



2025:DHC:6209-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 23.07.2025

Judgment pronounced on: 30.07.2025

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RERA APPEAL 5/2025, CM APPL. 43563/2025, CM APPL. 43564/2025, CM APPL. 43565/2025

SANSADIYA ADHIKARI WELFARE SOCIETY (SAWS)
THROUGH PRESIDENTAppellant

Through: Ms. Rekha Aggarwal, Ms. Hiteshi Kakkar, Mr. Amrit Singh K. and Mr. Aayush, Advocates.

versus

UTPAL KUMAR TRIPATHI & ORSRespondents

Through: Mr. Kunwar Chandresh, Ms. Poonam Prasad, Mr. Munis Nasir and Mr. Divyansh Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal filed under Section 58 of the Real Estate (Regulation & Development) Act, 2016 [hereinafter referred to as “the Act”], the Appellant assails the correctness of order passed on 07.02.2025 by the Ld. Real Estate Regulatory Authority Appellate Tribunal (RERA Appellate Tribunal), NCT of Delhi and UT of Chandigarh, New Delhi whereby an Appeal on account of failure to pre-deposit the decretal amount, as ordered by the Real Estate



Regulatory Authority as mandated under Section 43(5) of the Act, was dismissed.

2. The Constitutional validity of Section 43(5) of the Act has been upheld by the Hon'ble Supreme Court *vide* judgment dated 11.11.2021 passed in Civil Appeal Nos. 6745-6749 of 2021 captioned as ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors etc.***

3. Learned counsel representing the Appellant while submitting that the Appellant is not a 'promoter' as defined in the Act, has made the following submissions:

- i. Appellant is a welfare society registered under the Societies Registration Act, 1860; and
- ii. Appellant has neither carved out the plots nor got the buildings constructed.

4. Before analysing the arguments, it is necessary to note brief and relevant facts. As per the case of the Appellant, the Society was established to provide cost effective housing for Lok Sabha Secretariat officials.

5. In 2013, the Respondent Nos. 1, 2 and 3 became members of the Society by paying a fee of Rs. 5,000/- (Rupees Five Thousand only). Subsequently, each of the Respondent paid Rs.12,40,250/- (Rupees Twelve Lakh Forty Thousand Two Hundred and Fifty Only) which was utilized by the Society to purchase land admeasuring 85 Bigha 3 Biswa in village Khera Kalan, located in P-1 Zone.



6. Thereafter, on account of reduction of Floor Area Ratio (FAR), under revised Land Pooling Policy, from 400 to 200 by the Delhi Development Authority (DDA), the Society *vide* Circular No. SAWS/2/2018 dated 16.11.2018 requested its members to provide their inputs.

7. On 31.01.2019 *vide* Circular No. SAWS/1/2019, the Society offered its members the option to withdraw.

8. Subsequently, the Society on 15.12.2021 expressed its interest in participating in DDA's Land Pooling Policy, 2018 by submitting details on the official portal, however, no progress was evident as the houses/ apartments were never constructed.

9. The Respondents who are members of the Society filed a complaint with Real Estate Regulatory Authority (RERA) seeking a refund with 18% interest which was allowed on 21.11.2023 directing the Society to refund Respondents' contribution with interest at the rate of 10.75% p.a. (MCLR+2%) from the date of payment of each sum until the date of its actual return.

10. In accordance with Memorandum of Association of the Society, the aims and objective of the Society is to acquire land for development and construction of residential houses/ flats for its members at cost price which shall be shared by the members of the Society.

11. The expression 'promoter' has been defined in Section 2(zk) of the Act, the same has been reproduced hereunder:

"promoter means—



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

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

12. It is evident that the definition of the expression ‘promoter’ is expansive and wide particularly, when as many as six different clauses independently/separately include the various categories of person including Companies, Cooperative Housing Society and such authorities of the state.



13. As per Section 2(zk)(i) of the Act, any person who constructs or causes to be constructed an independent building or a building consisting of apartments shall fall within the definition of the word ‘promoter’.

14. Section 2(zk)(iv) provides that Cooperative Housing Societies which constructs buildings or apartments for its members also fall within the definition of ‘promoter’. However, the Appellant claims that being a welfare society, it does not fall in the definition of ‘promoter’.

15. This Court is afraid that there is no substance in the first submission because Cooperative Housing Societies which constructs apartments/buildings for its members fall within definition of the word ‘promoter’.

16. In sub-clauses (i), (ii) and (v) of Section 2 (zk) of the Act, the term ‘person’ is added in a generic and inclusive context. The use of word ‘person’ is not limited to natural persons only, rather it goes to the extent of including artificial or juristic persons as also envisaged under Section 2 (zg) of the Act. The definition of the word ‘person’ as provided in Section 2 (zg) of the Act, is inclusive and not restrictive in nature because it starts with the word includes which reads as under:-

“Person” includes,—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;

(v) a competent authority;



(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;”

17. Under Section 2 (zg)(vi) an association of person or a body of individuals whether incorporated or not is included in the expression ‘person’. Hence, it is amply clear that the word person used under Section 2 (zk) includes not only the category of persons which are enlisted therein, but also an association of persons or a body of individuals as provided under Section 2 (zg). As such while reading the word person under the Act, it shall be kept in mind that it includes body corporates, companies and other legal entities that are capable of bearing rights and duties independently in accordance with the statutory law.

18. Consequently, within the scope of definition provided under the Act, a welfare society is an association of persons, who have joined their hands to provide housing to its member. Hence, the Appellant would fall in the expression ‘promoter’ used in the Act.

19. Registered Society is a “body corporate” as per Section 6 of the Societies Registration Act, 1860. This section enables the Society to sue or be sued in the name of its officials, thereby recognising the inference that the Society operates as a juristic person.

20. Therefore, the Society is a body corporate because only under such circumstances, the Society will be qualified to purchase any land/ property in its name and have the authority to assign or allot such



land/ property further to its members. Once a Co-operative Society has been included under the Act, then the legislative intent behind such inclusion is that if the Society is a non-profit organisation, it will be a ‘promoter’ even if the apartments are being constructed or got constructed exclusively for its members.

21. Similarly, profit making is not the exclusive criteria for a person to fall within the definition of ‘promoter’.

22. In a case of Government Development Authority or a Cooperative Housing Society the element of profit may in a given case be absent, however, that would not exclude the applicability of the provisions of the Act, particularly when the object sought to be achieved under the Act is laudable and to regulate construction of buildings in a timely manner while preventing the abuse of gullible home buyers.

23. With regard to the second submission, a perusal of Memorandum of Association of the Society and Clause 4(i) of the “Aims and Objects” thereof, makes it evident that the Society was established for the purpose of acquiring land for development and construction of residential flats for its members and in furtherance of the same, purchased land.

24. Moreover, sub-clause (i) of Section 2(zk) of the Act provides that an expression ‘promoter’ includes a person who constructs or causes the building(s) to be constructed. Even if the Society has not constructed or got constructed a building, still it will fall within the definition of ‘promoter’ because the objective of acquisition of land



2025:DHC:6209-DB



by the Appellant was/is to construct/provide apartments for its members.

25. Ld. Counsel further submitted that in a connected RERA Appeal No. 13/2024 captioned as *Sansadiya Adhikari Welfare Society Through Secretary v Mayank Srivastav*, the Co-ordinate Bench of this Court, while issuing notice, *vide* its Order dated 06.11.2024, has stayed the operation of the Order by the Real Estate Appellate Tribunal and its execution thereof. This Court has considered the submission but finds no merit therein. Undoubtedly, a notice of motion has been issued in the connected Appeal filed by the Appellant. However, the interim order passed by the Co-ordinate Bench of this Court does not hold any precedential value, particularly since this Bench has opted to finally decide the matter, more precisely, after a thorough examination of the subject issue.

26. In view of the foregoing discussions, the Appeal is dismissed *in limine*.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.

JULY 30, 2025/sg/hr