the amount paid by the allottees to the Promoter Respondent for booking of their respective flats would also have been acquired by them and, therefore, 51 percent of the amount paid by the Complainant Allottees is with the landowners and has not been invested in the project.

47. They reiterated their written submission that section 71 of the Prevention of Money Laundering Act, 2002 states that it shall have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. They have again emphasised on section 41 of the Prevention of Money Laundering Act, 2002 barring the jurisdiction of the Civil Courts and section 8 (8) of the Prevention of Money Laundering Act, 2002 provides for

restoration of the property to legitimate claimants having suffered a quantifiable loss due to crime committed by the accused. Rounding up their argument they stated that the proposal of the Complainant Association before this Authority is an attempt to frustrate the proceedings under the Prevention of Money Laundering Act, 2002, which is aimed at unearthing grave money laundering offences and so prayed that the Enforcement Directorate should not be dragged in the proceedings and any alteration in the project may not be allowed.

48. Repeating the other arguments submitted in their factual report, they summed up their oral arguments by praying that the scheme proposed by the Complainant Association and the landowners would lead to an alteration in the project and, therefore, should not be allowed and the Enforcement Directorate may not be dragged in the proceedings before this Authority.

Oral Arguments of Landowners:

49. The legal representatives of the landowners in their oral argument before this Bench reiterated that the Real Estate (Regulation and Development) Act, 2016 is a special law and section 79 of the said Act bars the jurisdiction of the Civil Court and granting of any injunction by any Court or Authority in respect of any action taken under this Act. Section 80 of the Act further reiterates that no Court shall take cognizance of any offence punishable under this Act or the Rules made thereunder. It is, therefore, a Special Act dedicated for the fair justice to the innocent home buyers. They further argued that the interest of the Promoter Respondent is only in revenue derived from the sale of the apartments in the project to be developed and constructed by them, for which the development rights have been given by the landowners and under any circumstances or by any stretch of imagination, they have not been given any right or ownership in the land on which this project is to be developed. Consequently, the claim of the Enforcement

Directorate that the landowners' land can also be attached,is not correct and would be against any law of the land. They further argued that the claim of the Enforcement Directorate cannot be beyond the claim of the Promoter Respondent in this project and the claim of Promoter Respondent cannot be beyond the amount invested by the said Promoter Respondent in the construction, the amount paid to the statutory authorities for the approvals or any amount paid to the landowners.

50. Countering the argument of the Enforcement Directorate regarding the landowners having shared the amount paid by the complainant allottees and thus having a share in the development of the project, they stated that the money given by the Promoter Respondent to the landowners is not against any sale of land but only as security as has been agreed to in the development agreement signed between the Promoter Respondent and the landowners. The landowners are the sole owners of the land and neither the Enforcement Directorate nor the

Promoter Respondent has any right or ownership or any other claim in the land. Citing clause 1 and 14 of the development agreement signed between the Promoter Respondent and the landowners they argued that the relationship between the Promoter Respondent and the landowners is defined and contained only in the development agreement and these clauses clearly state that Rs. 20 crores will be paid by the Promoter Respondent to the landowners towards interest free refundable security deposited for due performance of their obligation under this development agreement and the developer would be allowed to enter upon the land and to start the construction of the building only thereafter. The amount of Rs. 20 crores paid by the Promoter Respondent to the landowners, is only towards the interest free security deposit and not towards the value of the land or share of the sale proceeds received by the Promoter Respondent from the allottees.

51. The legal representative of the landowners further stated that the allottees have taken loans from various

financial institutions or have paid the instalments towards the flats booked by them through their hard earned income and if the project is jeopardized, not only the interest of the allottees would be affected adversely and irreparably, but the Enforcement Directorate will also not be able to retrieve any money which they claim, has been invested in this project as proceeds of crime committed by the Promoter Respondent and would cause a loss of public money. They cited a citation from the Hon'ble Supreme Court in the case of Bikram Chatterjee Vs. Union of India and others dated 23.07.2019 in which the Hon'ble Supreme Court in similar circumstances, has allowed an alternative promoter to complete the project and hand over the possession of the flats to the buyers establishing that the home buyers cannot be left in lurch.

52. Citing another judgment of the Hon'ble Supreme Court in the case of Solidaire India Pvt. Ltd. Vs. Fair Growth Financial Services decided on 7.2.2001, they dwelled on the contention of the Enforcement Directorate regarding section

41 of the Prevention of Money Laundering Act, 2002 which bars the jurisdiction of the Civil Court and states that no injunction can be granted by any Authority in respect of any action under Prevention of Money Laundering Act, 2002. The cited judgment clearly lays out that if the Acts are Special Acts, which is so in the present case, the later Act must prevail. In fact, this has been established in various other judgments which have been quoted in the judgment of the Hon'ble Supreme Court so mentioned.

53. They further argued that the amount of Rs 296.36 crores stated by ED to have been spent by the Promoter Respondent on the project is, at best, an imaginary amount. In support of this argument, they questioned as to how could this figure of Rs. 296.36 Cr be correct if the entire cost of the development of the whole project of both the phases as uploaded by the Promoter Respondent on the website of RERA authority is 187.01 crore. They further iterated that the Promoter Respondent has completed only a fraction of the phase 1 on ground whose value has been assessed by

a GOI approved valuer at about 65 Crore. The estimation by ED of the amount spent on the project is, therefore, according to them, misleading.

54. As for Rs 20 crores given to the landowners by the Promoter Respondent, they argued that this amount was given according to clause 14 of the development agreement as a license fee to the landowners to enter on their land and carry out the development work which is a well-established market practice and the entire amount so deposited was an interest free refundable security deposit. They argued against the averment of ED regarding share of Promoter Respondent in the land on which the project is being constructed. They stated that the landowners are the joint and absolute owners of the land and no right of whatever nature had ever been created in favour of the Promoter Respondent as has been very clearly mentioned in clause 1 and clause 14 of the development agreement signed between the Promoter Respondent and the landowners. The share of the Promoter Respondent to the extent of 49%

was only in the revenue generated from the project and that too was conditional and would have accrued only upon successful completion of the project.

55. They cited a judgment from Hon'ble Bombay High Court in the case of Swapnil promoters and developers versus Union of India and Neelkamal Realtors Suburban Private Limited versus Union of India while deciding about the constitutional validity of various provisions of the Act and the powers and obligations of the Authority under Section 7 and 8 of the Act , where the Apex Court has reiterated that the wide powers conferred under Section 7 and 8 of the Act and has expected the Authority to mould its directions in such a way so that the object and purpose of this Act i.e. to complete the development work within the stipulated time frame is achieved, requested the Authority to fulfill its obligation, ensure the completion of the remaining development work of the project as empowered by the above two sections. Speaking about the scheme submitted by the landowners in consensus with the Complainant

Association of allottees, they stated that the scheme is the only transparent mechanism for collection and utilization of funds in the project which will duly protect the interests of the allottees as well as that of the Enforcement Directorate. Concluding their oral arguments, they prayed for the approval of the scheme, restraining the ED from creating bottlenecks in completion of the project in terms of the scheme, withdrawal of the restraint order from ED to the Sub Registrar for not registering the apartments in this project, a reward of 8% of the construction cost to the new developer and directions to JDA to extend the validity of the map approval so as to complete the project in terms of the scheme submitted to the Authority.

Order:

56. The oral arguments of the stakeholders, namely the Complainant Association of allottees, the landowners and ED were heard on 10.2.2021. On the request of the stakeholders, they were allowed sufficient time to submit their written statements. The replies submitted by the

various stakeholders and the written statements after the oral arguments along with the documents and the case laws submitted by them were examined. The scheme submitted jointly by the Association of allottees, and landowners was also examined in detail. As a matter of abundant precaution, the scheme was referred to the Joint Registrar (Legal) in the Authority for his legal opinion regarding whether the scheme was in accordance with law and with the provisions of this Act. The Joint Registrar (Legal) in the Authority found the provisions of the Scheme for revised Phase I submitted jointly by the complainant Association and the landowners as acceptable.

57. It is abundantly clear from the facts of the case that the real estate project 'Hyde Park' was a joint collaboration project of Promoter Respondent and landowners which was started in 2013 and registered with RERA bearing registration number RAJ/P/2018/604. 150 odd allottees booked their flats with the Promoter Respondent on the promise that they would be handed over the possession of

their apartments by 31.3.2017 which was extended by Promoter Respondent till 31.3.2021. However, the project came to an abrupt halt in 2018 on account of Promoter Respondent having got involved in multiple unfair and fraudulent practices leading to a multi crore financial scam as a result of which he, the other directors in the company and his associates got arrested and investigations by ED are underway under the Prevention of Money Laundering Act - 2002.

58. A number of allegations have been made by the Complainant Association regarding violation on part of the Promoter Respondent in regard to defaults and violation in compliance of various provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rajasthan Real Estate (Regulation and Development) Rules, 2017 made thereunder (hereinafter called 'the Rules'). It has been alleged that the Promoter Respondent accepted more than 10% of the cost of the flats without entering into agreement for sale with the allottees thereby violating section 13(1) of

the Act. Similarly, the website of the Promoter Respondent is not accessible, the telephone numbers and email ID are non-responsive and all directors of Promoter Respondent are either absconding or under arrest or simply untraceable. They have abandoned the project and the contractor appointed by them has removed his equipment and materials from the project site. The Promoter Respondent has not appeared in this Authority and the summons sent to him have returned repeatedly unserved. We take notice of the circumstances and all the allegations against the Promoter Respondent regarding violation of this Act and would deal with it while we are writing our Order.

59. The money laundering case made out against the Promoter Respondent by the investigating agency, the ED, merits serious examination by this Authority, particularly the trail of money that can be traced to the subject matter of this case namely, the project, 'Hyde Park'. While the investigation of money laundering from ACCSL is entirely in the domain of the ED, we will concern ourselves with the

extent of its connection with the Project in question. This Authority has no sympathy with the perpetrators of the alleged money laundering and would like to provide all possible support to ED to secure the entire proceeds of crime that can be traced to the subject matter of this case. However, at the same time, the interests of the home buyers- the members of the Complainant Association need to be protected as well. In this endeavour, it is our considered view that if the entire proceeds of crime that could be traced to this project in question is secured to the investigation agency, the ED and thereafter the project is allowed to be revived in accordance with the provisions of the Act, it will not only <u>not</u> adversely affect the investigation concerns of ED or exclude the interest of the ED but will also take care of the interests of the members of the Complainant Association, the home buyers.

60. The Scheme submitted jointly by the Complainant Association and the landowners envisages the revision of existing phase1 by reducing the number of towers from 8 to

4 and accommodating all existing allottees in these 4 towers. This would lead to the construction of 265 apartments in the 4 towers along with amenities promised in the project and construction of EWS houses to be given to the JDA as a mandatory condition. The estimated cost of balance construction is stated to be Rs. 55 Cr approximately which would come from the allottees as balance payment due from them towards the total sale consideration of their respective apartments. A new builder developer will be appointed for executing the incomplete work. The new developer, the landowners and Complainant Association would enter into a fresh tripartite agreement wherein the rights, responsibilities and obligations of all the three parties would be recorded for completion of the revised Phase 1. A new bank account shall be opened by the new developer in the name of the revised Phase 1 which shall be jointly operated by landowners and the new developer. The new bank account which will be an escrow account shall have proper checks and balances with due supervision from a

project management consultant and an authorized representative of the Complainant Association. The landowners will defer their share in the revenue from revised phase 1 till its completion and fulfilling of all associated financial obligations.

61. That there is a complete consensus between the Complainant Association and the landowners reflects the commitment on part of both of them to complete the project for mutual benefit. We have noted on record that the Complainant Association has submitted affidavits from all their members swearing their acceptance of the scheme and commitment to pay the balance amount to the new developer for completing the project. We have also noted that the landowners having suffered at the hands of Promoter Respondent had approached this Authority even before the Complainants and had prayed for action against the Promoter Respondent under Section 7 and 8 of the Act. The commitment of the Complainant Association and the landowners to honour

Rajasthan Real Estate Regulatory Authority, Jaipur • (RERA) •

any reasonable claim of the ED regarding proceeds of crime committed by the Promoter Respondent that can be justifiably traced to this project is an indication of their commitment towards the law of the land.

62. The opposition of ED to the Scheme on the ground that it would lead to the alteration of the project is not comprehensible to us. There should not be any opposition to the revision of the project if and as long as the amount claimed by the ED backed by reason in their money-laundering case against the Promoter Respondent is secured to them. Their contention that they should not be dragged in the proceedings before this Authority is also not understandable as they are a necessary party in this case on account of their allegation that there is a money trail from ACCSL to this project carried out by their accused and Promoter Respondent and on account of their intervention by stopping the sub registrar to register any sale deed in respect of this project. How is it possible for a 'necessary party' in a case not to be a part of the hearing in such case?

They are and will remain a necessary party to this case in which they have inherent interest on account of their claim of alleged proceeds of crime traced to this project.

63. We would, however, like to examine all the contentions and arguments of ED raised by them either in their oral arguments or in their written submissions.

64. The ED has alleged that the entire project of 'Hyde Park' has been constructed out of the funds of ACCSL by illegally diverting it to this project in the form of purported loans and therefore, all the flats and units under construction at 'Hyde Park' are to be considered as proceeds of crime. Even though it is a fact that the Promoter Respondent has received a substantial amount of money from the allottees / members of the Complainant Association and that money must also have been used by the Promoter Respondent on the construction of this project, we are willing to go by the presumption of ED that the entire project of Hyde Park may have been constructed with the

alleged illegal diversion of laundered money by the Promoter Respondent. The contention of the ED that the diversion of proceeds of crime by Promoter Respondent to this project for construction, security deposit to the landowners, statutory financial expenses for obtaining licenses etc from Government authorities, temporary electric connection, security, and salaries to the employees etc. are logically justified to have added value to the project and are attachable to this project only, is within the parameters of law, completely justifiable and accepted by this Authority. All the monies spent under the above-mentioned heads by the Promoter Respondent could possibly be a part of the alleged proceeds of crime and must be secured to the investigating agency. In such circumstances, if both the contentions by ED mentioned in this para are accepted, the claim of ED towards the proceeds of crime directed towards the project in question is limited to the money spent by Promoter Respondent in construction, security deposit to the landowners and statutory financial expenses for licensing or taxes, electric connection and salaries etc minus the amount received by the Promoter Respondent from the allottees as advances towards sale consideration of the booked units. Any other claim by the ED as proceeds of crime invested in this project would then be unjustified. We agree that the claim of the Enforcement Directorate cannot be beyond the claim of the Promoter Respondent in this project and the claim of the Promoter Respondent cannot be beyond the amount invested by him towards the construction of this project, whether in terms of land, construction per se or any other amounts paid to the landowners, Government authorities or towards salaries, security etc.

65. In this project there was no purchase of land and any money invested by the Promoter Respondent was for construction, security deposit to the landowners or monies paid to statutory authorities. Drawing from their own admission in the written statement, a sum of rupees 20 Cr was paid to the landowners by Promoter Respondent. Any

amount paid to statutory authorities whether for licensing or for taxes, in any case, is a matter of record which can be ascertained easily.Other sundry expenses like electric connection and consumption and salaries paid to the staff employed for this project can be broadly assessed without much difficulty and should not be more than a fraction of the amount spent on construction of the project.

66. With this view, the contention of the ED that a sum of Rs. 296 CR has been spent on construction and development/ construction of this project as per the books of account of Promoter Respondent needs to be examined in more depth. It becomes even more important because the Promoter Respondent while presenting their documents for registering the project in RERA mentioned the total cost of the project Hyde Park as Rs 187 Crores. The complete project comprises 12 towers with 889 flats and allied amenities while the construction on ground is only a minuscule of the total project for which, as claimed by ED, the promoter has recorded Rs.296.36 Cr in his books, as

the amount spent by him in the construction of only a part of the project, that too incomplete.

67. To ascertain the amount spent on the construction of the project, a Government of India approved valuer who is also on the panel of income tax Department of the Government of India was appointed by this Authority to assess the value of investment made in the construction work. The ED was also given the liberty to vet the credentials of the valuer by this Authority in its order dated 1.12.2020. The valuation of this property has been done on the basis of standing order No. Ex-3/2015, PWD, government of Rajasthan and CPWD, Government of India. This standing order was valid for the constructions done during 2013 – 2018. There is no reason for us not to rely on a valuation report submitted by Government of India approved valuer made on the basis of standing orders issued by Government Departments of the State Government of Rajasthan and that of the Government of India. Any other figure quoted by any person in his records

is a mere figment of imagination or with a motive to mislead the investigative agencies or the Tax Authorities. To our mind, this is the only viable method to determine the amount invested in the construction of the project by the Promoter Respondent.

68. By their own admission, the entire proceeds of crime was utilized by Promoter Respondent during 2014 - 2016 has been diverted by him in a number of deals involving purchase of land and construction of projects <u>and the project in question 'Hyde Park' is only one of them</u>. In this light, while we can understand that some of the money laundered by the accused Promoter Respondent may have been used in the development of this project as claimed by the Enforcement Directorate, but to attribute large sums of money without any cogent basis to this project would be unjustified, without any basis and outright wrong and would amount to travesty of justice.

69. To sum up the matter on this issue, the proceeds of crime claimed by ED that may have been used by their accused Promoter Respondent cannot be more than the sum of value assessed by the Government of India approved valuer, the security deposit transferred by Promoter Respondent to landowners and the amounts paid by the Promoter Respondent to statutory authorities for obtaining different approvals licenses or payment of taxes or any other bills paid by Promoter Respondent like that of electricity or salaries which can be attributed towards the development of this project and which the ED can prove on the basis of documents minus the booking amount and advance instalments received by the Promoter Respondent from the allottees of this project.

70. The ED has also contended that the landowners have 51% stake in the project upon completion. This 51% of the amount paid by the allottees to Promoter Respondent for booking of their respective flats would have also been acquired by them and, therefore, 51% and 49% stake of the

landowners and the Promoter Respondent as provided for in the agreement between the two shall remain the same in the incomplete project also. According to them since the landowners have also received a share of money from the Promoter Respondent and from the allottees of Complainant Association, they are at par with the Promoter Respondent and their land can also be attached under the Prevention of Money Laundering Act 2002. The import of ED's contention is that the landowners are also a promoter or a co-promoter and should be equally liable as Promoter Respondent.

71. The counter argument of the landowners in this regard is that the share of the Promoter Respondent to the extent of 49% was only in the revenue generated from the project and that too was conditional and would have accrued to the Promoter Respondent only after successful completion of the project. To our mind, it is a matter of simple understanding that unless the project is completed and possession of the flats is given to the home buyers, the sale transaction with the home buyers

Rajasthan Real Estate Regulatory Authority, Jaipur (RERA) would not be completed and no revenue from home buyers would accrue to the unless he has any share or claim in the land on which the project is being erected. We examined clause 14 of the development agreement signed between the Promoter Respondent and the landownerswherein it has been agreed between the two that the landowners shall continue to hold the actual as well as the legal possession of the land and shall not part with the same to the Promoter Respondent at any stage. The landowners on receipt of the interest free refundable security deposit, would grant a permission to the Promoter Respondent in the nature of a license to enter upon the land only for the purpose of construction of the building. It is, therefore, clear that the Promoter Respondent, against whom the ED has a case, have no title or any other claim on the land at any point of time during the construction of the project, leading thereby that the ED does not have any locus standi for attaching the land on which this project is erected. As for the sharing of revenue, Clause 33 of the development agreement talks about the sharing of revenue in the ratio of 41:59 in phase 1 and 51:49 in phase II and endorses the claim of the landowners that their agreement envisaged only sharing of revenue and the Promoter Respondent had no claim whatsoever on the land.

72. To determine whether landowners are promoters or should be treated as promoters, we would like to draw on the Notification No. F.1(152)RJ/RERA/LAND/ 2020 /1202 dated 30.6.2020 issued by this Authority under section 37 of the Act, which elaborately brings out the categories of promoters and the role and status of the landowners under RERA. Clauses 6, 7 and 8 of this notification under the heading "directions" state as follows:

73. ***"Directions"***

"6. *Whether a landowner will be named and treated as a promoter will depend on the terms of development agreement executed between the builder and the landowner. The landowner will be* *named and treated as a promoter (as seller-promoter or developer-promoter or as both, as the case may be) when the development agreement, by its intent or expression, discloses any of the following conditions:*

a. The landowner himself has some role as a builder, coloniser, contractor, developer or estate developer in construction or development of the project (with the exception that if the landowner's power of attorney holder acts as a builder, coloniser, contractor, developer or estate developer of the project, in that case such power of attorney holder will be named and treated as a promoter), or

b. The landowner has a share in the area developed for sale in the project, with the intent of marketing or selling it or any part of it before completion of the project; or

c. The landowner, through the development agreement and/or a power of attorney (irrevocable for the term of the development agreement), does not give to the developer-promoter all the powers of sale and conveyance of all the units to be sold, along with proportionate undivided interest in the land in the name and on behalf of the landowner, such that the landowner is required to sign all or any agreements for sale or sale deeds, etc. in respect of all or units of his share so as to bind him to the terms, conditions and covenants thereof; or

d. The landowner proposes to share profit or loss of the project; or

e. It is specifically agreed in the development agreement that the landowner shall be named or treated as a promoter under the Act.

7. *Accordingly, a landowner shall not be named or treated as a promoter of the project if, as per the development agreement, all the following conditions are fulfilled -*

a. The landowner has no role as a developer-promoter; and

b. The landowner does not have a share in the area developed for sale in the project or has such share but not with the intent of marketing or selling it or any part of it before completion of the project; and

c. The landowner, through the development agreement and/or a power of attorney (irrevocable for the term of the development agreement), has given to the developer-promoter all the powers of sale and conveyance of all the units to be sold, along with proportionate undivided interest in the land in the name and on behalf of the landowner, such that the landowner is not required to sign any agreement for sale or sale deed, etc. in respect of any units in the project, and

d. The landowner does not have a share in profit or loss of the project.

8. When a landowner is named or treated as a promoter, he will be jointly liable for the functions and responsibilities of promoter provided under the Act, but his liabilities under the Act will be limited to the extent of his functions and responsibilities under the development agreement. That is to say that when a landowner is named or treated as a promoter, he will be fully liable for the functions and responsibilities he is liable to discharge under the development agreement, but not for any other functions and responsibilities of promoter provided under the Act. For example, if, under the development agreement, the landowner is responsible for providing and maintaining a clear and marketable title over the project land and to keep it free from any defects and disputes at all times, he would be wholly liable for any title defect or dispute and consequent claim for compensation under section 18(2) of the Act. On the other hand, if, under the development agreement, the landowner is not responsible for construction of the project, he would not be liable for any construction defect and consequent claim for rectification of such defect or compensation under section 14(3) of the Act. And, when the landowner is not responsible, under the development agreement, for construction of the project, he would also not be liable for a delay in construction of the project and consequent claim for refund, interest or compensation under section 18(1) of the Act or for completing the project in the event of project getting stalled or its registration getting lapsed or revoked under section 7 and section 8 of the Act."

74. In the present case, the landowner has no role as a builder, colonizer, contractor or developer of the project and the entire responsibility of the construction of the project is that of the Promoter Respondent. In the development agreement signed between the landowners and Promoter Respondent, there is no clause regarding sharing of profit or loss in the project and the landowners have not been named or treated as a 'promoter' anywhere. In Clause 30 of the development agreement, there is a provision of an option for some flats to be reserved to be sold by the landowners, the sale and marketing of all other flats being the responsibility of the Promoter Respondent and in case the landowners do not exercise this option of selling the reserved flats themselves, the reserved flats would also be sold by the Promoter Respondent only. However, the landowners have not exercised the option given in clause 30 and have not sold any flat so far. In any case, clause 8 of the above-mentioned

notification by the Authority states clearly that even if a landowner is treated as promoter, his liability under the Act will be limited to the extent of its functions and responsibilities under the development agreement. He will be fully liable for the functions and responsibilities he is liable to discharge under the development agreement and for no other functions or responsibilities of promoter. Under the present development agreement signed between the landowners and the Promoter Respondent, the landowners are responsible for providing and maintaining a clear and marketable title free of all encumbrances, defects or disputes at all times, he would be wholly liable for any title defect or dispute and consequent claim for compensation if any. ED has also admitted in their written statement that the onus of entire construction work was put on the Promoter Respondent. According to Clause 8 of the above mentioned notification, the landowners in that case could not be held liable for any construction defect and consequent claim for rectification of such defect or compensation or for completing the Project in the event of project getting stalled or its registration getting lapsed or revoked under Section 7 and 8 of the Act. Moreover, the landowners have not made any default in discharging their liability as envisaged in the development agreement, and have provided clear, marketable title free of all encumbrances defects and disputes, it would be wrong to term him as 'promoter' or treat him like one.

75. Further, as for the argument of the ED that the land in question is liable to be attached by them, we would like to go to their statement mentioned in their written submissions that movable and immovable properties around Rs. 1,489 Crores have been attached provisionally by them under Section 5 of the PMLA-2002 and several constructed and under construction projects having trail of tainted funds from ACCSL fraud have also been provisionally attached by them and that

this attachment has been confirmed by the learned Adjudicating Authority, PMLA, New Delhi vide its order dated 31.3.2020. These attachments have been done as a result of investigation by the EDand such provisional attachments leading to subsequent confiscation of unsold stocks of constructed or under construction projects isessential to prohibit the accused from acquiring money from gullible investors or purchasers. We fail to understand that if ED was so convinced about this project in question too being liable to be attached on various grounds argued by ED in the case before us, why was this property not included in the list of under construction properties for provisional attachment or why was it not proposed to the Learned Adjudicating Authority, PMLA for attachment. Clearly when other properties worth Rs.1489 Cr were attached by ED, the project in question did not pass necessary or sufficient conditions for provisional attachment and so was not attached along with the other properties attached by ED and subsequently confirmed by the learned Adjudicating Authority, PMLA. The investigations against the accused and Promoter Respondent by SOG / ED are now going on for the last three years and they have not been able to find sufficient grounds to attach this property even though they have attached other properties worth Rs.1489 cr and have gotten confirmed from the learned adjudicating Authority, PMLA. Hence we do not find the argument of the ED about this project being liable to be attached credible enough.

76. The Enforcement Directorate has also contended that the Prevention of Money Laundering Act, 2002 is a Special Law and that section 71 of the Prevention of Money Laundering Act, 2002 states that it shall have an overriding effect notwithstanding anything inconsistent therewith contained in any other law. For ready reference, section 71 of the Prevention of Money Laundering Act, 2002 is reproduced hereunder:

Section 71. Act to have overriding effect

> *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

77. In reply to this, the Complainant Association has argued that the Real Estate (Regulation and Development) Act, 2016 is also a Special Law and an Act enacted later than the Prevention of Money Laundering Act, 2002 and, therefore, has an overriding effect over the Prevention of Money Laundering Act, 2002 itself. They further stated section 89 of the Act in support of their claim that the Real Estate (Regulation and Development) Act, 2016 has an overriding effect. Section 89 of the Act reads as under:

> *89. The provisions of this Act shall have effect, notwithstanding anything consistent therewith contained in any other law for the time being in force.*

In such a situation, where both the Special Laws have similar non-obstante provisions, we looked for cogent judgments passed in this regard by the higher Courts.

78. In the judgment dated 07.02.2001 passed by the Hon'ble Supreme Court in the case of Solidaire India Ltd. Vs. Fairgrowth Financial Services, as stated in para 13 of the judgment it is clear that both these Acts are Special Acts, the relevant portion of para 13 of the said judgment, is reproduced hereunder:

> *"It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows: Maharashtra Tubes Ltd. V. State Industrial & Investment Corporation of Maharashtra Ltd. and Anr., (1993) 2 SCC 144; Sarwan Singh &Anr. V. Kasturi Lal, (1977) 2 SCR 421; Allahabad Bank V. Canara Bank &Anr., (2000) 4 SCC 406 and Shri Ram Narain V. The Simla Banking Industrial Co. Limited, (1956) SCR 603"*

Since the Real Estate (Regulation and Development) Act, 2016 is a later Act, this shall prevail.

Rajasthan Real Estate Regulatory Authority, Jaipur (RERA)

80. Similarly, the Hon'ble High Court Kerala in the case No. W.P. © No. 23476 of 2005 decided on 12.01.2006 - Suresh Babu Vs. Assistant Superintendent of Police, has referred to another judgment in the case of Bhoruka Steel Ltd. Vs. Fairgrowth Financial Services

Ltd. and agreed with the decision reproduced hereunder:

> *"Where there are two special statutes which contain non-obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the legislature was aware of the earlier legislation and its non-obstante clause. If the legislature still confers the later enactment with a non-obstante clause it means that the legislature wanted that enactment to prevail. If the legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply."*

81. With these two judgments on record, there does not remain an iota of doubt in our mind that in the case of two Special Acts containing similar non-obstante clauses, it is the later Act which shall prevail in this case. This distinction, in the present case, goes to the Real Estate (Regulation and Development) Act, 2016 and we have no hesitation in concluding that the arguments of the Enforcement Directorate regarding overriding effect of the Prevention of Money Laundering Act, 2002 over the Real Estate (Regulation and Development) Act, 2016, does not measure up to the

judgments given by the higher Courts and the Apex Court itself and so is liable to be rejected.

82. The Enforcement Directorate has also raised the argument that section 41 of the Prevention of Money Laundering Act, 2002, bars the jurisdiction of the CivilCourt to entertain any suit or proceeding in respect of any matter and under this Act no injunction shall be granted by any Court or other Authority in respect of any action taken under this Act. The legal representative of the Enforcement Directorate was specifically asked during the course of oral arguments if they considered this Authority a Civil Court, to which the legal representative had no reply and stated that he was not sure of it and that he would have to check about this. That this Authority is not a Civil Court, is established by the fact that the Real Estate (Regulation and Development) Act, 2016 itself has a similar provision in section 79, which bars the jurisdiction of the Civil Court to entertain any suit or proceeding in respect

of any matter which the Authority is empowered under this Act to determine and no injunction shall be granted by any Court in respect of any action taken under this Act. Section 35 of the Act specifically gives certain limited powers vested in a Civil Courts under the Code of Civil Procedure, 1908 in certain specific matters. This law is, therefore, a Special Law in itself and this Authority cannot be considered a Civil Court as contended by the Enforcement Directorate and to that extent,section 41 of the PMLA- 2002 barring the jurisdiction of Civil Court in respect of any matter under this Act does not apply here.

Rajasthan Real Estate Regulatory Authority, Jaipur • (RERA) •

83. This Bench has noted that this Authority has ruled in its Order dt. 19.06.2019 and subsequently dt. 16.01.2020 in another Complaint No. Raj – RERA – C- 2018-2123 filed by another allottee, Raman paliwal and Rama Parwal against the same Promoter Respondent in the same project and in a similar matter. The Authority, in that Order, had directed the Promoter Respondent to refund the entire amount along

with interest and subsequently upon non-compliance of this order, a further financial penalty was imposed in a subsequent Order dt. 16.01.2020 and the case was forwarded to District Collector, Jaipur for recovery of the ordered amount as arrears of land revenue under section 63 of the Act. In the same order, the registration of the Promoter Respondent for the project 'Hyde Park' was revoked with all consequences provided in Section 7(4) and Section 8 of the Act. The Registrar of the Authority was also directed to issue intimation of this revocation of registration in Form D prescribed under the Rules and to initiate all necessary action pursuant thereto, in accordance with Section 7(4) and Section 8 of the Act. Section 7 of the Act empowers this Authority to revoke the registration granted to a promoter of a real estate project under Section 5 of the Act. Section 7(4) and Section 8 of the Act merit detailed examination here. For the purpose of ready reference, the two sections are reproduced below.

Section 7(4)

"The Authority, upon the revocation of the registration, -

a. Shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

b. Shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

c. Shall direct the bank holding the project bank account, specified under sub clause (D) of clause (l) of sub section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

d. may , to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary"

Section 8

"Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works"

84. Now that registration of the project 'Hyde Park' - the subject matter of this case - stands revoked by the order of this Authority dated 16.1.2020, section 7(4) and actions thereto necessarily follow. Section 7(4) (a), (b) and (c) are mandatory in nature as is evident from the mere text of these clauses. They cast specific obligations upon the Authority like debarring the promoter from accessing his website in relation to that project, directing the banks to freeze the project bank account and most important of all from the point of view of this case, facilitating the remaining development work to be carried out in accordance with the provisions of Section 8. Upon cancellation of registration, the provisions of section 7(4) makes it incumbent upon this Authority to facilitate the carrying out of the remaining development works and complete the project so as to protect the rights and interests of home buyers. The manner of carrying out the remaining development works has been provided in Section 8 whereby the

Authority has been given the powers to determine the best way to complete the remaining development works through a competent Authority or Association of allottees or in any other manner as deemed fit by the Authority. A proviso to Section 8 gives the first right of refusal to the Association of allottees for carrying out the remaining development works. This second proviso to Section 8 makes it amply clear that there is no choice left with the Authority than to get the project completed in favour of the allottees through Association of allottees in case they apply for the same.

Rajasthan Real Estate Regulatory Authority, Jaipur • (RERA) •

85. Once again, with the purpose of drawing precious wisdom from the judgments passed by other RERA Authorities, Hon'ble High Courts and the Hon'ble Apex Court, we fall back on such judgments passed in cases of similar circumstances.

86. RERA Maharashtra in three complaints No. CC 005000000054153, CC005000000022316, and CC005 00000022746 against the same respondent, Arush

Associates, passed a common order on 12th November 2020 whereby it revoked the registration of the project, froze the bank account of the respondent and handed over the project to the Association of allottees who was directed to complete the remaining development work in consultation with the project architect and was authorized to open a separate bank account for the remaining project work and making the Association of allottees, a legal entity like a registered cooperative society.

87. Bombay High Court in their order in the case Swapnil promoters and developers Versus Union of India and others passed an order on 6th December 2017 and in para 8 of the judgment held that

> *"Wide powers are conferred on the authority under section 7 (4) to issue such directions as it may deem necessary in larger public interest. Therefore, considering the object and scheme of the RERA, we find that a harmonious construction would advance the purpose of*

enactment of the os-wp-2737-17 &ors - RERA-JT.doc RERA and would protect public interest and interest of the promoter and the allottee, both".

88. Discussing the provisions of Section 8, the learned Bench of the Bombay High Court went on to say that

"the provisions of section 8 refer to obligation of authority consequent upon lapse of or on revocation of registration. Under these two contingencies, the authority is required to take necessary steps. It is conferred with wide powers under the RERA. The authority has to hear the parties before taking action. Under the second proviso to section 8, it is prescribed that in case of revocation of registration of a project, the association of allottees shall have the first right of refusal for carrying out the remaining development work. It was submitted on behalf of the petitioners that there is no choice left with the authority than to hand over os-wp-2737-17 &ors- RERA-JT.doc the project for its completion in favour of the allottees in case they apply for the same. We find that again it requires a harmonious and balanced construction of the provisions of Section 8 read with other provisions of RERA because

it would do harm in case individual provision of this nature and their clauses are considered in isolation and by separating them from one to another. As a scheme, we will have to understand and appreciate provisions of this beneficial legislation. Even if under second proviso to Section 8, the association of allottees may deserve first consideration, but under the wide powers conferred under Sections 7(3), 8 and 37 of the RERA, the authority could mould its directions in such a way so that the object and purpose of this Act, i.e., to complete the development work within the stipulated time frame is achieved".

89. Likewise, the Apex court in a case involving several writ petitions - Bikram chatterjee and others versus Union of India and others decided on 23.07.2019 dealt with Section 7(4) and Section 8 of the Act holding the interests of the home buyers as paramount.

"111. It is clear that RERA intends for completion of the project in case any fraud is committed by the promoter and the activity is not completed, the home-buyers cannot be left in lurch, allowing the prayer on behalf of Bankers

as well as by the Authorities would amount to unfair treatment of home-buyers in the facts of this case. It is too late for them to submit that home-buyers have no rights in the teeth of the provisions contained in the RERA, which intends to prevent fraud.

112. Once registration lapses on non-completion of project within the time stipulated or it is revoked, the consequence ensue as enumerated in section 8 of the RERA, the Authority is enjoined upon the duty to consult with the appropriate Government to take such action as it may deem including the carrying out of the remaining development works by the competent authority or by the association of allottees or any other manner as may be determined by the Authority. The development work has to be completed and cannot be left in between".

Restricting the Noida and Greater Noida authorities and the banks from selling the buildings or demolishing them in order to recover their money, they stated further,

" 153. We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by home

buyers as money of home buyers has been diverted due to the inaction of officials of Noida/Greater Noida authorities. They cannot sell the buildings or demolish them nor can enforce the charge against home-buyers/leased land/projects in the facts of the case. Similarly, the banks cannot recover money from projects as it has not been invested in the projects. Home-buyers money has been diverted fraudulently, thus, fraud cannot be perpetuated against them by selling the flats and depriving them of hard-earned money and savings of their entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Noida and Greater Noida authorities have to issue the completion/part completion certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part completion or completion of the buildings, as the case may be, or where the inhabitants are residing, within a period of one month."

and after these observations, the Apex Court ordered cancellation of the registration of the project being promoted by the promoter, appointed another promoter builder to complete the projects and handover the possession to the buyers , even fixed the percentage of Commission of the new promoter builder, directed the home buyers to deposit the outstanding amount under the agreement in a new bank account and directed the enforcement Directorate and concerned authorities to investigate and fix liability on persons responsible for such violation and submit the progress report in the Court.

90. With such clear judgments on the matter from the Hon'ble High Court of Bombay and Hon'ble Supreme Court , we see no reason why the order of this Authority dated 16.1.2020 revoking the registration of the project with all consequences provided in section 7(4) and Section 8 of the Act should not be further followed up to complete the project in accordance with the provisions of Section 8 of the Act. There are striking similarities between this case and the citation from the Apex Court

in the case of Bikram Chatterjee (supra). The allegations of fraud in that case were levelled against the promoter and the 3rd parties (Noida/Greater Noida authorities and the banks in that case) were seeking to recover their money/dues from the sale of apartments which was not allowed by the Apex Court. The matter, at hand, has similar circumstances where serious allegations of fraud and money laundering have been levelled against the Promoter Respondent and a 3rd party - in this case the ED – is seeking to recover the alleged proceeds of crime from this project. The Apex Court held the interests of allottees of paramount importance and endorsed the invoking of Section 8 of the Act to protect the interests of the home buyers.

91. In line with the observations of the Apex Court, this Authority in its Order dt. 16.01.20 had, in effect, already made up its mind to facilitate the remaining development work to be carried out in accordance with the provisions of Section 8 and protect the interest of

the allottees. Given the enormity of the interests of 150 odd allottees who have formed an Association and represented before this authority for an action that has already been ordered by this Authority, we feel no hesitation in taking the order given by this authority on 16.01.2020, to its logical conclusion. Under the circumstances, it is apt to infer that the legislative intent was to cast duty and obligation upon RERA to complete any project which has been abandoned or left incomplete by the promoter for whatever reason and it is the solemn duty of RERA who has wide powers under section 7(4) and Section 8 of the Act to pass such directions or orders as the circumstances of the individual case may require to achieve the paramount objective of completion of the project in the best interest of home buyers.

92. To sum up, we conclude that the Real Estate Regulation and Development Act, 2016 is a Special Act specially enacted for protecting the interests of home

buyers and from which alone they can seek justice when they find their hard-earned money compromised by unscrupulous real estate promoters. There is no other efficacious remedy available with them and they cannot be denied their right to get the project completed and their homes made available to them. The suggestion of ED to the allottees to approach the learned Adjudicating Authority PMLA to get this property released under section 8(8) of PMLA Act, 2002 is not tenable as the provision suggested by them is only after attachment followed by subsequent confiscation of the property which is not the case in the present matter. The property in question has neither been attached - even provisionally, nor has been proposed to the learned Adjudicating Authority PMLA for attachment. Further, when the allottees have an Authority specially constituted for protecting their genuine interests we see no reason why they should go to any other Authority.

93. We believe the scheme proposed jointly by the Complainant Association and the landowners is the only win-win and reasonable method through which not only the interests of the allottees could be protected but the Enforcement Directorate will also be in a position to retrieve the money which they claim, has been invested in this project as proceeds of crime committed by the Promoter Respondent and would cause a loss of public money. The scheme provides a solution to accommodate the interest of all the existing allottees who have paid roughly half of the total sale consideration of the flats allotted to them by the Promoter Respondent and are ready to pay the remaining half if a genuine new promoter with due supervision from a project management consultant and themselves is able to complete the project and give the possession of the flats to them. We notice that the scheme provides for revision of Phase I which envisages construction of 265 flats of which 150 would

Rajasthan Real Estate Regulatory Authority, Jaipur (RERA) be allotted to the existing allottees while the remaining flats could be disposed of by the new promoter/landowner and the sale proceeds of these flats could be used to meet the reasonable claim of the Enforcement Directorate which they have made out against the accused Promoter Respondent. The sale proceeds of the balance number of flats could be kept in an escrow account on which, after meeting the cost of construction of the balance work to complete the revised phase 1 in all respects, the first charge could be that of the Enforcement Directorate and only after meeting the reasonable claim of ED is met, the landowners would be able to utilise the balance amount of money.

94. The proposed scheme appears to be the only transparent mechanism for collection and utilisation of funds in the project to protect the interest of the allottees as well as that of the Enforcement Directorate. If the project is compromised in any manner at this

stage, either through the attachment by the Enforcement Directorate or by the inaction of this Authority by not invoking the provisions of section 8 of the Act and so not enabling the project to be completed, the project would be jeopardized irreversibly for a long time to come since the present state of construction is bound to deteriorate with time and the valuation of the project will necessarily depreciate if the project is not allowed to be completed in any reasonable amount of time. That would not only adversely affect the interests of the allottees and cause an irreparable loss to the allottees / homebuyers, but the Enforcement Directorate will also not be able to retrieve any money claimed by them as invested in this project from the proceeds of crime committed by the Promoter Respondent and would certainly cause loss of public money.

95. This court is conscious of the complexities and sensitivities of this case. On one hand, the concern is about a multi crore scam perpetrated by a group of individuals who

are alleged to have diverted huge amount of money collected from thousands and thousands of small time investors while on the other, there are hundreds of gullible and innocent home buyers who were taken in by the grandiose promises of the Promoter Respondent and deposited their hard earned money, in many cases, their retirement savings, to fulfil their dream of having a home of their own and then getting duped in the process. The order that has been laid down here is with the conviction that the public money that is alleged to have been swindled in the financial scam must be secured to the investigating agencies, at the same time the interest of the innocent home buyers is protected as well. In this endeavour, we are convinced that this is the only win-win solution which would take care of the interests of all the stakeholders, namely the members of the Complainant Association, the Landowners and most important of all, the ED who are conducting the solemn duty of safeguarding the public money allegedly laundered by the Promoter Respondent.

96. We are also guided by the preamble to this Act which states that this Authority has been established for regulation and promotion of the real estate sector and to ensure the sale of real estate projects in an efficient and transparent manner and most importantly to protect the interest of the consumer in the real estate sector.The three broad objectives of the Act being regulation and promotion of the real estate sector, protection of interests of the consumer in the real estate sector and providing a speed dispute redressal mechanism, this Act has been received by the people with much hope and a sense of delayed justice against the unscrupulous builders and promoters and has given hope to many frustrated consumers, who have been made to beg, plead, fight or litigate for years before they have finally been given the possession of the promised homes. In order to meet the objectives of this Act and replenish the faith of the buyers in the real estate sector, it is not only the solemn duty but is also enjoined upon this

Authority to protect and preserve the paramount and genuine interests of bonafide homebuyers.

97. With this view in mind, resultant of the arguments that have been discussed in detail in the above paragraphs, we in exercise of the powers conferred under section 6, 7, 8,34, 36, 37 and 38 of the Act, order as follows:

1. The registration of the project bearing registration No. RAJ/P/2018/604 shall remain revoked as ordered by this Authority in its order dated 16.01.2020;

2. The development agreement signed between the Promoter Respondent and the landowners having become incapable of being executed or acted upon by the Promoter Respondent on account of the Promoter Respondent facing serious multi-crore money laundering charges and being investigated by the Enforcement Directorate, is terminated;

3. The Promoter Respondent is declared defaulter in terms of Section 7 (4) (a) of the Act and is barred from

accessing its website in relation to this project. The Registrar of the Authority is directed to display his photograph on the website as a defaulter and inform other Real Estate Regulatory Authorities in other States about the revocation of registration of this project.

4. The registration of the project bearing Registration No. RAJ/P/2018/604 is extended for a period of one year from the date of the order of such extension subject to the new promoter completing the formalities for extension. Any further extension will be considered by this Authority subject to the satisfactory progress in the completion of the project.

5. The scheme as submitted jointly by the Complainant Association and the landowners including the terms and conditions that are binding onall the stakeholders (the new developer, the members of the Complainant Association and the landowners) is accorded approval of this Authority subject to the following additional conditions provided that these

additional conditions shall prevail over any provisions of the Scheme as submitted in case they are inconsistent in any manner with these additional conditions:

(i) That the scheme is sent to the State Government for consultation and approval as required under section 8 of the Act before starting its implementation;

(ii) An escrow bank account is opened in the name of the new Revised Phase I wherein the entire revenue received from the members of the Complainant Association towards the payment of their balance amount would be deposited;

(iii) The revenue received from the sale of unallotted balance number of flats will also be deposited by the new developer /landowners in the escrow bank account only;

(iv) The money from this escrow bank account would be used only and only for the completion of the Revised Phase I, allied amenities and construction of EWS/LIG flats for handing over to the Jaipur Development Authority or for payment of any other taxes, dues or expenses pertaining to the construction;

(v) The construction and expenses from the escrow bank account will be monitored by a Project Management Consultant to be approved by this Authority. The progress of construction and the details of the bank account would be submitted to this Authority on a monthly basis before the 10th day of each month;

(vii) After the completion of the project in all respects, the first charge on the balance amount in the escrow bank account would be that of the Enforcement Directorate, who would be paid their claim as determined in terms of para 69 of this Order.

(viii) The Landowners would be able to partake any amount from this escrow bank account only after the settlement of the reasonable claim of the Enforcement Directorate has been paid off from this account;

(ix) The new developer shall commence the construction of the work immediately within thirty days from the receipt of instalments from the members of the Complainant Association as per the terms of the Scheme and complete the apartments within two years from the start of the work.

(x) The Promoter Respondent or any of his contractor, vendor or agency are restrained from interfering in the progress of the completion of the revised Phase 1 as per the Scheme.

6. The Enforcement Directorate is directed to withdraw their direction given to the Sub Registrar, Jaipur prohibiting the Sub Registrar to register the sale deeds of the apartments in this project and refrain from any interference in the progress of work towards the completion of the Project as per the Scheme.

7. As for the reward to the new developer for the construction work to be completed by him, we do not feel the need of intervention if, as per the Scheme, the landowners and the Complainant Association have agreed to pay 8 percent of the construction cost to the new developer as a reward for the construction.

8. The Jaipur Development Authority is directed to extend the validity of the map approved so as to complete the project in terms of the Scheme submitted to this Authority.

9. Some other punishments and penalties for various violations of provisions of the Act and contravention of the obligations cast upon the promoter are due to be imposed on the Promoter Respondent. We deem it fit to defer them in view of the Promoter Respondent being behind the bars and no substantial purpose will be served if penalties are imposed upon the Promoter Respondent in such circumstances.

98. The complaint is disposed of in terms of above directions.

(SHAILENDRA AGARWAL)
MEMBER