

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Date of Decision: February 21, 2025**

**1 Appeal No. 373 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

...Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

...Respondent

**2 Appeal No.343 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Chirau Propbuild Private Limited, registered office at A-27, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**3 Appeal No.344 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Zack Estates Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**4 Appeal No.345 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Chirau Propbuild Private Limited, registered office at A-27, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

...Respondent

### **5 Appeal No.346 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Chirau Propbuild Private Limited, registered office at A-27, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

### **6 Appeal No.347 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Zack Estates Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

### **7 Appeal No.351 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar

Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Chirau Propbuild Private Limited, registered office at A-27, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

### **8 Appeal No.352 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Blossom Conbuild Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

### **9 Appeal No.353 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Blossom Conbuild Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

### **10 Appeal No.354 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Blossom Conbuild Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**11 Appeal No.355 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**12 Appeal No.356 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Chirau Propbuild Private Limited, registered office at A-27, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**13 Appeal No.357 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**14 Appeal No.358 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**15 Appeal No.359 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**16 Appeal No.361 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**17 Appeal No.362 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District

Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**18Appeal No.363 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**19Appeal No.364 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**20Appeal No.365 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**21 Appeal No.366 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystems Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**22 Appeal No.367 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**23 Appeal No.368 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**24 Appeal No.369 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

PS Technosystem Private Limited, registered office at A-27, MCIE, Mathura Road, New Delhi-110017, India through its Authorized Signatory Mr. Sunil Yadav C/o MGF Developments Limited.

Respondent

**25 Appeal No.370 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**26 Appeal No.372 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**27 Appeal No.374 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar



Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**28 Appeal No.375 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**29 Appeal No.376 of 2022**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Initia Solutions Private Limited registered office at A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

**30 Appeal No.171 of 2024**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

M/s Padampur Nirman Pvt. Ltd., registered office at A-27, MCIE, Mathura Road, New Delhi-110017

Respondent

**31 Appeal No.172 of 2024**

EMAAR India Limited (Formerly known as Emaar MGF Land Limited) Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017. Corporate Office: Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

M/s Padampur Nirman Pvt. Ltd., registered office at A-27, MCIE, Mathura Road, New Delhi-110017

Respondent

Argued by: Mr. Kunal Dawar, Advocate with  
Mr. Vipul Sharma, Ms. Tanika Goyal,  
Mr. Varun Thapa, Ms. Sukriti Rai, Advocates  
For the appellant.

Mr. Akshay Bhan, Senior Advocate assisted by  
Mr. Amandeep Singh Talwar and Mr. Abhijeet  
Singh Rawley, Advocates for the respondent

**CORAM:**

**Justice Rajan Gupta**  
**Rakesh Manocha**

**Chairman**  
**Member (Technical)**  
(joined through VC)

**ORDER:****RAJAN GUPTA, CHAIRMAN**

This order shall dispose of above mentioned appeals, as common questions of law and facts are involved. However, the facts have been extracted from Appeal No. 373 of 2022.

2. In the present case, challenge is posed to the order dated 22.02.2022, passed by the Authority<sup>1</sup>, operative part whereof reads as under:

*“61. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(1):*

<sup>1</sup> Haryana Real Estate Regulatory Authority, Gurugram

- i. The respondent is directed to offer possession of the subject unit to the complainant within 1 month from the date of this order and thereafter, the complainant shall take possession of the subject unit within 2 months from the date of this order after paying the outstanding dues.*
- ii. The respondent is further directed to pay interest at the prescribed rate i.e. simple interest at the rate of 9.30% per annum for every month of delay on the amount paid by the complainant w.e.f. the due date of handing over possession as per the buyer's agreement i.e. 05.02.2016 till the date of handing over of the actual physical possession of the unit or up to two months from the valid written offer of possession if possession is not taken by the complainant, whichever is earlier. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.*
- iii. The time period for which the complainant is entitled to delay possession charges and amount on which interest is to be calculated for all the connected complaints are detailed in table given in para 49 of this order. Hence, the delay possession charges in those complaints based the above decision of the authority shall be squarely applicable in all the complaints mentioned in para 3 of this order.*
- iv. The respondent is entitled to the outstanding dues, if any, payable by the complainant. Further, the interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same is being granted to the complainant in case of delayed*

*possession charges as per section 2(za) of the Act.*

- v. The respondent shall set off the outstanding dues upon duly informing the complainant of the same in writing against the delay possession charges which the respondent is liable to pay to the complainant as per the proviso to Section 18(1) of the Act.*
- vi. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainant(s)/ allottee(s) at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nso. 3864-3889/2020 decided on 14.12.2020.*

*62. The decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.*

*63. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decree in individual cases.*

*64. File be consigned to registry."*

3. It appears that 31 complaints were filed before the Authority against Emaar India Ltd. alleging violation of the buyer's agreements executed in respect of the units in question. The Authority proceeded to decide the aforesaid complaints vide three different impugned orders which have been impugned in this bunch of appeals. The complainants alleged violation of the buyer's agreements and demanded delivery of possession of the units and award of DPC<sup>2</sup>.

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<sup>2</sup> Delayed Possession Charges

4. Project-Emerald Plaza in Emerald Hills was floated in Sector 65, Gurugram. The project area is stated to be 3.963 acres, same being commercial in nature. Licence for this project was granted by DTCP in May, 2009 and renewed upto 20.05.2019. Name of the licensee was shown to be Active Promoters Pvt. Ltd. and others C/o Emaar India Land Limited. The project was not registered with RERA Authority. Occupation Certificate for the project was granted on 08.01.2018. It is claimed that buyer's agreement was executed on 05.08.2013. Thereafter, there were nomination letters in favour of certain subsequent purchasers dated 30.12.2015.

5. While deciding the bunch of aforesaid complaints, the Authority extracted facts from Complaint No. 3116 of 2021.

6. For the purpose of deciding these matters, primarily facts from said case are being extracted. As per this complaint, total consideration for the unit was Rs.1,01,74,655/-, out of which the complainant paid Rs.70,15,680/-, due date of delivery being 05.02.2016.

7. The complainant stated in the complaint that one Sikarwar Developers Pvt. Ltd. booked a retail space in Commercial Complex, namely, Emerald Plaza and was allotted a unit measuring 776.9 square meters. It is claimed that Emaar MGF Land Ltd. transferred the said unit on 18.12.2015 in the name of M/s Initia Solutions Pvt. Ltd. (complainant in CR No. 3116 of 2021) after obtaining consent of Sikarwar Developers Pvt. Ltd.. Thus, name of allottee was substituted. In place of Sikarwar Developers Pvt. Ltd., it was entered as M/s Initia Solutions Pvt. Ltd. in the agreement dated 05.08.2013. As

per the complainant, it stepped into the shoes of previous allottee.

8. It is claimed that the promoter-company issued nomination confirmation letter dated 30.12.20215 thereby formally approving the transfer of the said unit in favour of M/s Initia Solutions Pvt. Ltd. (and other entities). Grouse of these entities is that the respondent failed to hand over possession of the units much less execute a conveyance deed in respect thereof. It is further alleged that the respondent failed to register the project under RERA Rules thus, violating the provisions of the Act<sup>3</sup>. Stand of these entities is that the project in question was not registered under the Act even till the date of invoking of jurisdiction of the Authority. It also failed to abide by the terms of retail space buyer's agreement. Initia Solutions thus sought that possession of the unit in question in the project 'Emerald Plaza' be handed over to it and DPC w.e.f.05.02.2016 till realization be granted. Same prayer was made by other similarly placed entities.

9. The respondent (appellant herein) filed reply stating that the complainant was not a genuine consumer/allottee. All its averments were misleading in nature. The unit in question was allotted to another entity of MGFD i.e. Sikarwar Developers Pvt. Ltd. in August, 2013. Thereafter, it was transferred in the name of M/s Initia Solutions Pvt. Ltd. and other entities in December, 2015. As per it, MGFD exercised control over all its entities. Entire transaction was actually undertaken not between distinct entities but different arms of the same entity

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<sup>3</sup> The Real Estate (Regulation and Development) Act, 2016

i.e. MGF. Thus it was contended that the remedy under the Act was not available to the complainant, it neither being an allottee nor a consumer.

10. Learned counsel for the appellant vehemently argued that the complaint was not maintainable under the Act, firstly because there was no violation of Section 18 of the Act and secondly, the complainant could not claim to be allottee/consumer. It was contended that the complaint was wholly unsustainable and was erroneously entertained by the Authority. Learned counsel also drew attention of this Bench to MOU<sup>4</sup>, stated to have been executed between 'MGF and its associates' and 'respondent and its associates' on 21.08.2017. He took the stand that MOU alone would govern the relationship between contracting companies and not builder's agreement. As per MOU, transfer of the unit was contingent on performance of certain prior obligations by the complainant-entities. The said MOU also contains arbitration clause in case of any dispute between the parties. It was also emphasized that transfer to the entities were made at enormous discounts, some without any consideration. As per him, 39 such allotments were made pursuant to collaboration agreements.

11. Learned counsel further submitted that as per Clause 2 of the MOU, all concerns/claims of MGF entities stood redressed and no issue remained pending. Rest was subject to fulfilment of terms and conditions of MOU. Serious objection was thus raised regarding maintainability of the complaint. It was reiterated that MOU dated 21.08.2017

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<sup>4</sup> Memorandum of Understanding

governed all obligations between the parties and was contingent upon fulfilment of certain conditions including pending payments of MGF D entities.

12. Particular emphasis was laid by learned counsel on the issue that execution of MOU dated 21.08.2017 was not denied by the complainant at any stage. Said MOU required the complainant entities to assign their rights under the initial agreements (including rights over free plots) in favour respondent-entities through execution of additional agreements, deeds and documents (Supplementary Agreements).

13. Learned counsel emphasized that till execution of Supplementary Agreements, as envisaged by MOU, transfer of the units in question was to be kept in abeyance; MOU having superseded the buyer's agreement.

14. Learned counsel referred to the term 'arm's length basis' contained in Section 188 of the Companies Act, 2013 to contend that transfers by MGF D in favour of its entities were unsustainable.

15. We have heard learned counsel for the parties and given careful thought to the respective submissions. We have also examined the record with their assistance.

16. It appears that a company, namely, MGF D was a joint venture partner of the appellant. MGF D exercised control as Chairman of MGF D was over-all incharge. Another company, namely, Discovery Holdings Pvt. Ltd. was the associate company of MGF D. In the relevant financial statement, MGF D has shown Discovery Holdings Pvt. Ltd. as a related party.



MGFD continued to exercise control upto the year 2016. During this period, MGFD transferred 39 units (in question) in the name of Sikarwar Developers Pvt. Ltd. either for no consideration or at a consideration far below the prevailing price. Surprisingly, in two transactions with Padampur Nirman Pvt. Ltd., the basic price was Re.1/-, Preferential Location Charges and booking amount being Re.1/- each.

17. The basic question this Bench is faced with is whether jurisdiction of the Authority under the Act has been rightly invoked. At the outset, it will be pertinent to refer to the following Objects and Reasons for enactment of this legislation:

*“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereof.”*

18. A perusal of the above shows that enactment was made to ensure sale of plots, apartments and buildings in an efficient and transparent manner and to protect the interests of consumers in the real estate sector and to establish an adjudicatory mechanism for the purpose. The record as well as the facts of the instant case show that for allotments in question neither any brochure was issued nor any competitive

process was followed. It is not a case where general public was made aware of the proposed allotments and was allowed to participate in it. The transactions appear to be selective contracts between MGF and the complainant. The transactions were also without any justifiable consideration. Serious doubts would thus arise about the legality of such contracts which were either bereft of any consideration or much below the prevailing price. If the veil is lifted, it transpires that such allotments were made when the parent company was on the verge of split which actually happened in 2018. A question would thus arise whether such transactions were transparent and protected the interest of the consumers, the answer necessarily has to be in the negative.

19. There is nothing on record to show that any transparent process was followed and that the allottee-companies fall within the term 'consumer'. Each transaction was inter-se between the contracting parties without any outside participation. The regulatory mechanism envisaged by the Act would not be attracted as the transfers are based primarily on an agreement entered between the parties in the year 2013, stated to have been superseded by nomination/transfer letter dated 30.12.2015 in favour of respondent entities.

20. As regards MOU, same incorporates an arbitration clause therein. It appears that parties to MOU were aware that in case of dispute, they needed to have an efficacious remedy. It is not clear whether the parties ever explored the possibility of invoking arbitration clause. Two allotments were made in

favour of Padampur Nirman Pvt. Ltd. at Rs.1/- consideration, even payment of which is doubtful. There is nothing on record to show that any price was charged for these transfers rendering the transactions without any consideration. There can be no hesitation in holding that possibility of such transactions being dubious cannot be ruled out. It is inexplicable how transfers of such valuable units was made practically without any consideration. In case, it was a commercial transaction between two parties, it is expected that the same would be for some justifiable consideration. In the absence of same, it has to be held that such deals lack transparency and are not out of the realm of suspicion. Besides, entire dispute appears to be between promoters who after split started this proxy litigation. They embroiled the regulatory mechanism ('the Authority') in a dispute over which it had no jurisdiction.

21. The question whether the complaint was within the purview of the Act was raised before the Authority as well but was not dealt with. The Authority only observed that it was a dispute between promoter and an allottee. It is relevant here to refer to Joint Venture Agreement which contained a specific clause 7.1.19 binding the parties in following terms:

*“7.1.19. Enter into any contract, which is not on arm’s-length basis and not on normal commercial terms”.*

The term “an arm’s-length basis’ is defined in explanation (b) of Section 188 of the Companies Act. The aforesaid provision has been relied upon by the appellant to contend that transactions between MGF D and other entities

were to be conducted in a way that they were not related in any manner. The transaction was meant to be transparent, fair and reasonable; i.e. at 'an arm's-length' as defined in explanation (b) of Section 188 of the Companies Act, 2013. However, in the given facts and circumstances, the transaction appears to be hit by Section 188 of the Companies Act, 2013. In case there were internal fissures between parent company at the time transfers in question were made, none except the contracting parties would be aware of such transactions which originally took place in 2013 followed by transfer/nomination in favour of the present complainant(s) in the year 2015 by Sikarwar Developers Pvt. Ltd.

22. Though there is nothing to show that transactions were carried out in a transparent manner, this Tribunal does not intend to express any final opinion on their validity as they do not fall within the ambit of the Act. The complainant, being entity of MGFD, cannot be treated as 'allottee'. Co-promoters invoked jurisdiction of the Authority through its entities after de-merger took place in the year 2018. Thereafter, two companies came into being Emaar India Limited and MGFD. It is inexplicable as to how such a dispute can be said to be a dispute between consumer and promoter.

23. Besides, there appears to be substance in the plea of the appellant that the contract, which is not on 'arm's-length basis' and not on normal commercial terms is not sustainable. However, this Tribunal refrains from expressing any final opinion on this issue as well, as it is not directly seized thereof. This apart, regulatory mechanism enacted by the Act is meant

only to deal with the disputes between the allottee/consumers and the promoters who fall strictly within the purview of the enactment; which is not the situation in the instant case.

24. Stand was also taken before this Bench, which is reflected from para 8(v) of the order passed by the Authority that the project in question was never registered with RERA Authority. There is nothing on record to show that any steps were ever taken to get the project registered. In this context judgment reported as M/s Devinarayan Housing & Property Developments Private Limited represented by Managing Director, Chennai and others v. Manu Karan and others, 2023 Supreme (Mad.) 3046 needs to be referred to, relevant paragraphs whereof read as under:

*“11.4 Thus, if we read the definition of the word ‘promoters’, as defined under RERA along with the ‘functions of the promoters’ as reflected in Section 11, it is clear that the provisions of Sections 12, 14, 18 and 19 of the RERA are dealt with only with regard to the registered real estate project and it would not apply to the unregistered real estate project, because the functions of the promoters, as narrated in Section 11 of the Act is only with reference to the registered real estate project. Therefore, this Court holds that the word ‘promoter’ used in all these Sections has to be read only with reference to the provisions and scope of the Act and cannot be given any extended meaning beyond the scope of the Act, as rightly contended by the learned counsel for the appellants.*

*11.5 For all these reasons, this Court holds that Authorities, Adjudicating Officer and Regulatory RERA referred to in the Act are entitled to deal with the issue regarding the registered real estate project alone. As far as unregistered real estate project is*

*concerned, they will not have any control over the same and in case, if any person is aggrieved of the unregistered real estate project, they have to approach either before the Civil Court or consumer forum in accordance with law and not before RERA. Accordingly, the additional Substantial Question of Law (e) is also answered in favour of the appellants and as against the respondents.*

*12. As far as the three other substantial questions of law are concerned, viz. (a) to (c), which were framed at the time of admission of the Appeals, since this Court has decided the additional Substantial Questions of Law (d) and (e) in favour of the appellants, by holding that the appellants' project is not liable to be registered under RERA and the allottees of a unregistered project cannot address their grievances either before the Regulatory Authority or Adjudicating Officer, the necessity to answer the substantial questions of law 'a' to 'c' does not arise, and only in the event that the project of the appellants is held to be registered under the RERA, those substantial questions of law would arise for consideration and the same would be answered in an appropriate case.*

*13. As far as case laws relied upon by the parties, particularly, the decisions rendered by the TNREAT are concerned, in view of the above findings of this Court, it is not necessary to traverse into the case laws, as the same are not applicable to the facts to the present case nor will they have any persuasive effect on the case. As far as other case laws referred by the counsel is concerned, the same would not apply to the present facts of the case.*

*14. In the result, these Civil Miscellaneous Second Appeals are allowed. The judgment passed by the Tamil Nadu Real Estate Appellate TNREAT, Chennai in Appeal Nos. 70 of 2019 and 39 of 2020, dated*

*22.05.2020, are set aside with liberty to the respondents to approach the appropriate forum to adjudicate their grievances, if so advised. No costs. Consequently, connected miscellaneous petitions are closed.”*

25. Special Leave to Appeal (C) Nos. 25976-25977 of 2024 was filed against the aforesaid judgment. It was, however, dismissed vide order dated 04.11.2024.

26. In the instant case, there is no explanation forthcoming why steps were never taken for registration of the project, even after occupation certificate was granted by the competent authority on 08.01.2018. In case the parent company intended to sell the plots by way of competitive process, it would necessarily have applied for registration under the Act. The very fact that it did not do so lends credence to the view that transactions were primarily between two contracting parties which were earlier co-promoters. In case such transactions were to shell companies (transferee) which were not entirely unrelated to the transferor company, serious doubts would arise whether such transfers were valid or sham. No opinion, however, is being expressed on this issue as the dispute is outside the purview of the Act.

27. Consequently, the appeals are allowed and complaints are dismissed.

28. Files be consigned to the record.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)  
(Joined through VC)

February 21, 2025/mk