Supertech Ltd vs Emerald Court Owner Resident Welfare ... on 31 August, 2021

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Bench: D.Y. Chandrachud, M.R. Shah, Hima Kohli

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 5041 of 2021
(Arising out of SLP (C) No. 11959 of 2014)

Supertech Limited ...Appellant

Versus

Emerald Court Owner Resident
Welfare Association & Ors. ...Respondents

With Civil Appeal No. 5042 of 2021 (Arising out of SLP (C) No. 14314 of 2014) With Civil Appeal No. 5043 of 2021 (Arising out of SLP (C) No. 12470 of 2014) With (Arising out of SLP (C) No. 14262 of 2014) With (Arising out of SLP (C) No. 21035 of 2014) With (Arising out of SLP (C) No. 31117 of 2014) (Arising out of SLP (C) No. 12427 of 2015) 16:25:11 IST Reason:

> With (Arising out of SLP (C) No. 12947 of 2015) With (Arising out of SLP (C) No. 12948 of 2015) With Arising out of SLP (C) No. 12191 of 2021 (Diary No. 28571 of 2018) With Contempt Petition (C) No. 380 of 2021 In Special Leave Petition (C) No. 14314 of 2014 With Contempt Petition (C) No. 381 of 2021 In Special Leave Petition (C) No. 14314 of 2014 With Contempt Petition (C) No. 382 of 2021 In Special Leave Petition (C) No. 14314 of 2014 With Contempt Petition (C) No. 383 of 2021 In Special Leave Petition (C) No. 14314 of 2014 And With Contempt Petition (C) No. 384 of 2021 In Special Leave Petition (C) No. 14314 of 2014 JUDGMENT Dr Dhananjaya Y Chandrachud, J INDEX A Factual and procedural history A.1 The appeals A.2 The Emerald Court project A.3 First Revised Plan A.4 Second Revised Plan A.5 Third Revised Plan A.6 Complaints against the Revised Plans A.7 Proceedings before the Allahabad High Court A.8 Proceedings before this Court B Submissions by Counsel C Prefatory observations D Violation of distance requirement under Building Regulations D.1 Violation of NBR 2006 and 2010 D.1.1 Interpretation of “building

blocks" D.1.2 Interpretation of "dead end sides of buildings" D.2 Violation of NBC 2005 D.3 Violation of Fire Safety Norms E Consent of the RWA E.1 Applicability of UP 1975 Act E.2 Applicability of the UP Apartments Act 2010 E.3 Requirement of RWA's Consent F Collusion and Illegal Construction G Conclusion H Interlocutory Applications PART A 1 Leave granted.

A Factual and procedural history

A.1 The appeals

2 These appeals have arisen from a judgment of a Division Bench of the High

Court of Judicature at Allahabad dated 11 April 2014, upon a writ petition 1 instituted by the first respondent, the Residents' Welfare Association 2 of Emerald Court Group Housing Society 3.

3 By its judgment, the High Court directed:

(i) The demolition of Towers -16 4 and 17 5 by the third respondent, New Okhla Industrial Development Authority 6, in Emerald Court situated on Plot No 4, Sector 93A, NOIDA constructed by the appellant, Supertech Limited 7;

(ii) The cost of demolition and removal would be borne by the appellant, failing which NOIDA shall recover it as arrears of land revenue;

(iii) Sanction for prosecution under Section 49 of the Uttar Pradesh Urban Development Act 1973 8, as incorporated by Section 12 of the Uttar Pradesh Industrial Area Development Act 1976 9, shall be granted for the prosecution of the officials of the appellant and the officers of NOIDA for possible Writ Petition (Civil) No 65085 of 2012 "RWA" "Emerald Court" "T-16"/"Ceyane" "T-17"/"Apex" "NOIDA" "Supertech" "UPUD Act 1973" "UPIAD Act 1976" PART A violations of the UPIAD Act 1976 and Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act 2010 10; and

(iv) Refund by the appellant of amounts invested by purchasers who had booked apartments in T-16 and T-17, with interest at fourteen per cent, compounded annually.

4 The correctness of these directions is challenged before this Court in the present appeals.

A.2 The Emerald Court project

5 On 23 November 2004, NOIDA allotted to the appellant a plot of land

admeasuring 48,263 sq. mtrs., which was a part of Plot No 4 situated in Sector 93A. This plot of land was allotted for the development of a group housing society, by the name of Emerald Court.

6 The first deed of lease was executed on 16 March 2005 between the appellant and NOIDA. A possession certificate was issued on 17 March 2005. 7 On 20 June 2005, NOIDA sanctioned the building plan for the construction of Emerald Court consisting of fourteen towers, each with ground and nine floors (G+9). This sanction was granted under the New Okhla Industrial Development Area "UP Apartments Act 2010" PART A Building Regulations and Directions 1986 11. The construction commenced for these fourteen towers.

A.3 First Revised Plan

8 On 21 June 2006, a supplementary lease deed was executed by NOIDA in

favour of the appellant for an additional land area of 6556.51 sq. mtrs. in the same plot of land in Plot No 4. Adding to the existing holding allotted under the first lease deed, the total leased area allotted to the appellant increased to 54,819.51 sq. mtrs. The supplementary lease deed noted that:

> (i) The demised premises shall be deemed to be part of Plot No 4, Sector 93A, NOIDA as already leased to the appellant;
>
> (ii) All other conditions of the original lease deed and allotment shall remain unchanged and would be applicable to the newly demised premises, and bind the appellant;
>
> (iii) The period of lease shall commence from 16 March 2005; and
>
> (iv) The total area of Plot No 4, Sector 93A, NOIDA is 54,819.51 sq. mtrs.

The possession certificate in respect of the additional land was issued to the appellant on 23 June 2006.

9 On 5 December 2006, the New Okhla Industrial Development Area Building Regulations and Directions 2006 12 were notified. Under the NBR 2006, the Floor-

"NBR 1986" "NBR 2006" PART A Area-Ratio 13 was increased from 1.5 to 2 for new allottees after 2006. Regulation 33.2.3(i) provided as follows:

> "33. 'Floor area ratio' Floor Area Ratio. Ground coverage and height limitations.

> […] 33.2.3 Any other utilities as decided by Chief Executive Officer depending on its requirement.

i. Distance between two adjacent building blocks shall not be less than half of the height of the tallest building." 10 On 29 December 2006, NOIDA sanctioned the first revised plan for Emerald Court under the NBR 2006, by which two additional floors were envisaged in addition to the already sanctioned G+9 floors in the original fourteen towers, thereby bringing all of them to ground and eleven floors (G+11). Furthermore, additional buildings were also sanctioned, namely: (i) Tower-15 (comprising of ground and eleven floors (G+11)); (ii) T-16 (comprising of a cluster of wings including 1 wing of ground and eleven floors (G+11) and 3 wings of ground and four floors (G+4)); and

(iii) a shopping complex (comprising of ground and first floor (G+1)). As a consequence, under the first revised plan, NOIDA permitted a total of sixteen towers (G+11) (which would each be 37 mtrs. in height) and one shopping complex (G+1). It is important to note that the appellant was able to have this additional construction due to the area that was made available to it under the supplementary lease deed, and further, when the appellant had allotted flats to the purchasers, only a small "FAR" PART A building on the additional leased area was sanctioned. Pertinently, it is also necessary to highlight that the first revised plan contemplated a green area in front of Tower- 1 14. According to the purchasers, when the flats were sold, the brochure of the appellant contained information in accordance with the first revised plan dated 29 December 2006, which shows the area in front of T-1 as a green area. 11 On 10 April 2008, a completion certificate was granted in relation to the first eight towers (G+11). Thereafter, various owners of flats were granted possession by the appellant. Crucially, the completion map also indicated a green area in front of T- 1, where currently T-16 and T-17 are being constructed.

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A.4         Second Revised Plan


12          On 28 February 2009, a notification was issued by the State of Uttar Pradesh
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enhancing the FAR from 2 (as provided under the NBR 2006) to 2.75 for new allottees. Further, the notification also provided for "purchasable FAR", according to which old allottees (such as the appellant) could purchase FAR to the maximum extent of thirty-three per cent of their base existing FAR of 1.5. 13 On 3 July 2009, NOIDA decided that the stipulation to purchase thirty-three per cent FAR of the existing base FAR for old allotees under the notification dated 28 February 2009, should be brought at par with other allotees. As a consequence, the purchasable FAR for old allotees would be enhanced to 2.75. However, the notification by the State of Uttar Pradesh in this regard was still awaited. The "T-1"/ "Aster 2" PART A appellant states that, in any case, based on the decision of NOIDA, it planned the construction of T-16 and T-17 in a way that catered to the additional FAR which may be available for purchase at a later date.

14 On 19 November 2009, relying on the notification dated 28 February 2009, the appellant purchased thirty-three per cent of its existing base 1.5 FAR at the cost of Rs eight crores, increasing

its available FAR to 1.995. 15 However, it appears from the record that the appellant had already started construction of the disputed towers – Apex and Ceyane – prior to the grant of this sanction by NOIDA. On 16 July 2009, the appellant informed the flat owners that:

> "1. That we have bought two separate plots measuring approximately 48000 square meter and 6500 square meter and got them registered separately in March 2005 & May 2006 respectively.
>
> 2. That the new towers which are being constructed will have altogether separate entry, exit, swimming pool, club & basic infrastructure. We will also construct boundary wall separating two structure i.e. existing 15 towers & Apex Ceyane."

16 The above communication of the appellant indicates that:

> (i) The construction of T-16 and T-17 had already commenced on 16 July 2009;
>
> (ii) According to the appellant, these new towers would have separate entry-exit, amenities and infrastructure; and
>
> (iii) The new towers would be separated from the existing fifteen towers by the construction of a boundary wall.

PART A The appellant represented to the flat-owners that a revised building plan for replacing the existing T-16 (G+11) and the shopping complex (G+1) was sanctioned, with twin towers T-16 and T-17, each of G+24 floors and a height of 73 mtrs., replacing them.

17 On 11 September 2009, the Chief Fire Officer of Gautam Budh Nagar 15, the fourth respondent, issued a report to the In-charge (Building Cell) NOIDA, Sector 6 for the grant of the provisional Non-Objection Certificate 16 for T-16 and T-17. The provisional Fire NOC was made subject to compliance with the requirements of the National Building Code, 2005 17.

18 On 16 September 2009, a completion certification was granted in relation to another six towers (G+11). The completion map accompanying this certificate again showed the green area in front of T-1, where presently T-16 and T-17 are being constructed.

19 On 26 November 2009, NOIDA sanctioned the second revised plan for Emerald Court under the NBR 2006. In this plan, the earlier T-16 (G+11) was replaced with a T-16 consisting of ground and twenty-four floors (G+24). Similarly, the shopping complex (G+1) was replaced with T-17 consisting of ground and twenty-four floors (G+24). T-16 and T-17 would each be of a height of 73 mtrs. According to the plan, T-17 was to be at a distance of 9 mtrs. from T-1, and there "CFO" "NOC" "NBC 2005" PART A was a provision for their connection through a space-frame at the upper level. This plan was sanctioned by NOIDA on the basis of the appellant having purchased thirty-three per cent of the purchasable FAR (27,135.657 sq. mtrs.), in addition to the permissible 1.5 FAR (82,229.265 sq. mtrs.), totalling to 1.995 FAR (1,09,364.922 sq. mtrs.). The second revised plan expressly

provided for the following, among other conditions:

> "2. Due to this sanction of the building plan, the right and ownership of any government authority like (municipality, NOIDA) any other person will not get affected.

[...]

8. A set of sanctioned building plan shall be kept at the construction site so that it can be checked at the site at any time and the construction work shall be done as per the sanctioned building plans specifications as per the rules of Noida Building Rules. The allottee shall start the construction work of the ground floor only after getting the inspection of the basement done upon completion of the work of basement from building section department, Noida. Otherwise sanctioned map deemed to be cancelled." (emphasis supplied) A.5 Third Revised Plan 20 On 20 February 2010, a notification was issued by the State of Uttar Pradesh enabling old allotees to purchase FAR of up to 2.75 and, as a consequence, the limit of a maximum purchasable FAR of thirty-three per cent of the existing base FAR was removed. The notification contemplated that "the purchasable FAR shall be PART A allowed up to the maximum limit of applicable FAR". The notification also amended the NBR 2006, which expressly provided that:

> "Purchasable FAR is an enabling provision. It shall not be allowed to any allottee as a matter of right."

21 On 19 March 2010, the UP Apartments Act 2010 came into force. Section 4(4) and Section 5 of this Act provide for the consent of the owners of flats before any change in the sanctioned plans is effected and also envisage that the percentage of undivided common interest of the owners of the flats cannot be changed without their consent.

22 On 30 November 2010, the New Okhla Industrial Development Area Building Regulations 2010 18 came into force. Regulation 24.2.1.(6) contains the following stipulations:

> "(6). Distance between two adjacent building blocks Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs, depending on the height of blocks. For building height up to 18 mts., the spacing shall be increased by 1 metre for every addition of 3 mtrs. as per National Building Code 2005. If the blocks have dead-end sides facing each other, than the spacing shall be maximum 9 mtrs. instead of 16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs space between two blocks." "NBR 2010" PART A

23 On 18 August 2011, the CFO granted a temporary NOC in respect of T-16 and T-17, for a height of 121.5 mtrs. with proposed ground and thirty-eight floors (G+38). It was noted that once the buildings were constructed and proper fire safety equipment was installed, they would be inspected in order to assess whether a permanent NOC should be granted.

24 On 25 October 2011, in view of the notification dated 20 February 2010, the appellant purchased an additional FAR at a cost of Rs 15 crores, so as to enhance the available FAR from 1.995 to 2.75 (1,50,753.652 sq. mtrs.). On the same date, NOIDA issued a letter to the appellant in relation to the purchase of the FAR, imposing several requirements, including compliance with the provisions of the UP Apartments Act 2010.

25 On 2 March 2012, the third revised plan was sanctioned by NOIDA for Emerald Court. Through this sanction, the height of T-16 and T-17 was permitted to be raised from 24 floors to 40 floors (i.e., G+40), resulting in the building's height being 121 mtrs. Further, T-16 and T-17 would also consist, inter alia, of two basements and open space for parking beneath the towers. The third revised plan also contained a requirement of compliance with the UP Apartments Act 2010, along with similar requirements which were present in the second revised plan. A.6 Complaints against the Revised Plans 26 On 9 March 2012, the appellant addressed a communication to the first respondent intimating that the flat purchasers of T-16 and T-17, which were under PART A construction, would have altogether separate entry-exit, amenities and infrastructure.

27 On 29 March 2012, the office of the CFO, on the basis of a complaint by the first respondent, issued a notice to the appellant in regard to certain deficiencies and violations in complying with fire safety requirements. 28 On 24 April 2012, the CFO, on the basis of another complaint by the first respondent, addressed a communication to NOIDA in regards the violation of the minimum distance between T-1 and T-17. The letter, inter alia, states:

> "When record was perused in respect of the above, it was found that:
>
> [...]
>
> 2. There should be a minimum distance of half of the height of building in between two building blocks as per Clause No. 33.2.3. of Building Construction Regulations, 2006 and there should be a distance of 16 meters in between the buildings whose height is more than 50 meters as per Noida Regulations, 2010.
>
> 3. There should be a distance of 16 meter in between two buildings situated side by side as per National building Code of India – 2005.

Therefore, you are requested that in the light of above kindly inform that license was granted for construction of building after providing relaxation to the building in question in Special Category or construction is being carried out by the concerned is contrary to the standards." 29 On 3 May 2012 and 22 May 2012, the first respondent filed an RTI application with NOIDA for obtaining the sanctioned plans in relation to Plot No 4 of Sector 93A. Though under the terms of the sanctioned plans the appellant was required to PART A display the sanctioned map at its site, NOIDA still wrote to the appellant to verify whether the sanctioned plans and maps could be made available to the first respondent. The appellant in response refused to grant its consent to release sanctioned plans and maps to the first respondent. Hence, NOIDA refused to provide the sanctioned plans to the first respondent. 30 On 19 June 2012, a show cause notice was issued by NOIDA to the appellant stating

that: (i) the construction was not in accordance with the third revised plan since, inter alia, T-1 and T-16/17 were not joined by a space frame; and (ii) a copy of the plan had not been exhibited at the site office. The appellant replied to the show cause notice on 26 June 2012 stating that T-16 and T-17 were still under construction and the space frame would be built at the time of construction. 31 On 26 June 2012, NOIDA issued a completion certificate to the appellant in respect of Tower-15 (G+11).

32 On 28 June 2012, the first respondent addressed a communication to NOIDA complaining of violations and misrepresentations made to the owners by the appellant, and sought cancellation of the layout plan of the two new towers, T-16 and T-17. The first respondent followed up its earlier communication with letters dated 9 and 29 August 2012 demanding information, and intimating that the construction was being carried out by the appellant in violation of the norms. PART A A.7 Proceedings before the Allahabad High Court 33 On 10 December 2012, the first respondent filed a writ petition under Article 226 of the Constitution before the High Court seeking inter alia the following reliefs:

> "i. Issue a writ, order or direction quashing the revised plan approved by respondent 2 for construction of new towers namely Tower 'APEX' and 'CEYANE' in plot no. 4, Sector 93- A, and issue further directions for demolishing of aforesaid towers, the approval and construction being in complete violation of provisions of U.P. Apartments Act of 2010. ii. Issue a writ, order or direction directing the Respondent 2 not to sanction amendments to any further building plans in respect of the Group Housing Society being developed by respondent 5 without obtaining consent of all the residents. iii. Issue a writ, order or direction quashing the permission granted to respondent 5 to link Tower T-1 and T 'APEX' / 'CEYANCE' through space frame.
>
> iv. Issue a writ, order or direction directing respondents 2 and 3 to ensure that fire safety equipment and infrastructure is installed at the expenses of respondent 5 within a specified period.

v. Issue a writ, order or direction directing respondent 2 to demolish illegal construction made in the basement and setback area as per notice dated 19.06.2012 and 17.07.2012. vi. Issue a writ or direction directing respondent no. 2and 5 to provide car parking spaces (both aboveground and in the basement) as per the provisions of the NBC 2005 to all the legal allottees/residents of Supertech Emerald Court Complex, plot 4, Section 93-A NOIDA." 34 The first respondent only pressed reliefs i and iii, seeking a direction to quash the revised plan which approved the construction of T-16 and T-17, and to demolish them. The first respondent also sought the quashing of the permission granted to link T-1 and T-16/T-17 though a space frame. During the pendency of the writ PART A proceedings, in pursuance of a specific order of the High Court, the RWA was provided with the sanctioned maps together with related information and documents in respect of the construction at the site. Pleadings were subsequently exchanged between the parties.

35 The appellant filed a counter affidavit on 27 January 2013 submitting that:

(i) The first respondent is not recognised by the appellant under the UP Apartments Act 2010;

(ii) The first respondent should have first approached the Chief Executive Officer of NOIDA, who is the competent authority under the UP Apartments Act 2010, and then the State Government, before approaching the High Court under the writ jurisdiction;

(iii) Construction of T-16 and T-17 was approved on 26 November 2009, but the writ petition had been filed after three years in December 2012, when the building is in an advanced stage of construction. Hence, the writ petition is barred by delay and laches; and

(iv) T-16 and T-17 were sanctioned in 2009 under the NBR 2006. The final sanction given on 2 March 2012 only increased the height of the towers from twenty-four floors to forty floors, after the appellant purchased the additional FAR. Under the NBR 2006, there is no provision with regard to the minimum distance between two "building blocks". Since the NBR 2006 did not incorporate the NBC 2005, the mandatory requirement of 16 mtrs. between two building blocks for buildings higher than 55 mtrs. need not be followed.

PART A The distance requirement between two building blocks was only mandated by NBR 2010, which is not applicable since the initial sanction for T-16 and T-17 was given under NBR 2006.

36 NOIDA in its counter affidavit dated 7 February 2013 stated that:

(i) It allotted the plot to the appellant by complying with the NBR 2010. The sanction was also given with the specific condition that the UP Apartments Act 2010 must be complied with;

(ii) Plot No 4 is not divided into two projects. It is unified and belongs to a single project; and

(iii) The permission for the construction of a space frame connecting T-1 with T-

16/T-17 was granted only after the design was approved by IIT Roorkee. 37 The High Court allowed the writ petition on 11 April 2014 and directed the demolition of T-16 and T-17, with the expenses of the demolition being borne by the appellant. It further directed the Competent Authority to grant sanction for the prosecution of NOIDA's officials as required under the UPUD Act 1973, within a period of three months. The High Court also directed the appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with fourteen per cent interest compounded annually. While allowing the writ petition, the High Court made the following observations:

(i) The first respondent had the locus to institute proceedings under Article 226 of the Constitution. The flats were handed over to the purchasers by PART A September 2009. The RWA was formed and registered with the Registrar of Societies in the same year. The Model Bye-Laws under the UP Apartments Act 2010 were notified by the Government on 16 November 2011. However, the Deputy Registrar Firms, Societies and Chits, Meerut, Uttar Pradesh issued a letter on 14 December 2012 stating that pending instructions from the Registrar, no decision could be taken in respect of the Model Bye-Laws and registration. The Registrar by a circular dated 5 December 2013 issued instructions for registration of the first respondent under the UP Apartments Act 2010. On 20 October 2013, the first respondent by its resolution adopted the Model Bye-Laws and conducted its elections. Further, in any case, the appellant had recognized the first respondent since its inception and had corresponded with it continuously. The appellant had never raised objections on its competence to represent the flat purchasers. The grant of sanction by NOIDA in violation of the relevant building regulations affects the rights of every apartment owner, who is represented through the first respondent.

Hence, the first respondent is a 'person aggrieved' and was entitled to initiate the writ proceedings;

(ii) The first respondent under Article 226 was not barred by the available remedy of approaching either the CFO, NOIDA under the UP Apartments Act 2010 or the State under Section 27 of the UPIAD Act 1976. Though the first respondent raised its grievance before NOIDA, no notices were issued and there was no follow up. Only if NOIDA had issued an order, could the first respondent have approached the State Government under Section 27 of the PART A UPIAD Act 1976. Thus, there was no other alternative remedy that was available to first respondent but to initiate writ proceedings;

(iii) The appellant must have submitted a declaration in the office of the competent authority with regard to the construction of the building under the UP Apartments Act 2010. Rule 4 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules 2011 states that when the competent authority receives an application for amendment of the declaration, it shall issue a written notice to the association of the building owners and an order shall be passed by the competent authority only after the association is given the opportunity of being heard. Since no such notice was given to the association, it is an 'aggrieved person' and thus has the locus to initiate writ proceedings;

(iv) The original building plan was sanctioned when NBR 2006 was in force.

However, the approval for purchase of additional FAR was made in 2011. It is a settled principle of law that the rules and regulations applicable on the date of the sanction would determine the rights of the parties. The sanction given on 2 March 2012 further imposed a condition of applicability of the UP Apartments Act 2010. Therefore, both the NBR 2010 (and NBC 2005, since NBR 2010 makes it applicable) and the UP Apartments Act 2010 shall be applicable;

(v) The contention of appellant that the project was in two phases is not borne out from the record since NOIDA has permitted the purchase of additional FAR and granted the subsequent sanction treating the project as a single PART A project. The plans submitted and sanctioned were for a single project, and an attempt has been made by the appellant to mislead the court;

(vi) Regulation 24.2.1(6) of the NBR 2010 states that for buildings up to the height of 18 mtrs., the spacing between two adjacent building blocks shall be 6 mtrs. and the spacing shall be increased by 1 mtr. for every 3 mtrs. above 18 mtrs., but subject to a maximum distance of 16 mtrs. Para 8.2.3.1 of the NBC 2005 states that for buildings higher than 55 mtrs., 16 mtrs. open space must be left in the sides and rear.. Since the height of T-17 is 121 mtrs., the distance between the building blocks must at least be 16 mtrs. However, the distance is only 9 mtrs. and is deficient by 7 mtrs.;

(vii) The appellant, in collusion with NOIDA, obtained sanctions for the layout map in violation of the mandatory requirement for space to be maintained between building blocks and clear space;

(viii) The provisions of the UP Fire Prevention and Fire Safety Act 2005 19 were required to be complied with, according to which the minimum distance of 7.5 mtrs. between building blocks and a clear space must be provided, which has been violated in the third revised plan of 2012;

(ix) The submission of the appellant that the expression 'building blocks' having not been defined in the NBR 2010, would mean the entire set of buildings on Plot No 4 is contrary to the NBR 2006 and NBR 2010. The sanctioned plans show that the appellant got the layout approved, consisting of separate "Fire Safety Act" PART A blocks. The nomenclature of the blocks was subsequently changed in each successive plan, and finally the buildings were numbered as T-1 to T-17. The sanctioned plans clearly show that T-1 and T-16/17 are separate building blocks; and

(x) The plan sanctioned by NOIDA was contrary to: (a) the building regulations;

(b) the mandatory distance between building blocks; and (c) the movement space required, as a result of which the rights of the apartment owners and the safety of their apartment blocks have been seriously affected.

A.8 Proceedings before this Court

38 The appellant filed a Special Leave Petition under Article 136 of the

Constitution on 28 April 2014 assailing the judgment of the High Court. On 5 May 2014, this Court directed the maintenance of status quo in respect of T-16 and T-17, directing that neither the builder nor the purchaser shall alienate the property or create third party rights. During the course of the hearings on 19 July 2016 and 27 July 2016, the appellant and NOIDA submitted that the Court may have the view of an expert agency on the issue and engage an expert for this purpose. On the submission of the Additional Solicitor General, the National Buildings Construction Corporation Limited 20, a government owned enterprise, was appointed to examine various facts in relation to

the dispute, particularly those having a bearing on whether the two towers (T-1 and T-17) have dead-end sides facing each other. By its report dated 13 October 2016, the NBCC concluded that the two towers are not "NBCC" PART A compliant with Regulation 24.2.1.6 of the NBR 2010. Apart from the report which has been submitted by the NBCC, the first respondent had commissioned IIT Delhi and IIT Roorkee to report on the disputed issue of 'dead ends'. Reports by them have been placed on the record.

39 By its interim orders dated 6 September 2016 and 11 January 2017, this Court directed that a group of applicants be given ten per cent per month towards return of investment 21. On 22 September 2017, this Court directed Mr Gaurav Agarwal, Amicus Curiae, to create a portal link to coordinate with the appellant and the flat purchasers on issues relating to refund. Further, this Court directed that the principal amount along with interest of fourteen per cent shall be provided to the flat purchasers who have opted not to wait for the decision of this Court in the present Special Leave Petition.

40 By an order dated 30 July 2018, this Court with the assistance of the Amicus Curiae classified the home buyers into the following groups, based on the refund option chosen by them:

> (i) Refund of principal amount along with twelve per cent simple interest per annum (one hundred and one home buyers);
>
> (ii) Home buyers who still insist on getting interest at the rate of fourteen per cent (twenty-four home buyers) - since a substantial number of home purchasers "ROI" PART B have agreed to twelve per cent interest, these twenty-four purchasers were also directed to accept the twelve per cent interest rate;
>
> (iii) Home buyers through the Subvention Scheme – in such cases, the EMIs shall be paid by the appellant until the possession is handed over; and
>
> (iv) Disputed cases - Mr Sanjeev Agrawal and Ms Rashmi Arora have paid Rs 38,51,009 and Rs 17,43,162 respectively by cheque. The said amount shall be refunded with a simple interest at twelve per cent per annum.

B Submissions by Counsel

41 Mr Vikas Singh, learned Senior Counsel appearing on behalf of the appellant urged the following submissions:

(i) The sanction and construction of T-16 and T-17 is not violative of the distance rule under NBR 2010:

a. NBR 2010 does not apply to T-16 and T-17, since they were first sanctioned in the second revised plan issued under the NBR 2006. Under the NBR 2006, the distance provision in Regulation 33.2.3(i) was not mandatory and it was open to the CEO to stipulate the distance requirement depending upon the exigencies of a lay out plan. In any case, the Regulation applies to the distance between two building blocks and does not govern the distance between the T-1 and T-17, which form a part of the same block. Further, if this provision was mandatorily applied, then it would also affect the first revised plan, in which the heights of the fifteen PART B other towers is 37.5 mtrs. while the distance with the adjacent blocks was less than half the height, i.e., less than 18.75 mtrs.;

b. Even if NBR 2010 was to apply, T-16 and T-17 are part of the same building block consisting of T-1, Tower-2, Tower-3 and T-17, which is connected by a space frame to T-1. Hence, Regulation 24.1.2(6) of the NBR 2010, which provides for a distance to be maintained between "adjacent building blocks" ("Bhawan Samuh"/cluster of buildings), is not applicable in respect of the distance between T-17 and T-1; c. The concept of a building block has been explained in a note submitted by NOIDA to the High Court. While using the FAR, the only requirement is to maintain a certain percentage as an open/green area. Instead of scattering the buildings over the total project area, group housing projects can envisage adjacent towers or even a block of towers so as to ensure a large open green space rather than scattered small spaces all over the project;

d. In the alternative, even if the they are not part of the same building block, T-17 being a "tower like structure", para 8.2.3.2 of the NBC 2005 is attracted in terms of Regulation 24.2.1(6). In accordance with para 8.2.3.2, the minimum distance for buildings of a height of less than 37.5 mtrs. is 9 mtrs., while for buildings of a greater height, it is 12 mtrs. Further, in accordance with para 8.2.3.2(d), the deficiency of this distance at the ground level can be made good at the upper levels. Hence, maintaining a PART B minimum distance of 16 mtrs. between "tower like structures" is not an inviolable requirement;

e. In the present case, the minimum distance between T-1 and T-17 varies from 9.88 mtrs (at the ground level) to 25.75 mtrs (at the upper level), since the total height of T-1 is 27.61 mtrs. while that of T-17 is 84.5 mtrs. As such, it is in compliance with NBC 2005; and f. The Model Bye-Laws 2016 issued by the Ministry of Urban Development, Government of India prescribe a 9 mtrs. space around any building irrespective of the height beyond 40 mtrs.;

(ii) The sanction to construct T-16 and T-17 is not violative of the UP Apartments Act 2010:

a. T-16 and T-17 were sanctioned on 26 November 2009, and hence the requirement of prior consent did not arise, since the Act was not in force then;

b. The flat owners of T-1 to T-15 who already had possession of their flats would not be "intended purchasers" under the proviso to Section 4(4) of UP Apartments Act 2010, and their consent was not required for the construction of additional floors in T-16 and T-17; c. The consent of all flat owners would be impractical, and at best the

consent of the RWA would suffice. On 2 March 2012, when the third revised plan was sanctioned, the RWA was not functional and it was only PART B on 20 October 2013 that the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010;

d. There has been no violation of the common area facilities of the flat owners of T-1 to T-15 by the creation of T-16 and T-17, since they have been planned with separate entries and exit facilities together with infrastructure; and e. A majority of the flat owners of T-1 to T-15 was fully aware of the sanction to construct T-16 and T-17 since: (i) 245 flats were booked till the first revised plan in 2006; (ii) between 2006 and until the second revised plan in 2009, 141 flats were booked; (iii) after the second revised plan and until the third revised plan in 2012, 114 flats were booked; and (iv) after the third revised plan in 2012 till 2 August 2021, 159 flats have been purchased;

(iii) There has been no violation of fire safety norms:

a. A provisional Fire NOC was received on 11 September 2009, prior to the sanction on 26 November 2009. The fire department thereafter granted another temporary NOC for T-16 and T-17 on 18 August 2012, prior to the sanction dated 2 March 2012; and b. Under NBR 1986 and NBR 2006, buildings were required to be compliant with fire safety norms prescribed in Part-IV of the NBC 2005. Para 4.6(b) of the NBC 2005 provides that for high rise buildings, open spaces on all sides up to a width of 6 mtrs. shall be available for free movement of fire PART B tenders. In the present case, there is a clear space of 9 mtrs. between T-1 and T-17, which allows a free movement of fire tenders;

(iv) The Uttar Pradesh Ownership of Flats Act 1975 22 is not applicable:

a. Under Section 2, the Act applies only to properties, the owners of which submit to the provisions of the Act by executing a declaration. As such, the Act does not automatically apply to all properties and none of the flat owners have made executed any such declaration presently; b. Clause II(h) of the lease deed dated 26 March 2005 deals with maintenance, and cannot be construed to incorporate the application of the UP 1975 Act; and c. If the contention of the first respondent is accepted, the changes made by the first revised plan in T-1 to T-15, involving an increase in the height of all towers from nine to eleven floors, would also to be illegal;

(v) There is no green area violation in the sanctioning of T-16 and T-17:

a. A triangular green space in the first revised plan was planned for the newly proposed T-16 (G+11) and shopping complex (G+1). This area was over and above the mandatory green area (soft landscape) required to be maintained on the plots under the NBR 2006;

b. The central green area was sanctioned in the original plan of 2005. The required green area under Regulation 38 of the NBR 2006 was twenty-five per cent of the open area, which would be 11,538,02 sq. mtrs. whereas "UP 1975 Act" PART B the appellant had provided a green area of 12,064.91 sq. mtrs. in the form of a central park;

c. T-1 was not sold on the promise of a green space area in front of it and none of the buyers were charged preferential location charges; and d. Only eleven flats in T-1, out of a total of 44, were booked after the sanctioning of first revised plan and before the second revised plan. Out of these eleven, only seven flats were facing towards T-17. Even in these seven, there were no windows/balconies facing T-17, but only small bathroom windows;

(vi) The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers;

(vii) The appellant has not collected the entire lease rent payable to NOIDA only from the flat owners of T-1 to T-15. It has only collected around Rs 7.5 crores, while it itself has paid around Rs 14 crores; and

(viii) The order for demolition of T-16 and T-17 is liable to be set aside on ground of equity:

a. The construction was carried out with the sanction of the authorities; b. 600 persons had purchased flats in these towers; c. Construction began in December of 2009, and third-party rights in favour of the purchasers have been crystalized;

d. The petition was filed before the High Court in December 2012; and PART B e. 28 floors in T-17 and 26 floors in T-16 were constructed as on 20 December 2013 when arguments were concluded before the High Court, and by the time that the judgment was delivered, 32 floors had been constructed.

Hence, the order of demolition would be harsh and inequitable. 42 Supplementing the submissions of Mr Vikas Singh, Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, made the following submissions:

(i) Para 8.2.3.2 of NBC 2005 provides that for buildings of heights between 24 mtrs. to 37.5 mtrs. with one setback, the open space at the ground level shall not be less than 9 mtrs. Since the height of the existing tower Aster-2 (T-1) is less than 37.5 mtrs., the minimum space required between this tower and T-

17 is only 9 mtrs. Further, the deficiency of open space can be made good through set-backs at the upper level. However, since the height of T-1 is not proposed to be increased and the tower is open from all three sides, this requirement need not be fulfilled;

(ii) The various NOIDA Building Regulations have not been violated as they do not prescribe the minimum distance between two towers. It only refers to the distance between 'building blocks', with reference to the NBC 2005;

(iii) If building blocks have dead end sides facing each other, then the space between two building blocks shall be a maximum of 9 mtrs. as per the NBR 2010. Similar provisions are found in other building bye-laws such as Delhi PART B Building Bye Laws, Bhubaneshwar Development Authority Building Byelaws, and Model Building Byelaws prepared by the Ministry of Urban Development;

(iv) The Fire Safety Act has also been adhered to, as it requires a minimum distance of 6 mtrs. between two towers to provide space for movement of fire tenders;

(v) The construction of the buildings was not stayed by the High Court, which has now jeopardized the rights of third-parties, who will now be aggrieved by the order of demolition;

(vi) At the time of sanction of the second revised plan dated 26 November 2009, the UP Apartments Act 2010 had not been enacted. With respect to grant of sanction to the third revised plan, the power to sanction the plans or revisions vests with NOIDA and is not curtailed by the UP Apartments Act 2010;

(vii) UP Apartments Act 2010 does not mandate the taking of any consent or NOC from the RWA prior to sanction of plans. In spite of this, an obligation was placed on the appellant to abide by the provisions of UP Apartments Act 2010, while sanctioning the third revised plan dated 2 March 2012;

(viii) While sanctioning the third revised plan, there was no change in the ground coverage area of T-16 and T-17 and only their proposed heights were increased; and

(ix) There is no factual foundation to conclude that there had been any collusion between the appellant and NOIDA.

PART B 43 Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of RWA urged that the members of the RWA purchased their flats after being shown a layout which included a limited number of flats and gardens, including a garden in front of T-1. Many of the allottees are retired persons who have suffered as a result of the unilateral changes made by the appellant, which resulted in an increase in the number of flats from 689 to 1573. The garden area in front of T-1 has been completely removed and instead of a complex of 11 storeyed buildings, two long and tall structures have been sanctioned without the consent of the existing allottees obliterating their right to light, air, view and garden area, thereby endangering their safety. Mr Bhushan submitted that:

> (i) The sanctions of 2009 and 2012 are in violation of the minimum distance criteria required to be maintained between two buildings. Under Regulation 32.3.1(i) of the NBR 2006, the distance required is half the height of the tallest building. The tallest building, T-17, under the second revised plan of 2009 is 73 mtrs. and hence, the

minimum distance of 36.5 mtrs. was required between T-1 and T-17. Even the existing T-1 is of 37 mtrs. height and therefore, even a building smaller than T-1 could come up only at a distance of at least 18.5 mtrs from T-1;

(ii) Regulation 24.2.1(6) of the NBR 2010 requires a minimum distance of 16 mtrs. between T-1 and T-17, as opposed to 9 mtrs. at the side;

(iii) Under para 8.2.3.1 of NBC 2005, the distance required between buildings would be 16 mtrs. plus ten per cent of the building length minus 4 mtrs. The PART B length of the proposed tower is 84.5 mtrs., and hence the distance required would be (16 + (10 per cent of 84.5) – 4), which is equal to 20.45 mtrs.;

(iv) The requirement of complying with NBC 2005 is prescribed by NBR 2010 and the NOC issued by the CFO in 2009. In this regard, on 24 April 2012, the CFO inquired from NOIDA how the new buildings were sanctioned in violation of the distance criteria prescribed in NBR 2006 and 2010, and NBC 2005, which was not responded to by NOIDA;

(v) NBCC, which was appointed by this Court at the request of the appellant, has stated in its report that the distance requirement has been violated;

(vi) In response to the argument of the appellant that T-1, T-16 and T-17 form part of one building block, obviating the requirement of minimum distance, it was submitted that:

a. NBC 2005 refers to the distance between buildings and not building blocks;

b. The expression “building block” though used in NBR 2006 and 2010, has not been defined in either of the regulations. The rationale for the distance between building blocks is to ensure fire safety evacuation, light and ventilation. It cannot be left to the builder to designate groups of buildings as one building block since the purpose of maintaining the minimum distance would be seriously compromised. The expression must take its colour from NBC 2005 and every building must be a building block; and
c. The reports submitted by the IITs of Delhi and Roorkee specify functional requirements of distance between buildings including:

PART B i. fire separation to avoid transmission between buildings; ii. safe escape and rescue during fire;

iii. ventilation; and iv. daylight access.

These requirements have been severely compromised due to the lack of the minimum distance between T-1 and T-17;

d. Regulation 24.2.1(6) of NBR 2010 refers to NBC 2005 as the source of the distance requirement. The interpretation of the phrase ‘building block’ in NBR 2010 and 2006

must be consistent with NBC 2005; e. The first revised plan of 2006 shows that each building was intended to be a separate block;

f. The initial argument of the appellant was that T-1 and T-17 are on separate plots and were never intended as the same block. Subsequently, the appellant claimed that they were constructed in separate phases and were to have separate facilities. Later, it introduced a false and unapproved map showing T-1, T-2, T-3, T-16 and T-17 as one block; g. The affidavit of the appellant dated 4 August 2021 before this Court states that T-16 and T-17 will have separate facilities including entry and exit; h. T-1, T-16 and the shopping complex as sanctioned in the first revised plan of 2006 were distanced and were different blocks altogether; PART B i. The construction of T-1 was completed in April 2008 and possession was granted to allottees. It was not legally possible to construct T-17 in 2008 since it was first sanctioned only in November 2009; j. The road between T-1 and T-17 is the main road for the society and leads into the basement and parking;

k. The basement of T-1 has one level while T-17 has two levels; l. The foundation of T-1 is made to bear a load of only eleven floors. The appellant has claimed that though the foundation of T-17 was laid in 2009, when only twenty-four floors were sanctioned, it was meant to bear a load of forty floors, which were sanctioned only in 2012; m. The connection of two building blocks with the space frame would not make it one building block; and n. The appellant itself was unconvinced by the building block argument and raised the 'dead end' side issue, which led to the appointment of NBCC by this Court to verify the facts. After a negative report from NBCC, the appellant has once again fallen back on the building block argument to assert that blocks can be defined at the discretion of the developer;

(vii) In response to the submission of the appellant that the buildings are "tower like structures" under the NBC 2005 and thus, meet the minimum distance mandated, it was submitted that:

PART B a. Requirements of NBR 2006 and 2010 and NBC 2005 are independent and hence, the defence of a tower like structure under the NBC 2005 cannot cure violations of the NBRs;

b. T-17 does not have any set-backs and has the same width throughout; c. At least 12 mtrs. distance is required at the ground level even for tower like structures; and d. The deficiency of the mandated open space of 16 mtrs. under the NBC 2005 in tower-like structures can be cured by set-backs on upper levels. However, the distance of 12 mtrs. at the ground level is still mandatory;

(viii) Possession of flats in T-1 was given to purchasers in 2008. The second and third revised plans of 2009 and 2012 respectively proposed a space frame connecting T-1 and T-17 when the residents had already started living in T-1.

This is illegal and a safety hazard;

(ix) Under the lease, the undivided interest in common areas stood transferred to the respective allottees. The owners of the existing flats had paid the entire lease amount and more. While the appellant paid Rs 13 crores as onetime lease rent, the buyers of existing flats (other than those in T-16 and T-17) were charged over Rs 16 crores;

(x) Consent of flat owners was required under UP Apartments Act 2010 before an alteration in the sanctioned plan:

> a. Sections 4(4) and Section 5(3) of the UP Apartments Act 2010 requires the consent of all allottees before a change in the sanctioned PART B plan/undivided interest in the common area is made. The removal of the green area reduced the common areas and, with an increase in the flats from 689 to 1573, the proportionate undivided interest in the common areas has been reduced substantially;
>
> b. The UP Apartments Act 2010 is applicable irrespective of whether or not a society is formed. The rights are vested with the apartment owners and not the association; and c. Gardens as well as land are included in the definition of common areas over which all residents have rights;
>
> (xi) Consent of flat owners ought to have been obtained before obtaining an alteration of the sanctioned plan, under UP 1975 Act:
>
> a. Under Sections 5(2) and 5(3), undivided interest cannot be altered without the consent of all owners of flats;
>
> b. Clause II(h) of the lease deed stipulates the applicability of the UP 1975 Act. This is not confined only to maintenance. The tripartite sub-lease between NOIDA, the appellant and the allotees also mandates the applicability of the UP 1975 Act; and c. The appellant was responsible to ensure that the declaration under the UP 1975 Act was made. It cannot take advantage of its own wrong in failing to submit a declaration;
>
> (xii) The appellant and NOIDA have colluded to by-pass the Building Regulations:
>
> PART B a. Despite the revised plans violating the distance criteria, NOIDA granted sanction to the said revisions. The plans were not cancelled despite repeated reminders from the RWA;
>
> b. Despite the letter of the CFO dated 24 April 2012 highlighting the violation of the distance criteria, NOIDA did not take any action; c. The appellant was aware in advance that its plan would be sanctioned in the future, and hence built a stronger foundation in 2009 to support forty storey buildings for T-16 and T-17, which

received sanction only in 2012; d. Under the terms of approval, the sanctioned plan had to be kept at the site for display. In spite of this, there was a failure of the appellant to display the plans. When a request was made by the RWA to NOIDA to provide a copy of the plans, NOIDA asked the appellant whether it could supply the plans. Upon the refusal by the appellant, NOIDA declined to provide the plans; and e. No action was taken by NOIDA after issuing a show cause notice for violation of the minimum distance requirement to the appellant based on a complaint by the flat owners;

(xiii) No part of the second revised plan of 2009 can be saved as it is in violation of the distance criteria contained in the NBR 2006, and is also contrary to the UP 1975 Act;

(xiv) The appellant cannot make any further constructions without the consent of the existing flat owners under the UP Apartments Act 2010 and the Real Estate Regulation and Development Act 2016;

PART C

(xv) There is no equity in favour of the flat buyers in the new buildings (T-16 and T-17) who have decided to retain their flats, particularly when this Court had through several orders granted an opportunity to the purchasers to seek refund;

(xvi) T-16 and T-17 can safely be demolished; and (xvii) False and misleading statements have been made by the appellant in the course of its pleadings before the High Court and this Court.

C Prefatory observations

44 At the outset, it must be noted that:

(i) The area which was originally leased to the appellant admeasured 48,263 sq. mtrs.; and

(ii) As a result of the supplementary lease, the area stood increased to 54,816 sq. mtrs.

In order to bring clarity to the issues raised, the dates of sanction and details of the construction are tabulated below:

Title	Date of Sanction	Buildings	Details

Original Plan	20 June 2005	Towers 1-14	G+9 floors
First Revised Plan	29 December 2006	Towers 1-15	G+11 floors, height of e tower is 37 mtrs.
		Tower 16	T-16 was to comprise of cluster of wings compris of 1 (G+11 (G+4 floor 37 mtrs.
		Shopping Complex	
Second Revised Plan	26 November 2009	Towers 1-15	G+11 floor tower is 3
		Towers 16-17	G+24 floor tower incr
Third Revised Plan	2 March 2012	Towers 1-15	G+11 floor tower is 3
		Towers 16-17	G+40 floor tower is i mtrs.

The plan for the construction was originally sanctioned on 20 June 2005. Thereafter, three revisions were sanctioned on 29 December 2006, 26 November 2009 and 2 March 2012.

45 The sanctioning of the revised plans and the construction of T- 16 and T- 17 have been challenged on the ground of a violation of:

(i) NBR 2006;

☐The earlier G+1 shopping complex is numbered as T-16, while the original T-16 is numbered as T-17. Further, T-1 and T-17 were to be connected by a space frame at the upper level. ☐As per the third revised plan dated 2 March 2012, the proposed floors for T-16 and T-17 were G+40. We note however, that in the details of sanctioned plans submitted by Mr Vikas Singh, learned Senior Counsel, the number of floors envisaged for T-17 were G+39 and T-16 were G+40. Further, as per the provisional Fire NOC dated 18 August 2011, the proposed construction for T-16 and T-17 was for G+38 floors. PART C

(ii) NBR 2010;

(iii) NBC 2005;

(iv) UP 1975 Act;

(v) UP Apartments Act 2010; and

(vi) Fire safety norms.

The appellant disputes the applicability of the UP 1975 Act. This will be considered in the course of the judgment.

46 It becomes necessary to clear the ground in regard to the reliefs which were sought before the High Court. The reliefs sought before the High Court in the petition were for:

> (i) Quashing the revised plan for the construction of T-16 (Ceyane) and T-17 (Apex) and the demolition of the structures constructed pursuant to the plan;
>
> (ii) Directing NOIDA to not sanction any further building plans in respect of Emerald Court without obtaining the consent of all residents;
>
> (iii) Quashing the permission granted to link T-1 with T-16/ T-17;
>
> (iv) Directing the installation of fire safety equipment and infrastructure;
>
> (v) Directing the demolition of the illegal construction in the basement and the setback area; and
>
> (vi) Directing NOIDA and the appellant to provide car parking spaces in accordance with NBC 2005.

PART C Of the above reliefs, the High Court recorded that only prayers (i) and (iii) were pressed.

47 The above narration establishes that there was a challenge to the revised plans by which the construction and increase in the height of T-17 (Apex) and T- 16 (Ceyane) were envisaged. As the

tabulation set out above indicates, in the first revised plan of 29 December 2006, T-16 was to partially comprise of G+11, the rest being G+4. A shopping complex was envisaged comprising of G+1 floors. A triangular green area is indicated in the first revised plan of 29 December 2006 in front of T-1. In the second revised plan of 26 November 2009, T-17 (Apex) and T-16 (Ceyane) came to be envisaged with twenty-four floors and of a height of 73 mtrs. each. In the third revised plan of 2 March 2012, the number of floors of T-16 and T- 17 was increased further from twenty-four to forty floors (for T-16) and thirty-nine floors (for T-17), and the height of each of the towers was increased from 73 mtrs. to 121 mtrs. In this backdrop, the relief which was sought in prayer (i) was for quashing the revised plan for the construction of the two new towers – T-17 (Apex) and T-16 (Ceyane). This clearly implicates a challenge both to the second revised plan of 26 November 2009 as well as the third revised plan of 2 March 2012. 48 A brazen attempt at stonewalling the first respondent was made by the appellant and NOIDA before the High Court. The sanctioned plans incorporate the condition that a copy of each plan would be made available at the site. Despite this, when the first respondent sought copies of the sanctioned plans and other information, NOIDA wrote to the appellant asking for their consent to provide the PART D plans to the first respondent. When the appellant refused, NOIDA's refusal to the RWA followed suit. It was only pursuant to the interim directions of the High Court that the sanctioned plans and documents were provided to the first respondent. The reliefs which have been sought encompass a challenge to the validity of the second and third revised plans, under which the two towers, T- 17 (Apex) and T-16 (Ceyane), were being constructed.

D Violation of distance requirement under Building Regulations 49 The first issue we shall address is whether the sanction for the construction of T-16 and T-17 by NOIDA is in violation of the distance requirement under applicable building regulations.

Original sanction dated 20 June 2005 50 When the plan was originally sanctioned on 20 June 2005, the NBR 2006 was yet to come into force. The sanction of 20 June 2005 was under the regime of the NBR 1986. NBR 1986 envisaged a 15 mtrs. set back from the front and 9 mtrs. on all sides. Since the original plan did not envisage construction of T-16 and T-17, the said plan is not under challenge for violation of the relevant building regulations. First revised sanction dated 29 December 2006 51 NBR 2006 came into force on 16 December 2006. The sanctioned plan for the project was first revised on 29 December 2006, and it covered a total area of 54,819 sq. mtrs., leased to the appellant under the Lease Deed and the PART D Supplementary Lease Deed. The first revised plan provided for the construction of two additional towers (T-15 and T-16) and one shopping complex (G+1 floors). All 16 towers were to comprise of G+11 floors and were to be 37 mtrs. in height. 52 The first revised plan was governed by the NBR 2006. Regulation 33 provided for permissible FAR, ground coverage and height of buildings. Regulation 33.2 dealt with the group housing. The table appended to it is as follows:

> "33.2 Group Housing GROUP HOUSING Max Ground FAR Height Coverage 1 Coverage 30 200 No limit 2 Density As mentioned in the section layout plan or scheme Regulation 32 deals with set-backs, which is defined as the line parallel to the plot boundaries, beyond which nothing can be constructed towards the plot boundaries.

Regulation 32.3 stipulates that where a plot size exceeds 40,000 sq. mtrs., there has to be a front setback of 25 mtrs., while setbacks on the rear and on all sides will be 9 mtrs. Regulation 33.2.3 is relevant for the dispute in the present case and it stipulates as follows, insofar as is relevant:

> "i. Distance between two adjacent building blocks shall not be less than half of the height of tallest building." (emphasis supplied) PART D Second revised sanction dated 26 November 2009

53 The second revision to the original plan was sanctioned on 26 November 2009, under the NBR 2006. The second revised plan envisaged that instead of the construction of T-16 (comprising of G + 11 floors and G+4 floors), and a shopping complex (G + 1 floor), two towers, T- 16 and T-17, would be constructed, each comprising of G+24 floors and of 73 mtrs. height. According to the revision, a 9 mtrs. distance was to be maintained between T-17 and T-1 at the ground level, and T-1 and T-17 were to be connected through a space frame at the upper level. The second revised plan provided that a front set back of 15 mtrs., and a rear and side set-back of 9 mtrs. each was approved.

54 The issue is whether the second revised plan for construction of T-16 and T- 17 each of a height of 73 mtrs. and at a distance of 9 mtrs. from T-1, is in compliance with the applicable regulation at the time, that is NBR 2006. We shall advert to this in the next section.

Third revised sanction dated 2 March 2012 55 The third revision to the plan was sanctioned on 2 March 2012, by which the height of T-16 and T-17 was increased from 73 mtrs. to 121 mtrs., and the number of floors in T-16 and T-17 was increased from twenty-four to forty floors. 56 At the time of the sanction of the third revised plan, the NBR 2010 had come into force. Regulations 1.6 and 1.7 of the NBR 2010 are in the following terms:

> PART D "1.6 The plot on which map has already been sanctioned and construction has already started or completed, the allottee may be allowed to revise the same building plan or submit the new plan as per the prevailing regulations for that part of the building where construction has not started or any new addition is required in the building. 1.7 F.A.R, Ground coverage, setbacks and density as indicated in the regulations shall not be applicable in respect of those plots which were allotted on auction or tender basis and group housing prior to the coming into operation of these regulations. However, the calculation of FAR and Ground Coverage in the new buildings in such plots shall be done as per these regulations. The purchasable F.A.R and Ground coverage as per applicability may be allowed." (emphasis supplied)

57 Under Regulation 24.2, the following stipulations have been provided for Group Housing:

> (II) Maximum permissible-

(i)	Ground coverage	35 per cent to 40000 sq. mtrs and 40% above 40000 sq. mtrs
(ii)	Floor Area Ratio	2.75

(iii)	Height	No limit. For buildings above 30 metres in height, clearance from Airport Authority shall have to be taken.
(iv)	Density (Family size 4.5)	As mentioned in the sector Layout Plan or decided by the Authority for a particular scheme.

Table No 2 of the NBR 2010 prescribes the set-back requirement in relation to Regulation 24. For all plots measuring above 40,000 sq. mtrs., the set-backs in the front are 16 mtrs. and at the rear and on the sides are 12 mtrs.

PART D 58 Regulation 24.2.1(1)(vi) provides that a distance of 6 mtrs. is to be left open for fire tenders. The said regulation is extracted below:

"The following features shall be permitted after leaving minimum 6 mtrs. open corridor for fire tenders.

(a) Meter room as per norms of Electricity Authority.

(b) Open transformers without any permanent enclosure keeping in view the necessary safety requirements.

(c) Other features as mentioned in Table 3.

(d) Rockery, well and well structures, water pool, swimming pool (if uncovered), uncovered platform around tree, tank, fountain, bench, chabutra With open top and unenclosed by side walls, compound-wall, gate, slide- swing, culverts on drains.

(e) Any other feature, primarily ornamental in nature, not enclosing or covering space of commercial use may be permitted by the Chief Executive Officer on case to case basis.

(f) Open generator set, filtration plant, Electrical distribution equipment, feeder pillars, telephone distribution equipments may be permitted in open setback as a service utility provided after leaving clear space for fire tender." With respect to the distance between two adjacent building blocks, Regulation 24.2.1.6 provides:

"Distance between two adjacent building blocks Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs. depending on the height of blocks. For building height up to 18 mtrs, the spacing shall be 6 mtrs and thereafter

> the spacing shall be increased by 1 metre for every addition of 3 mtrs in height of building subject to a maximum spacing of 16 mtrs as per National Building Code – 2005. If the blocks have dead-end sides facing each other, th[e]n the spacing shall be maximum 9 mtrs. instead of PART D 16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs. space between two blocks."

59 The above regulation indicates that:

> (i) The distance between two "adjacent building blocks" is to be a minimum of 6 mtrs. going up to 16 mtrs., depending upon the height of the blocks;
>
> (ii) For a building height upto 18 mtrs., the spacing would be 6 mtrs., to be increased by 1 mtr. for every addition of 3 mtrs. to the height of the building (subject to a maximum spacing of 16 mtrs. under the NBC 2005);
>
> (iii) If the blocks have dead-end sides facing each other, the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs.; and
>
> (iv) The allottee may, however, propose more than a 16 mtrs. space between two blocks.

60 Regulation 24.2.1.6 of NBR 2010 refers to the NBC 2005 for the minimum distance requirement. The NBC 2005 contains the following stipulations in para 8.2.3.1:

> "8.2.3.1 For buildings of height above 10 m, the open spaces (side and rear) shall be as given in Table 2. The front open spaces for increasing heights of buildings shall be governed by 9.4.1(a).
>
> Table 2 Side and Rear Open Spaces for Different Heights of Buildings (Clause 8.2.3.1) Si Height of Buildings Side and Rear Open No. Spaces to be Left Around the Building PART D m m (1) (2) (3) NOTES 1 For buildings above 24 m in height, there shall be a minimum front open space of 6 m.
>
> 2 Where rooms do not derive light and ventilation from the exterior open space, the width of such exterior open space as given in col 3 may be reduced by 1 m subject to a minimum of 3 m and a maximum of 8 m. No further projections shall be permitted.

3 If the length or depth of the building exceeds 40 m, add to col (3) 10 percent of length or depth of building minus 4.0 m." (emphasis supplied) Para 8.2.3.2 provides as follows:

> "8.2.3.2 For tower like structures, as an alternative to 8.2.3.1, open spaces shall be as below:

(a) Up to a height of 24 m, with one set-back, the open spaces at the ground level shall be not less than 6 m;

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(b) For heights between 24 m and 37.5 m with one set-back, the open spaces at the ground level, shall be not less than 9 m.

(c) For heights above 37.5m with two set-backs, the open spaces at the ground level, shall be not less than 12m; and

(d) The deficiency in the open spaces shall be made good to satisfy 8.2.3.1 through the set-backs at the upper level;: these set-backs shall not be accessible from individual rooms/flats at these levels." (emphasis supplied) 61 Para 8.2.3.1 of NBC 2005 indicates that where the height of the building is 55 mtrs. and above, the side and rear open spaces to be left around the building must be 16 mtrs. Note 3 indicates that if the length or the depth of the building exceeds 40 mtrs., in addition to the height which is specified in column 3, ten per cent of the length and the depth of the building minus 4 mtrs. has to be added to the distance required. Thus, in the case of a height (as in the present case) of 55 mtrs. and above, an additional 8.45 mtrs. (10 per cent of 84.5 mtrs.) is added to the 16 mtrs. and 4 mtrs is to be deducted, arriving at a 20.45 mtrs. distance requirement. However, an alternative is provided by para 8.2.3.2 for "tower like structures". For heights above 37.5 mtrs., open spaces at the ground level shall not be less than 12 mtrs. Further, deficiencies in open space as required under Para 8.3.2.1, can be met through set-backs at the upper levels, subject to the condition that the set-back shall not be accessible from the individual rooms/flats at these levels. PART D D.1 Violation of NBR 2006 and 2010 D.1.1 Interpretation of "building blocks" 62 The first aspect which needs to be considered is whether T-17 and T-1 are two adjacent building blocks or form part of a single building block as claimed by the appellant. Regulation 33.2.3 of the NBR 2006 stipulates that the distance between the two adjacent building blocks shall not be less than half of the height of the tallest building.

63 The submission of Mr Vikas Singh, learned Senior Counsel, as well as of Mr Ravindra Kumar, appearing on behalf of NOIDA, is that Regulation 33.2.3 of the NBR 2006, which was in force when the second revised plan was sanctioned on 26 November 2009 (contemplating the construction of T-16 and T-17), stipulates a distance between "two adjacent building blocks". Mr Vikas Singh submitted that it is entirely the discretion of the developer to determine as to whether one or more buildings should be treated as a building block, there being no definition of the expression "building blocks" in NBR 2006. It has been urged that the appellant is entitled to assert that the sanctioned plan consists of building blocks, and that T-16 and 17 are part of a building block along with T-1, T-2, and T-3. Thus, it has been submitted that all these towers (T-1, T-2, T-3, T-16 and T-17) constitute one single building block. To buttress this submission, the space frame connecting T-1 and T- 17 is referred to. It has been urged that there is no necessity of maintaining the minimum distance provided by Regulation 33.2.3, which applies only to the distance PART D between two adjacent building blocks, and since T-1 was to be connected to T-17 by a space-frame, the two new towers (T-17 and T-16) would constitute a part of the same building block, thus obviating the need of

maintaining a minimum distance between them. This argument was sought to be supported by adverting to the original Hindi version of Regulation 33.2.3, which uses the expression " ". In this context, it has been submitted that after the NBR 2010 came into force, there was an increase in the height of T-16 and T-17 from twenty-four to forty floors. Regulation 24.2.1.(6) of the NBR 2010 has also used the expression "two adjacent building blocks". Thus, based on both the NBR 2006 and 2010, it has been urged that the appellant was entitled to treat T-16 and T-17 as forming a part of a cluster which would include T-1. Therefore, the submission is that since all of them constitute a single building block, the minimum distance requirement need not be maintained.

64 The submission which has been urged on behalf of the the appellant finds support in the arguments of Mr Ravinder Kumar, learned Counsel appearing on behalf of NOIDA. The submissions which have been made on behalf of NOIDA highlight the following features:

> (i) Apart from the English version of Regulation 24.2.1.(6) of the NBR 2010, which uses the expression building blocks, the Hindi version uses the terms " ", which emphasises the concept of a cluster of buildings;

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(ii) When the Regulations speak of a " ", it is not the distance between the towers but the distance between blocks which is implicated;

(iii) T-1, T-16 and T-17 form part of one cluster or block and hence there is no need of maintaining a distance between buildings forming part of a block;

(iv) The absence of a minimum distance between the T-1 and T-7 would be of no consequence;

(v) Apart from the alleged breach of the minimum distance requirement, all parameters have been maintained, in terms of:

> a. Ground coverage;
>
> b. FAR;
>
> c. Open area; and d. Green area; and
>
> (vi) An explanatory note was submitted by NOIDA before the High Court, concerning the issue of building blocks, and is extracted below:
>
> "Building Block in a Group Housing Project Main Points:
>
> 1. Noida Building Regulations, 2010: A "Bhavan Samuh" which is translated in English as a "Building block" is the combination or a group of buildings in any given

area/Plot.

> 2. The Section 3(g) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership, Maintenance) Act, 2010 defines building. As per the Act, “building” means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings; Provided that an independent house PART D constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.

Therefore, it is clear that the Block is designated as “two or more buildings in any area” and the building is defined as “four or more apartments on any land”.

3. As per Zoning Glossary of New York City Planning; "A Block" is defined as a tract of land bounded on all sides by streets by a combination of streets, public parks, railroad rights of way, pierhead lines or airport boundaries. Building is defined as a structure that has one or more floors and a roof, is permanently affixed to the land and is bounded by open areas or the lot lines of a zoning lot.

4. The buildings in a block may not be connected, may be partially connected or may be fully connected, as is clear from the aforesaid provisions.

5. It is a common practice in all the metropolitan cities of India and all over the world to construct high rise buildings for different purposes to make optimum utilization of land. In any given area, more open & green space can be provided only with a provision of high rise buildings which enable to accommodate high density comparatively with less ground coverage and more open space. Large size projects generally have many buildings which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in event of any emergency. In view of all these considerations generally different building blocks or groups of buildings having interconnected accessibility, facilities and services are designed, which give better living environment than having a system of all buildings situated in isolation within the project area. It is common practice in all the metropolitan cities of India and over world to construct high-rise building for different purpose to make optimum utilization of land. In any given area more open & green space can be provided only within a provision of high-rise building which enable to PART D accommodate high density comparatively within less ground coverage and more open space. Large size projects generally have many building which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in the event of any emergency. In view of all these considerations generally different building blocks or cluster of building having inter connected accessibilities & facilities are decided, which give better living environment than having a system of all building situated in isolation within the project area.

6. Isolated buildings are more prone to safety, security, provision and maintenance of common services related problems. In case of a fire accident in any isolated building having no extra exit routes, chances of danger to human lives is more.

7. Generally, a group of buildings in a project is constructed with the provision of common basement i.e. One basement for all the buildings. This is done for better accessibility and movement and provision of common facilities. It is also a very common practice in India and abroad to connect the high rise buildings by way of space frame bridges giving additional exit routes for early evacuation in the event of emergency. This practice has increased after the occurrence of incident of fire in Gopal tower in Connaught Place, New Delhi and the temporary space frame was made connecting the said tower at the Height with nearby tower for evacuation of cornered persons saving many lives.

8. NBC OF INDIA OF 2005: Side and rear open space for different height of building is governed as per Para 8.2.3.1 of NBC 2005 which states that for height of building.

Height	Side and Rear Open Space
35 Mtr	11 Mtr
40 Mtr	12 Mtr

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55 Mtr & above	16 Mtr

But as per Para 8.2.3, tower like structures as an alternative to Para 8.2.3.1 open space as below:

> For height between 24 Mtr nd 37.50 Mtr with one set back the open space At the ground level, shall not be less than 9 Mtr.

9. It is stated that NOIDA Building Regulations intends to provide the distance between two adjacent building blocks to be between 6 meter to 16 meter depending upon the height of the building blocks. It does not provide any specific requirement of distance between two buildings. The concept of minimum distance required between two High Rise building of a block may not necessarily be the same as required between the two building blocks. For Example a building block may have three or four stories for the entire block area and few towers of different height and different upper stories designed at different places in the same block.

10. The concept of minimum distance between the two building blocks is for the purpose of free fire tender movement (Minimum 6 meters setback as per regulation), air ventilation, sunlight etc. The minimum distance requirement is in no way connected with the structural safety of the building.

11. It is stated here that the new building under construction is having perimeter of approx. 230 meter the entire building is surrounding by enough open area i.e. more than 16 meter except at one place where the building is made a part of block of adjoining building by way off a proposed connecting bridge to provide an extra exit route for the purpose of emergency evacuation. Here also the minimum gap between old building and new building is 9 meter for 6.80 meter length with satisfies the requirements of fire safety provisions. It does not violate any provision with regards to fire safety and air circulation." PART D 65 Essentially, the plea both on behalf of the appellant and NOIDA is that the requirement of maintaining a minimum distance applies only to adjacent building blocks, which is not equivalent to adjacent buildings. To put it differently, the arguments proceed on the basis that where there is a cluster of buildings the requirement of a minimum distance cannot be observed as between buildings forming part of the cluster, but only as between two adjacent building blocks/clusters. Each building block in this line of argument may consist of a collection of buildings, and it is argued that neither NBR 2006 nor NBR 2010 mandates the maintenance of a minimum distance as between buildings in a cluster. 66 The expression 'building block' has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of PART D structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body.

67 If a developer is left with the unbridled discretion to define the content of the expression "building block", this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers. Before this Court, an argument has been advanced that four towers out of the seventeen towers in the plot are a part of one "building block" and do not require maintenance of a minimum distance. Before the High Court, the appellant attempted to argue that all the buildings (that is all seventeen towers) on Plot No 4 of Sector 93A NOIDA would comprise of one "building block". The inconsistency of the appellant's argument on building blocks before the High Court and this Court points out the obvious flaw in it – that the designation of how many buildings constitute a "building block" by the developer would undermine the requirements prescribed by Building Regulations. As a matter of first principle, we are not inclined to adopt the construction proposed by the appellant. It will deprive the residents of urban areas of the amenities of light, air and ventilation which are essential to maintaining a basic quality of life. It will also have serious ramifications on fire safety. The developer cannot be allowed to subvert the requirement of maintaining minimum distances prescribed in the Building Regulations by unilaterally designating independent towers as building blocks, in the manner which the appellant has suggested before this Court. Setting up a space frame or providing for a common entry or exit would not make two otherwise separate buildings as one consolidated block. PART D

68 Regulations 33.2.3 of the NBR 2006 refers to the distances between adjacent 'building blocks' which shall not be less than half of the height of the tallest building. The purpose of this regulation is not to apply it only as between building blocks as distinguished from buildings within a block. Clause (1) of Regulation 33.2.3 has used the expression 'building blocks' and 'height of tallest building' in the same sentence. These expressions must be given a meaning which accords with common sense and in furtherance with the object and the purpose of the said Regulation. The plain meaning of the expression is that when there are two adjacent blocks, the height of the tallest building will determine the distance required to be observed, with the distance being not less than half the height of the tallest building. Consequently, when two or more buildings exist in proximity together, they comprise of a building block within the meaning of Clause (1) of Regulation 33.2.3. In such an eventuality, the distance between each of the buildings comprised in the block shall also not be less than half of the height of the tallest building. The reference to the height of the tallest building is evidently made because this kind of a building will likely overshadow the buildings of a lesser height in a cluster of proximate construction. Therefore, the regulation has defined the minimum distance required with reference to half the height of the tallest building. Any other construction will defeat the purpose of Regulation 33.2.3 and cannot be accepted. 69 Applying the NBR 2006 to the facts of the present case, the construction of T- 16 and T-17 was envisaged in the second revised plan dated 26 November 2009. The height of the said towers was to be 73 mtrs., while the height of other towers, PART D including T-1, was to be 37 mtrs. Thus, as per Regulation 33.2.3 of the NBR 2006, the minimum distance between T-17 and T-1, should be half of the height of the tallest building, that is, half of the height of T-17 which is 36.5 mtrs. It is evident from the record that the distance between T-1 and T-17 is 9 mtrs. only. Thus, clearly the second revised plan was violative of the NBR 2006.

70 We shall now come to the NBR 2010. Regulation 24.2.1(6) has prescribed the requirement of maintaining varying distances between two adjacent blocks from a minimum of 6 mtrs. extending up to 16 mtrs., depending on the height of blocks. The content to the first sentence of this regulation is further amplified by what follows it. The next part of the regulation stipulates that for a building of height up to 18 mtrs., "spacing" shall be 6 mtrs. The expression "spacing" in its plain terms means the observance of a stipulated distance. Where the height of the building is up to 18 mtrs., "the spacing" shall be 6 mtrs. Thereafter, for a height above 18 mtrs., the minimum distance has to be increased by one meter for an additional height of three mtrs. subject to a maximum distance or spacing of 16 mtrs. "as per National Building Code – 2005".

71 Mr Ravindra Kumar, learned counsel appearing on behalf of NOIDA, has particularly laid emphasis on the Hindi version of the NBR 2010 to argue that it used the term " ", which must mean that a separate meaning is accorded to it than the term " ". The Hindi text of Regulation 24.2.1.(6) (Regulation 24.2.1 (V) in the Hindi version) is as follows:

> PART D As is evident, the Hindi version of the NBR 2010, uses three different terms " ", " ", and " ". A purely textual interpretation, as is suggested by Mr Ravindra Kumar, would lead us to ascribe three different meanings to each of these terms. Extending this argument would then imply that the first sentence, which states that two adjacent building blocks require a minimum distance of 6 mtrs. to a

maximum distance of 16 mtrs., will depend on the height of the blocks. The second sentence, which in English simply reads, “for building height upto 18 mtrs, the spacing shall be 6 mtrs...”, does not clarify what the term “spacing” denotes – does it imply spacing between buildings inter se the block, or spacing between adjacent ‘building blocks’. Mr Ravindra Kumar suggests that it implies the latter. However, looking at the Hindi version of the Regulations from a purely textual standpoint, it would appear that it states that the spacing between the buildings of height 18 mtrs. should be 6 mtrs., that is, “18.00 6.00 ...”. The term used here is “ ” and not ““ ” or “ ”. Thus, overemphasis on the text of the NBR 2010, while losing sight of the context and the purpose of the regulation, would lead to an absurd interpretation. Where the initial PART D part of Regulation 24.2.1.6 provides for distance between building blocks, the latter part stipulates the distance between buildings of height above 18 mtrs. Accordingly, we reject the argument of Mr Ravindra Kumar that Regulation 24.2.1.6 only provides for the distance between ‘building blocks’ and not buildings within the blocks.

72 The latter part of Regulation 24.2.1.6 of the NBR 2010 provides that the maximum spacing between buildings of a height above 18 mtrs. shall be 16 mtrs. as per the NBC 2005. In the third revised plan dated 2 March 2012, the height of T-16 and T-17 was increased to 121 mtrs. In accordance with Regulation 24.2.1.6, the spacing between a building of height 121 mtrs. and another building would be 16 mtrs. (the maximum limit as per NBC 2005). Thus, the distance between T-1 and T- 17 should have been 16 mtrs., as opposed to 9 mtrs. Consequently, we find that the third revised plan dated 2 March 2012 was in violation of NBR 2010. 73 NOIDA, before it granted sanction for enhancing the height of T-16 and T-17 from G+24 to G+40 (or 39, as the case may be), was duty bound to apply its mind to whether there was a compliance with the provisions of Regulation 24.2.1.6. The third revised plan which was sanctioned on 2 March 2012 has evidently glossed over the clear deficiency of open space with reference to the NBR 2010, the consequence of which would have been to reject the proposal for a further increase in the height of the towers from twenty-four floors to forty floors. Yet NOIDA has chosen to lend its support to the appellant in clear defiance of the provisions of law. PART D 74 The issue as to whether T-1, together with T-16 and T-17, form one cluster can be looked from another perspective to test the hypothesis of Mr Vikas Singh. The original sanctioned plan dated 20 June 2005 provided that:

“Total area of plot	:	48263.00 Sq. mt
Permissible coverage 35 %	:	16892.05 Sq. mt
Sanctioned coverage 14.03%	:	6773.25 sq. mt
Permissible FAR 1.50	:	72394.50 Sq. mt
Sanctioned FAR 134.28	:	64810.04 Sq. mt.
Sanctioned height of building	:	30.00 meter

SET BACK

SET BACK OF BUILDING Permissible · Sanctioned		
Front	9.66 Mt	15.00 Mt
Back	9.66 Mt	09.70 Mt.

Side	9.66 Mt	09.70 Mt.
Side	9.69 Mt	09.70 Mt.”

75 The original sanctioned plan covered a total plot area of 48,263 sq. mtrs.

Subsequently, an additional area of 6556.61 sq mtrs. was leased out to the appellant by a Supplementary Lease Deed dated 21 June 2006, so as to enhance the total area of the plot to 54,819.51 sq. mtrs. As a consequence, the first revised plan was sanctioned on 29 December 2006, where the sanctioned area was enhanced from 64,810.04 sq. mtrs. to 81,943.216 sq. mtrs., the calculations being as follows:

> “Sanctioned area Total area of plot : 54819 Sq. Mt Floor Existing Addition Total PART D Ground 6773.25 Sq. Mt. 1025.313 Sq Mt 7798.563 Sq. Mt Floor First Floor 6672.17 Sq. Mt 1010.673 Sq Mt 7682.843 Sq. Mt Second 6672.17 Sq. Mt 1010.673 Sq Mt 7682.843 Sq. Mt Floor Third Floor 6672.17 Sq. Mt 1010.673 Sq Mt 7682.843 Sq. Mt Fourth 6672.17 Sq. Mt 778.737 Sq Mt 7450.907 Sq.

Floor			Mt.
Fifth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Sixth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Seventh Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Eighth Floor	6522.89 Sq. Mt	- 28.294 Sq Mt	6494.596 Sq. Mt
Ninth Floor	4808.71 Sq. Mt	1685.886 Sq Mt	6494.596 Sq. Mt
Tenth Floor		6312.410 Sq Mt	6312.410 Sq. Mt.
Eleventh Floor		4448.677 Sq Mt	4448.677 Sq Mt
Commercial		411.15 Sq Mt.	411.15 Sq Mt.
Total	64810.04	17133.176	81943.216
Basement		: 32352.71 + 8189.67 = 40542.38	
Total	97162.75	25528.41	122485.60

76 The first revised plan dated 29 December 2006 relating to 6556.61 sq. mtrs.

indicates that in the south-west corner of the plot, an additional construction comprising of one tower and a shopping facility would be put up and directly opposite T-1 was a green area, which has been depicted on the sanctioned plan. 77 On 26 November 2009, there was a second revised sanction, consequent upon the

acquisition of purchasable FAR of thirty-three per cent of the permissible 1.5 FAR. The area calculations of the second revised sanction were indicated as follows:

PART D "Area of plot : 54819.510 Sq. Mt. Permissible FAR 1.50% : 82229.265 Sq. Mt. Purchasable FAR 33% : 27135.657 Sq. Mt Total FAR 82229.265 + 27135.657 = 109364.922 Sq. Mt Area of utilization issued earlier: 78019.956 Sq. Mt Area of upper basement issued earlier:

40542.380 sq Mt. (3397.0990 with demolished upper basement) Floor Permissible area Proposed Area (Sq.

	(Sq. Mt.)		Mt.)
Ground Floor		19186.82	1751.320
First Floor	Rest FAR		228.230
Second Floor			2249.220
Third Floor			2249.220
Fourth Floor	…….		2249.220
Fifth Floor	…….		2249.220
Sixth Floor	…….		2249.220
Seventh Floor	…….		2249.220
Eighth Floor	…….		2249.220
Ninth Floor	…….		2249.220
Tenth Floor	…….		1358.786
Eleventh Floor	…….		1186.914
Twelfth Floor	…….		740.162
Thirteenth Floor	…….		740.162
Fourteenth Floor	…….		740.162
Fifteenth Floor	…….		740.162
Sixteenth Floor	…….		447.955
Seventeenth Floor	…….		447.955
Eighteenth Floor	…….		447.955

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Nineteenth Floor	…….	447.955
Twentieth Floor	…….	447.955
Twenty first	…….	383.168

Floor			
Twenty	…….		383.168
second Floor			
Twenty third	…….		383.168
Floor			
Twenty	…….		383.168
fourth Floor			
TOTAL FAR	…….	31312.081	
Upper	…….	3397.090	
basement			
Lower	40542.38		3397.090
basement			
Total Area		43939.470	

Set back	Permissible	Sanctioned
Front	15.00 Mt	15.00 Mt
Back	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt

78 As the second revised plan indicates, the existing towers now envisaged twenty-four floors instead of eleven floors. The third revised plan of 2 March 2012 further envisaged an enhancement in the constructed area consequent upon a purchasable FAR, together with the sanctioned FAR of 2.75. The number of floors was further increased to forty floors in T-16 and T-17, the relevant calculations being as follows:

"Total area of plot : 54819.510 Sq. mt
Permissible coverage 35% : 19186.828 Sq. mt
Sanctioned coverage 14.03% : 6773.25 sq. mt

Permissible FAR @ 1.5% : 82229.265 Sq. mt
at the time of allotment

Purchasable FAR on 25.10.10: 150753.652 Sq. mt With Sanctioned FAR @ 2.75 Floor wise Description of Proposed area of different floors are as under Floor Permissibl Built up Previous Proposed Revised Total area e area area sanctioned FAR tower area tower (Sq. Mt.) (Sq. Mt.) (tower 1 to area tower 15, 16 & 15, 16 & (2 +5)

14) on 15, 16 & 17 (Sq. 17 (Sq.

16.10.09 17 date Mt.) Mt.) utility 26.11.09 (3 +4) certificate issued.

		Sq. Mt				
Space frame	--	--	--	24.00	24.00	24.
Podium (T-1 to T-14)	--	288.983	--	--	--	--
Ground Floor	19186.825	6823.429	1751.320	1125.302	2876.622	970
1st Floor	Rest FAR	6722.349	2288.230	78.075	2366.305	908
2nd Floor	--	6722.349	2249.220	58.555	2307.775	903
3rd Floor	--	6722.349	2249.220	58.555	2307.775	903
4th Floor	--	6722.349	2249.220	38.400	2287.620	900
5th Floor	--	6722.349	2249.220	38.400	2287.620	900
6th Floor		6722.349	2249.220	-12.397	2236.823	895
7th Floor		6722.349	2249.220	-12.397	2236.823	895
8th Floor		6722.349	2249.220	-12.397	2236.823	895
9th Floor		6722.349	2249.220	-12.397	2236.823	895
10th Floor		6423.737	1358.786	878.037	2236.823	866
11th Floor		3982.669	1186.94	910.301	2097.215	607
12th Floor			740.162	851.205	1591.367	159
13th Floor			740.162	851.205	1591.367	159
14th Floor			740.162	851.205	1591.367	159
15th Floor			740.162	851.205	1591.367	159
16th Floor			447.995	1162.568	1610.523	161
18th Floor			447.995	1162.568	1610.523	161

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19th Floor			447.995	1162.568	1610.523	1610.523
20th Floor			447.995	1165.568	1610.523	1610.523
21st Floor			383.168	1610.523	1610.523	1610.523
22nd Floor			383.168	1610.523	1610.523	1610.523
23rd Floor			383.168	1610.523	1610.523	1610.523
24th Floor			383.168		1610.523	1610.523
25th Floor				1610.523	1610.523	1610.523
26th Floor				1610.523	1610.523	1610.523
27th Floor				1610.523	1610.523	1610.523
28th Floor				1610.523	1610.523	1610.523
29th Floor				1610.523	1610.523	1610.523
30th Floor				1610.523	1610.523	1610.523
31st Floor				1610.523	1610.523	1610.523
32nd Floor				1610.523	1610.523	1610.523
33rd Floor				1610.523	1610.523	1610.523
34th Floor				1610.523	1610.523	1610.523
35th Floor				1610.523	1610.523	1610.523
36th Floor				1610.523	1610.523	1610.523
37th Floor				1610.523	1610.523	1610.523
38th Floor				1610.523	1610.523	1610.523
39th Floor				859.055	859.055	859.055
40th Floor				439.106	439.106	439.106
Total FAR	150753.65	78019.956	31312.105	41132.600	72444.705	150464.66

Basement		After leaving set back, rest area (for parking, services)				
Upper basement		40542.38		1511.144		42053.524
			3397.09	41.680		3438.770
Lower basement		40542.38				45942.294
Total area			3397.09	1552.824		
Services	15% services	Zero	Zero	6396.896		6396.896
Total area		118562.33	34709.195	49082.32	83791.515	202353.85

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basement and services)

Proposed land coverage area = 10648.503 Sq. Mt. (19.425%) Revised FAR (Built + Revised) = 150464.664 Sq Mt." 79 On 24 April 2012, the CFO drew the attention of the In-Charge of the Building Cell, NOIDA to the violation of the minimum distance which was required to be maintained in the construction which was being carried out by the appellant. The subject of the letter reads thus:

> "Regarding distance between the under construction (Tower No. 17) situated at Plot No. 4, Sector-93A NOIDA being constructed by M/s Supertech Limited and old constructed buildings" The letter (which has been extracted above para 28 of Part A.5) has a crucial bearing on these proceedings. The CFO made a clear reference to the distance requirements which were to be observed in terms of NBR 2006, NBR 2010 and NBC 2005. The CFO queried NOIDA as to whether the license for construction was granted after granting a relaxation to the builder in a "special category" or whether the construction was being carried out contrary to the standards. This letter evinced no response from NOIDA.

80 When the construction of two towers in the newly acquired leasehold area commenced in July 2009, a communication dated 16 July 2009 was addressed on behalf of the appellant (by its Director) to the Group Co-coordinator of Emerald Court (the letter has been extracted in para 15 of Part A.4). Evidently, the residents PART D were concerned about the construction of the new towers. The said letter clearly demonstrates that in 2009, the appellant was of the view that the new

towers which were being constructed would have separate entries and exits, amenities and infrastructure and that the developer would construct a boundary wall separating the existing 15 towers from Apex and Ceyane. This representation was reiterated in a letter dated 9 March 2012 from the appellant to the President of the RWA. 81 The first paragraph of the above letter indicates that the appellant had obtained two separate plots admeasuring approximately 48,650 sq. mtrs. and 6556.61 sq mtrs., and had got them registered separately in March 2005 and May 2006. The representation to the residents that these were separate plots which were leased out to the developer was clearly contrary to the provisions of the supplementary lease deed which stipulated that the newly demised area of 6556.61 sq. mtrs would form a part of the original plot which had been allotted to the appellant. The supplementary lease deed contains the following covenants:

> "[...] That the Lessor has agreed to demise on lease in additional place of land measuring 6556.61 Sq. mtrs. Against consideration of Rs.14,48,98,871/- (Rupees Fourteen Crores forty eight lacs ninety eight thousand eight hundred seventy one only) which has been already been paid by the lessee to the lessor and also in consideration of the yearly lease rent @1 % of the total premium per year Rs.1,59,38,876 for enhanced area has been paid by the Lessee to the Lessors as one time lease rent (equal to 11 year's lease rent). That the demised premises shall be deemed to be part of the Plot No.04, Sector 93-A, Noida already leased to the lessee. That all other conditions of the original lease deed and allotment shall remain unchanged and shall be equally PART D applicable to this demised · premises and binding upon the lessee.
>
> That the period of 90 years lease shall commence from16.03.2005.
>
> That the demised premises shall be part of the original allotted Plot No. 04 Sector Noida. Necessary addition or alterations in the structure can be subject to the building byelaws of the lessor and terms of the transfer lease deed. That total area of Plot No. 94, Sector 93-A, Noida is 54819.51 Sq. mtrs.
>
> That the total premium of Plot No. 04, Sector 93-A is Rs.1,21, 15,11,171/- (Rupees One hundred Twenty one crores fifteen lacs eleven thousand and one hundred and seventy one only) instead of Rs.1,06,66,12,000/-.(Rupees One hundred six crores sixty six lacs twelve thousand and three hundred). The lessee shall construct the building on the demised premises according to the building bye laws of the Lessor."

Despite the clear terms of the supplementary lease deed in terms of which the additional land allotted under it is to form a part of the original plot, the communication addressed to the flat buyers of the existing towers was that the new towers were completely disconnected from and independent of the earlier developed fifteen towers. This letter cannot be glossed over because a similar position was affirmed before the High Court in paragraph 32 of the counter affidavit filed by the appellant, which reads as follows:

> "32. That the contents of para 12 so far it relates to matter of record are need no reply and other contents are wrong and denied. The letter dated 16.07.2009 and 09.03.2012 given by respondent no. 5 contains the same stand, that "Apex and Ceyane" is Phase II of the project as in the present counter affidavit. Similarly, letter dated 31.01.2012 and 13.02.2012 filed by respondent no.5 before police authorities can be relied upon in support of the stand of respondent no.5." PART D

82 The only reasonable hypothesis which emerges from the above disclosures is that the argument which has now sought to be advanced – that Towers 1, 16 and 17 are part of a cluster of buildings comprised within a block, thus obviating the need to maintain the minimum distance between them – is an afterthought. It is contrary to the stated position which has been adopted by the appellant in its affidavit before the High Court. The record before this Court also indicates that the appellant has taken liberties with the truth in making the submission that a cluster of towers in the project constitutes a block which allows the appellant to subvert the minimum distance requirement.

83 The above conclusion is clearly evident from the record from IA No 54807 of 2021 for the production of additional documents. Annexures A-1, A-2, A-3 and A-4 are:

> (i) A true copy of the first revised plan dated 29 December 2006 showing various blocks as sanctioned by NOIDA;
>
> (ii) A true copy of an allotment letter dated 17 March 2007 issued by the appellant in favour of a flat purchaser;
>
> (iii) A true copy of the completion map dated 10 April 2008 in relation to T- 1 to 8;

and

(iv) A true copy of the completion map dated 16 September 2009 in relation to T-

9 to 14.

PART D 84 Annexure A1 above, which is part of the first revised plan of 2006, clearly indicates that each block comprises of a cluster of two buildings. Annexure A2, which is the letter of allotment, makes it clear that what is meant by a block was the Tower comprised of Aster II. Moreover, the letter also indicates the recovery of lease rent at Rs 190 per sq. foot. Annexure A-3, the completion drawing of 2008, indicates that each tower is depicted to have four wings. In other words, the tower itself is a block comprising of four wings and the towers have been specified distinctly with reference to numbers. During the course of the proceedings before the High Court, the appellant filed a document purported to be the second revised plan of 2009 where a depiction of several blocks was made. The plan which was filed before the High Court bears no signature of the competent officer of NOIDA. In the counter affidavit filed by the appellant in the High Court, it was stated that:

"3. That Noida Building Bye-laws talks about building blocks. Even the mandatory distance is provided only between the two building blocks in the said bye-laws. It is stated that Cluster of buildings from one building block, provided these buildings are connected with each other to form one building block. Further number of buildings within one building block depends upon various factors like the theme of the project its Architecture features surrounding, plot dimensions etc.

4. The Emerald Court (phase I) has five building block each comprising of three buildings. After acquisition of additional land, admeasuring 6556 sq.mt. Apex & Ceyane (phase II) was envisaged and the same was sanctioned by NOIDA. With the provision of space frame between tower Apex and Aster-2 as per sanction plan dated 26.11.2009 by NOIDA, the Apex & Ceyane were connected within the existing building block comprising of towers Aster-2, Aspire-1 and Aster-1 as per Architecture feature of the project. The sanction dated 26.11.2009 was granted by NOIDA only after structural safety certificate was issued by the IIT-Roorkee.

PART D Copy of the sanctioned plan showing the Building block is annexed herewith as ANNEXURE SCA-1." (emphasis supplied) 85 In the rejoinder filed to the above affidavit on behalf of the RWA, the contents of the above plan were seriously disputed and it was averred:

"5. That the contents of paragraph 4 of the supplementary counter affidavit are incorrect as Aster Type-A was already envisaged on the additional land measuring 6556 sq. mtrs. along with certain green area as is evident in the plan approved by NOIDA in Dec. 2006 (Annexures 2 of WP) on total area of the plot viz. 54800sq. mt.

The respondent has submitted a document marked as SCA-1 which is called the sanctioned building plan. This is altogether a new document submitted by respondent 5 and is a shocking surprise to the petitioner as this has never ever been disclosed nor advertised in the past. The documents has glaring deviations as compared to the document shared and submitted in the past. For the first time respondent 5 has submitted a plan which contains reference to "BLOCKS". In the past such a document was never shared. Also now each tower is given only a tower number and the nomenclature used in title documents and popular usage has been deleted viz Aspire/Aster/ Emperor etc. This is an alarming misnomer being created by respondent 5. Also, nowhere this bears the sanctioning endorsement by NOIDA (Respondent No.

2) terming as BLOCK 1 to 5. It is amply clear that respondent 5 is using false representation and documents and trying to create confusions on flimsy ground. They are trying to buy time and attention of this Court and using these as delaying tactics, which is against the interest of petition. With the delaying tactics respondent 5 is rapidly proceeding with unauthorized construction of APEX and CYNE towers day and night, especially after filing of writ petition by the petitioners, as no injunction has been issued so far. Respondent 5 has been and will be using the public

> interest plea of investors and financial institutions/banks to PART D cover up illegal and unauthorized construction as is evident from Para 19 of the supplementary counter affidavit." (emphasis supplied)

86 Significantly, it must be noted that the second revised plan of 2009, which has been placed on record, does not show the existence of blocks and is duly endorsed by NOIDA. Similarly, the third revised plan of 2012, which is also on the record, does not embody any description of blocks. Therefore, we have no manner of doubt in finding that the argument sought to be developed in the course of these proceedings that there were separate blocks in the plan is an afterthought. It is contrary to the stated position which has been adopted by the appellant on affidavit before the High Court. It is contrary to the sanctioned plans. What is worse is that an effort was made to place on the record before the High Court a purported plan of dubious origin by seeking to pass it of as the second revised plan of 2009. 87 In its affidavit before the High Court, the appellant stated that:

> "9. That it is pertinent to mention here that the Phase II of the project by the name of "Apex and Ceyane" has been planned to have provision of altogether separate facilities like swimming pool, gymnasium, separate power backup, separate L.T. Panels and separate entry and exits gates etc. Therefore the members of petitioner society of Emerald Court (Phase I) does not have any locus to challenge any issue relating to the towers of "Apex and Ceyane" (Phase II)." (emphasis supplied) PART D

88 The above averments would belie the submission sought to be advanced before this Court that Apex and Ceyane are parts of a cluster of buildings comprised within one block. The High Court, while rejecting the submission, observed:

> "Learned counsel for the respondent-company finally made an attempt to argue that the phase "building blocks" is not defined under the byelaws and according to the learned senior advocate building blocks would mean the entire building on plot no. 4 of Sector 93A NOIDA. The said argument is farfetched and against the provisions of the Building Regulation of 2006 as well as 2010. Building blocks means group of building on the plot/site. The sanctioned maps clearly shows that the respondent company has got the layout approved consisting of separate blocks. The nomenclature of the blocks was subsequently changed by the respondent company, in each successive plan and finally the buildings were numbered as towers (1-17). The maps sanctioned clearly shows that the buildings in dispute Aster II (tower 1) and Apex and Ceyane (tower 16 and 17) are separate building blocks. The argument has been advanced without there being any foundation in the pleadings. Without pleadings argument cannot be advanced."

89 Based on the interpretation of 'building blocks' in the Building Regulations as discussed above, and the inconsistency in fact and in the argument of the appellant, we affirm the above conclusion of the High Court.

D.1.2 Interpretation of "dead end sides of buildings" 90 An alternative argument has been advanced by Mr Ravindra Kumar, counsel for NOIDA, that Regulation 24.2.1.6 of the NBR 2010 provides for an exception to the 16 mtrs. minimum distance requirement if the building blocks have dead-end sides facing each other. It stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a minimum of 9 mtrs. instead of 16 mtrs. Mr PART D Ravindra Kumar submitted that T-1 and T-17 have dead-end sides facing each other and thus, the distance requirement of 16 mtrs. was not applicable. The "dead-end" argument has met a dead-end in the submissions of the appellant as during the proceedings. Mr Vikas Singh, learned Senior Counsel for the appellant, has specifically clarified that he is not pressing the submission. We will however deal with it as the counsel appearing for NOIDA has raised it before this Court. 91 Regulation 24.2.6 of the NBR 2010 stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs. The question of dead-end sides arises only between blocks, in which case the minimum distance required is 9 mtrs.

92 This Court on 27 July 2016 directed the NBCC to ascertain if the dead-end sides of T-1 and T-17 are facing each other, in order to decide if the towers can be brought within the exception in Regulation 24.2.1(6) of NBR 2010. The terms of reference were as follows:

> "To ascertain whether the two towers- Tower-1 (Aster 2) and Tower-17 have dead end sides facing each other for the purpose of Reg. 24.2.1(6) of Noida Building Regulations 2010." NBCC was tasked with the job of determining the meaning of the phrase 'dead end sides facing each other', and whether T-1 and T-17 could be brought within the exception. This Court also specifically directed that NBCC shall not travel beyond the issue that was referred to it.
>
> PART D

93 The appellant filed its submissions before NBCC on the meaning of the phrase 'dead end side of a building'. It was submitted that:

> (i) Model Bye-Laws 2004, Model Bye-Laws 2016 and the Delhi Development Authority Building Byelaws 2016 have relaxed the 16 mtrs. distance rule to 9 mtrs. if there are 'no habitable rooms in the front', irrespective of the height of the building. A similar provision has been incorporated in NBR 2010 as well.

However, instead of using the phrase "no habitable rooms in the front", the phrase "dead end" has been used. Therefore, the phrase "dead end" must take color from the bye-laws and will have to be interpreted to mean absence of 'habitable rooms'; and

(ii) Clause 3.46 of NBR 2006 defines 'habitable room' as "a room occupied or designed for occupation by one or more persons for study, living, sleeping, eating, kitchen if it is used as a living room but not including bathrooms, water closet, compartments laundries, serving and storage pantries, corridors, cellars, attics and spaces that are not used frequently or during extended periods".

94 The term 'dead-end sides of a building' has not been defined in NBR 2006, NBR 2010, and NBC 2005. Regulation 3 of NBR 2010 states that words that are not defined in the Regulations shall have the meanings assigned to them in the UPIAD 1976. If no meaning is assigned to the word in UPIAD 1976, then the meaning assigned to the word in the Master Plan/Development Plan, Development Plan, National Building Code, Indian Standard Institution Code shall be referred to. PART D However, none of the above mentioned authorities define the phrase 'dead end sides of a building'. Though, NBC 2005 uses the phrase in reference to dead end situation of road, corridor, water supply etc., no reference with respect to 'dead end sides of a building' is made.

95 Therefore, NBCC wrote to the Bureau of Indian Standards 23 and NOIDA on 3 September 2016 and 30 August 2016 respectively, seeking a clarification on the meaning of the phrase 'dead end sides of a building'. BIS through a letter dated 9 September 2016 stated that the phrase was only used in NBR 2010 and not the NBC 2005 that was brought by BIS, and therefore, it was not best suited to provide an interpretation on the phrase. NOIDA vide a letter dated 30 August 2016 stated that it refers to "[a]n area/side of a building or a residence having no access/entrance or exit becomes a dead end area/side of the building, though it may have openings for ventilation".

96 NBCC submitted its report on 13 October 2016. The report discusses the structure of T-1 and T-17, the meaning of the phrase 'dead end side of a building' and concludes that the sides of T-1 and T-17 facing each other are not dead end sides of the buildings. NBCC made the following observations on the structure of T-1 and T-17 after site verification:

> (i) The ground floor of T-17 is allocated for commercial shops. The remaining floors in T-17 will have residential flats with windows/balconies/ventilators on "BIS" PART D all sides. Except for one opening for a fire exit, there will be no opening on the ground floor on the side that faces T-1. However, all other floors (i.e., except the ground floor) will have an opening on the side that faces T-1;
>
> (ii) The entry to T-17 is on the side that is perpendicular to the side that is facing T-1;
>
> (iii) The entry to the residential flats of T-1 is from the side facing T-17;
>
> (iv) T-1 has offsets. Therefore, the space between T-1 and T-17 varies from 9.3 mtrs. to 25 mtrs.;
>
> (v) The habitable rooms with balconies in T-1 and T-17 face each other; and
>
> (vi) T-1 and T-17 do not taper at the higher floor. None of the tower wings have different heights.

97 Since there is no clarity on the meaning of 'dead end side of a building', NBCC interpreted the phrase by referring to the use of the phrase 'dead end' in NBC 2005 in the context of roads, water supply network etc. where the passage is limited. The report stated that "a dead end exists in the corridor or passageway where there is only one direction to travel to an exit". Using this meaning as

a reference, NBCC interpreted the phrase of 'dead end side of building' to hold that T-1 and T-17 do not have dead end sides facing each other. Further, NBCC also observed that the distance between T-1 and T-17 does not comply with the distance rule specified in NBC 2005:

> "6. The dead end sides, as per regulation 24.2.1 (6) of NBR 2010 would mean where habitable rooms of the building do not face each other and the distance between two PART D adjacent building blocks shall be 9 mtrs and otherwise it shall be 16 mtrs as per NBC 2005. In the present case both the buildings i.e T-1 & T-17 have habitable rooms (with balconies) facing each other so these are not dead ends".
>
> 7. Whether the side of T-17 which is facing T-1 is its dead-

end side:

> (a) The T-17 has entry & exit routes on the sides perpendicular to the side facing T-1. Therefore, the side of tower T-17 which faces T-1 is not the front-side, and therefore, the 'Building Separation' between T-1 & T-17 should be guided by those clause(s) in NBC 2005 that guide(s) open spaces to the sides of a building.
>
> (b) On the ground floor, tower T-17 has commercial space/shops which would be always busy/occupied with people for most of the time during a normal dat.
>
> (c) On higher floors it has balconies & terraces anchored to habitable rooms on all sides.

Inference: From (i), (ii) & (iii) above, the side of T-17 which faces T-1 would naturally have frequent human use & activity both during daytime and nighttime, every day of the year, for however short the durations, both on ground and on higher floors (balconies & terraces anchored to habitable rooms) on any normal day. Therefore, it may be safe to conclude it is not a dead-end side of T-17.

8. Whether the side of T-1 which faces T-17 is its dead-end side: The side of T-1 facing T-17 has three sections, and its middle section is offset further away from Tower T-17 while the two sections at the ends are in the same line. However, that section is the main entry/exist to the Tower. The remaining portion of the side facing Tower T-17 is also not inactive since it has balconies & terraces anchored to habitable rooms and/or toilets.

Inference: The entry to tower T-1 is from the side facing Tower-17. This the side of tower 1 facing tower-17 cannot be treated as dead end side of tower-1." (emphasis supplied) PART D 98 The appellant filed its objections to the report of NBCC, contending the following:

> (i) The scope of enquiry was restricted by this Court to the issue whether T-1 and T-17 have dead end sides facing each other for the purpose of Regulation 24.2.1(6) of the NBR 2010. However, NBCC has widened the scope of enquiry and determined if the sanction is in compliance with the distance rule in NBC 2005;

(ii) The entry to the ground floor of T-17 is provided on both sides. For the commercial shops, the entry is on the side perpendicular to the side facing T-

1, and for the other facilities it is on the other side opening towards the side of T-16 and the open space;

(iii) The passage between T-1 and T-17 is used only to enter into the parking space allotted for the houses in T-1 toT-15. To enter the parking space of T- 17, another passage is used;

(iv) Four out of the five external sides of the apartments in T-1 facing T-17 are dead ends (two plumbing shafts, toilet dead wall, bedroom dead wall). Only the fifth external side of T-1, which is a balcony attached to the living room, faces towards T-17;

(v) Though the entry in T-1 is facing T-17, the entry is 20 mtrs. away from T-17;

(vi) NBCC has failed to consider the different line positions with respect to T-1 and T-17. There are sixteen line positions of the sides of T-1 and T-17 that PART D are facing each other and they are predominantly dead end sides. Of the sixteen line positions:

a. Eleven line positions have dead walls facing each other; b. Two line positions have dead walls of T1 facing windows of T-17. However, there is a 16 mtrs. open space between them; c. Two line positions have the railings of common lift lobbies of T-1 facing the bed room window of T-17. However, there is a 3 mtrs. open space between them; and d. One line position where the dead wall of shaft of T-1 faces the railing of balcony in T-17, there is 9.30 mtrs. of open space between them. The open space between the walls of both the buildings in this line space is 10.80 mtrs.

99 The first respondent also sought an expert opinion on whether T-1 and T-17 have dead end sides facing each other from IIT Delhi. The report was submitted on 6 September 2016 to this Court, and concluded that the sides of T-1 and T-17 that face each other cannot be considered as 'dead end sides of the building'. It was observed that when balconies and windows (or any other egress) are provided, the functional performance will be compromised if the minimum distance as prescribed is not adhered to. Elaborating further, it was stated that the minimum distance can be reduced when there is no egress on the concerned side of the building because then there would be no possibility of a functional compromise. The reasoning in the report is summarized below:

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(i) The dictionary meaning of 'dead end' is '"no exit", i.e., no egress or without openings. Therefore, the presence of any opening in the form of windows of balconies renders the building side not a dead end;

(ii) The purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities,

minimum ventilation, and to receive natural day light. In case the minimum distance requirement between buildings with egress facing another building is not complied with, then the function of the egress (through window or balcony) will be compromised due to the following reasons:

a. To avoid transmission of fire: According to NBC 2005, fire separation is defined as the distance from the 'external wall' of a building to the 'external wall' of another building. There is an increased possibility for fire to be transmitted to the adjacent building through windows. However, if the walls have no openings, then the distance between the buildings can be less since there is a lesser chance for transmission of fire; b. Safe escape and rescue: As the height of the building increases, there is an increased difficulty to rescue residents in case of emergency situations. In such cases, open balconies can be used to facilitate rescue operations provided that the street has sufficient width. As the height of the building increases, for maximum safe inclination of the ladder, the street has to be wider;

PART D c. Minimum ventilation: Minimum natural ventilation is required for hygienic ventilation (i.e., the removal of CO2, body odour, etc.), for heat exchange and cooling of the building; and d. Natural day light: When the distance between two buildings is high, the building receives direct sunlight;

(iii) The main entry/exit of T-1 is facing T-17. This entry is the only one that abuts the road and will in all probability be used for rescue operations if the need arises. The balconies of habitable rooms in T-1 and T-17 also face each other. Therefore, the concerned building sides (of T-1 facing T-17 and vice versa) cannot be considered as dead ends since the sides have egress.

Moreover, a reduction in the minimum distance requirement would severely compromise the purpose of providing such egress.

100 The first respondent by a letter dated 6 October 2016 also sought an expert opinion from IIT Roorkee on whether T-1 and T-17 have dead end sides facing each other. A report was submitted in October 2016 to this Court holding that the building sides of T-1 and T-17 facing each other cannot be termed as 'dead ends' for the following reasons:

(i) The scientific basis of providing the distance requirement is to enhance fire safety, provide sufficient day light and ventilation, visual privacy and air flow;

(ii) The Merriam Webster Dictionary defines 'Dead End' as a street that ends instead of joining with another street so that there is only one way in and out of it. 'Dead wall' is defined as a wall without openings such as doors, windows PART D and ventilators. Therefore, evidently, openings for fenestration and the presence of balconies and windows would mean that the 'side' is not a dead end side;

(iii) When the side of the building facing another building has egress, the minimum distance specified under the Regulations must be complied with.

Otherwise, the functional performances of the egress (i.e., balcony, window, etc.) will be compromised; and

(iv) The main entry, the doors, windows, and balconies of T-1 face T-17. Since the side of T-1 facing T-17 has egress, it is not a 'dead end side'. 101 The appellant approached Design Forum International24, an architectural and design firm, requesting their assistance in the ongoing case. DFI through its report made the following observations on NBCC's report regarding the dead end issue:

(i) T-1 and T-17 vary in design. T-17 has nearly three times the length when compared to T-1. Moreover, the portion of T-17 that overlaps T-1 is not constant along the whole length. Therefore, it is necessary that the sides of the towers facing each other are examined in a more detailed manner;

(ii) The entry of T-1 and T-17 is perpendicular to each other;

(iii) The sides of T-1 and T-17 can be classified into the following three categories: (a) dead end facing dead end (i.e., a wall facing a wall); (b) dead end facing a non-dead end (i.e., a wall facing a window); and (c) non-dead end facing a non-dead end (i.e., a window facing a window);

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(iv) The position is clear under Regulation 24.2.1(6) of NBR 2010 that for cases falling under (a), the distance between the buildings must be 9 mtrs. and for cases falling under (c), the distance must be 16 mtrs. However, for cases that fall under (b), there is no clarity on the distance that must be maintained between the buildings;

(v) There are thirteen unique line positions between T-1 and T-17. Of the thirteen line positions, in six line positions the dead end side of T-1 faces the dead end side of T-17 (Type (a)); in four line positions, the dead end side of T1/T- 17 faces the non- dead end side of the other (Type (b)); in three line positions, the non-dead end side of T-1 and T-17 face each other (Type (c));

(vi) For the line positions falling under type (a), the distance varies from 9.88 mtrs. to 15.11 mtrs. complying with the 9 mtrs. requirement; for the line positions falling under type (b), the distance varies from 10.8 mtrs. to 15.3 mtrs.; for the line positions falling under type (c), the distance varies between 14.62 mtrs. to 15.5 mtrs., which is 'very slightly lesser' than the required 16 mtrs.;

(vii) Since the distance between the sides of T-1 and T-17 facing each other differ widely and is not uniform, this Court will have to undertake an in depth analysis of the issue keeping in mind the unique situation; and

(viii) The minute deficiency in case of type (c) and type (b) (if this Court declares the distance to be deficient) can be rectified by making structural alterations in the buildings by shifting the position of the egresses. PART D 102 The NBR 2010 does not provide any definition of the phrase 'the dead end side of the block.' NBR 2006, NBC 2005 and the UPIAD Act 1976 also do not define the phrase. The Court while interpreting the expression will have to attribute a contextual meaning to the phrase 'dead end side of the block'. The above reports adopt two different meanings of the phrase. The NBCC report and the appellant in its objections before the NBCC state that the dead end sides of the building would mean where 'habitable rooms' of a building do not face each other. Though it is not specified that only habitable rooms with 'windows/balconies' will not be considered as dead ends, it is evident that the argument is that it is only if a habitable room with egress faces the side of the adjacent building, that it should not be considered as a dead end side. The corollary is that if the store room or the bathroom or corridor with a window/vent faces the side of the adjacent building it must still be considered as a dead end. Whereas, the reports by IIT Delhi and IIT Roorkee take another approach by defining a dead end side of a building as a side with egress (i.e., windows, balconies or vents) without any reference to 'habitable rooms'. 103 Two other contentions on the interpretation of the phrase have also been raised. It is contended that the phrase is ambiguous to the extent that it does not provide clarity on whether an egress of a building facing a dead wall of the adjacent building would fall within the exception. It is also contended that since the height of T-1 and T-17 is not the same, two egresses in adjacent buildings face each other only in a few line positions, and the requirement of minimum distance between the PART D adjacent buildings must differ with each line position depending upon whether those specific line positions are dead ends.

104 We are therefore faced with three questions while interpreting the phrase 'dead end sides of the buildings':

> (i) whether only habitable rooms with egress in any part of the building must be excluded from the ambit of the phrase 'dead end sides of the buildings';
>
> (ii) whether both sides of the buildings must be dead end sides, or whether it is sufficient if one side of the building is a dead end side; and
>
> (iii) whether the direct line position must be used for the determination of 'dead end sides of the building' and the distance between two adjacent buildings.

105 We are unable to accept the contention that only habitable rooms with egress (that is, windows or balconies) will fall outside the ambit of 'dead end side of the buildings'. 'Dead end' in common parlance means no exit or absence of access. NBR 2010 does not provide any indication to classify between habitable and non- habitable rooms in the context of the phrase 'dead end side'. The argument that the classification between habitable and non-habitable rooms has been made in the Model Bye-Laws with specific reference to the distance requirement and therefore, it must be imported for the interpretation of the phrase 'dead end sides of the building' is unsatisfactory. It is a settled principle of statutory interpretation that words must be given their plain and ordinary meaning unless such an interpretation leads to an ambiguity or absurdity or when the object of the statute indicates otherwise. The use PART D of the phrase 'dead end side of the building' in NBR

2010, in spite of the other bye laws using the phrase 'habitable rooms', makes it evident that the intent was to restrict the ambit of the exception. Interpreting the phrase in the context of the ordinary meaning of the word 'dead end' does not lead to any ambiguity; rather it is in pursuance of the intent and purpose behind the provision. As stated by the reports submitted by IIT Delhi and IIT Roorkee, the purpose of prescribing a higher minimum distance between adjacent buildings in case the side of the building facing another has egress is so that the functional utility of the egress (either a window or balcony) is not diminished. Windows/balconies, irrespective of whether they are attached to a habitable or a non-habitable room, perform functions which will be greatly diminished if the adjacent building is closer and thereby restricting the air flow and increasing the chance of transmissibility in the event of a fire. Moreover, the privacy of the flat dwellers would be severely compromised. The expansion of the meaning of the phrase 'dead end side of the building' to include non-habitable rooms with windows would thus amount to rewriting the regulation, when no such indication can be construed from NBR 2006 or NBR 2010.

106 The contention that the dead end exception will be applicable, even if one side of the two adjacent buildings has a dead end is erroneous. Regulation 24.2.1(6) of NBR 2010 states "If the blocks have dead end sides facing each other, then the spacing shall be maximum 9 meters instead of 16 meters". The words 'blocks' and 'sides' in the plural form find place in Regulation 24.2.1(6) of NBR 2010. The Regulation does not state 'if the block having a dead end side'. When the phrases or PART D words are free from ambiguity and when there is only one meaning that the phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat the intent, purpose and object of a provision in a planning regulation.

107 The report submitted by DFI refers to the variant heights of T-1 and T-17. The contention is that since the structure of T-1 and T-17 are different, and since the towers horizontally overlap with each other only to the extent of the height of the shorter tower (T-1), the distance between T-1 and T-17 must be measured in the direct line positions. These direct line positions are then classified into three categories (Category (a) - dead end facing dead end; Category (b) - dead end facing a non-dead end; Category (c) - a non-dead end facing a non-dead end). The distances between T-1 and T-17 with respect to each of these types have been measured to argue that for lines falling in category (a), it is enough if the distance is 9 mtrs; for those falling under category (b), there is no clarity on the distance required; and for lines in category (c), a minimum distance of 16 mtrs. is required. This argument rests on two premises: (i) the minimum distance requirement prescribed under Regulation 24.2.1(6) of NBR 2010 is not the distance between two buildings but is rather the distance between the different direct line positions between two adjacent buildings; and (ii) it is necessary for the entire adjacent blocks to have non-dead end sides facing each other for the 16 mtrs. distance rule to be applied uniformly.

PART D 108 The phrase which is used in Regulation 24.2.1(6) of NBR 2010 is 'block' and not 'flat'/'unit'. The unit of consideration is thus not individual 'units' in the block but the entire block itself. The side of the block would not be a dead end side if there are even few egresses. If the direct line position argument is accepted, then the intent behind providing the minimum distance requirement would become nugatory. The purpose of imposing the minimum distance requirement

as stated in the reports of IIT Delhi and IIT Roorkee is to provide ventilation, direct sun light, means of rescue and prevent the spread of fire. If particular 'flats'/'units' in the block have a vent according to the construction plan, the minimum distance would have to be complied with, not just with respect to the direct line but with respect to the 'entire block'. 109 The reports of IIT Delhi and IIT Roorkee clearly elucidate the difficulty in evacuation of occupants in high rise buildings. The report states that the distance between adjacent buildings needs to be greater for taller buildings since the street has to be wider for the maximum safe inclination of the ladder. The reports also mention the reduction in ventilation, sunlight and privacy in case the distance between the buildings is less. Therefore, irrespective of whether all or some of the units in the block have an egress facing the adjacent building, the minimum distance of 16 mtrs. will have to be complied with, otherwise the purpose of providing the vent would be functionally compromised 110 In view of the above discussion, the principles that would guide the interpretation of the phrase 'dead end sides of the blocks' are as follows:

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(i) The phrase 'dead end side of the block' would mean that any building does not have an egress;

(ii) An egress in a non-habitable room like the bathroom or the storeroom will be considered as a non-dead end side;

(iii) For the 'dead end' exception to be applicable, it is necessary that the sides of both the buildings facing each other must not have any egress;

(iv) It is not necessary that all the units in the building facing the other building must have an egress. Even if some of the units have an egress, that side of the block will not be considered as a 'dead end side'; and

(v) The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground.

111 On application of the principles deduced above on the interpretation of the expression 'dead end side of the building', the sides of T-1 and T-17 facing each other are held not to be dead end sides for the following reasons:

(i) The windows/corridors of T-17 on all floors except the ground floor have an opening on the side that faces T-1. Though this is contested by the appellant, it has been conceded that there are at least a few windows/balconies in T-1 facing T-17 and vice versa;

(ii) The entries of T-1 and T-17 do not face each other but are perpendicular to each other. However, the entry to T-1 is from the side facing T-17;

(iii) Four out of five external sides of T-1 that face T-17 are dead end sides.

However, the fifth side is a balcony of the living room facing T-17. The PART D distance between points of the buildings cannot be selectively measured to argue its compliance with the distance rule; and

(iv) Even though the entry of T-1 facing T-17 is 20 mtrs. away, the distance rule is not complied with since a selective measurement from the dead end points cannot be undertaken. The distance must be measured along the ground. Thus, we find that the revised plans were in violation of NBR 2010 and do not fall under the exception provided in Regulation 24.2.1.6 for blocks having dead end sides.

D.2 Violation of NBC 2005

112 We shall now address the question of whether the third revised plans violated

the NBC 2005. As we have seen above, NBC 2005 is referenced in Regulations 24.2.1.6 of the NBR 2010. NBC 2005 has two parts in regard to the maintenance of open spaces – para 8.2.3.1 and para 8.2.3.2. Para 8.2.3.1 provides for open spaces for buildings above the height of 10 mtrs., which are specified in Table 2. Table 2 indicates that the side and rear open spaces correspond to the height of the building and increase accordingly, beginning with 3 mtrs. for a building of a height of 10 mtrs. and up to 16 mtrs., where the height of the building is 55 mtrs. and above. In addition, Note 3 clarifies that where either the length and depth of the building exceeds 40 mtrs., the minimum distance which is prescribed must be further increased by ten percent of the length and depth of the building minus 4 mtrs. Thus, PART D the calculation for the side and rear open spaces to be left around the building would be as follows:

		(third revision)	(
Height of the Building		84.5 m 25	
Minimum distance prescribed in Col 3 of Table 22 (for buildings above 55 mtrs)		16 m	
Distance to be maintained as per Note 3: Distance in col (3) + 10% of the length or depth of building – 4.0 mtrs	16 + 10% (84.5) – 4 = 20.45 mtrs		16 + 10% mtrs

Thus, according to the NBC 2005, the spacing between T-1 and T-17 should be 20.45 mtrs. Evidently then, the second and third revised plans were not in accordance with the NBC 2005. This conclusion is fortified by the report of the NBCC, which in para 5 reaches the conclusion that the minimum open space around T-17 is to be 20.45 mtrs. and thus, the distance between T-1 and T-17 does not comply with para 8.2.3.1 of the NBC 2005.

113 An alternative to para 8.2.3.1 has been provided in para 8.2.3.2 for 'tower like structures'. Para 8.2.3.2 stipulates that for a structure of a height up to 24 mtrs. with one set-back, the open spaces at the ground level should not be less than 6 mtrs.; if The total actual length of T-17 as noted in the NBCC Report is 84.5 m as against the envisaged 121 m. PART D the height is between 24 mtrs. and 37.5 mtrs. with one set-back, the open space at the ground level must be not less than 9 mtrs.; and for heights above 37.5 mtrs. with two set-backs, the open space at the ground level should not be less than 12 mtrs. Additionally, under (d) of para 8.2.3.1, the deficiency in open spaces of tower like structures (as compared to all building of height above 10 mtrs. in para 8.2.3.1) can be made good by providing set-backs at the upper levels, so long as the set-backs are not accessible from individual rooms or flats at these levels. 114 A reading of para 8.2.3.2 indicates that this exception is only applicable if the deficiency in open spaces can be made good by set-backs at the upper level. Clause (d) of para 8.2.3.2 of the NBC 2005 is ex facie not attracted for the reason that there are no set-backs at the upper levels within the contemplation of the disputed constructions. In any case, even para 8.2.3.2 provides that for tower like structures higher than 37.5 mtrs. with two setbacks, the open space should be not less than 12 mtrs. Thus, the exception is of no aid to the appellant and NOIDA which has issued the third revised plan envisaging a distance of 9 mtrs. between T-1 and T-17.

D.3 Violation of Fire Safety Norms

115 The appellant requested for a fire NOC for the construction of T-16 and T-17.

On 11 September 2009, a report was submitted to the CFO observing that the road is wide enough for vehicles of the Fire Brigade Department to reach the spot in case of emergency situations. However, clause 10 of the report states that Part III and PART D Part IV of NBC 2005 will have to be complied with during the construction of the building and in case of non-compliance, the NOC shall stand cancelled. Para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. for the side and rear open spaces of buildings which are 55 mtrs. high and above.

116 On 18 August 2011, the CFO issued a temporary fire NOC for the construction of T-16 and T-17. This letter also stated that the applicant will have make arrangements for fire safety compliant with the NBC 2005. On 29 March 2012, the CFO issued a notice to the appellant highlighting various shortcomings in fire security provisions. On 24 April 2012, the CFO wrote to NOIDA stating that the distance between T-1 and T-17 is only 9 mtrs. which is violative of NBR 2006, NBR 2010 and NBC 2005 and asking if NOIDA had provided any exemption to the distance rule to appellant. The CFO issued a show cause notice to the appellant on 17 July 2012 directing that T-16 and T-17 that are under construction be physically separated from the 'old towers'.

117 A complaint was made by the first respondent to the CFO on the non- compliance of the conditions stipulated for the grant of the NOC for the complex (for T1 to T-15). A committee was constituted to look into the complaint and the following observations were made by the committee:

(i) A show cause notice was issued for the construction of a second staircase.

The stair case has still not been built;

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(ii) People are living in quarters constructed in the basement which is not in accordance with the NBC 2005 provisions;

(iii) Set back is used as a parking, so the effective set back in certain places is reduced by 2 mtrs. and is thus less than the required 9 mtrs.;

(iv) On the rear side of the tower, 6 mtrs. set back is not available. 118 These suggestions given by the committee were required to be complied with within six months. Since they were not complied with, a show cause notice was issued on 30 May 2014 for not remedying the deficiencies. 119 Regulation 76 of NBR 2006 states that the building must be planned and constructed in accordance with Part IV of National Building Code 1970, amended as of that day. Para 4.6 of NBC 2005 states that the approach to the building and the open spaces on all the sides of a high rise building shall be 6 mtrs. and that the layout of the building must be made in consultation with the CFO. However, para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. side and rear spaces for buildings that are higher than 55 mtrs. Therefore, on reading NBC 2005 as a whole, the side and rear space around the building must be 16 mtrs. The distance between T-1 and T-17 is only 9 mtrs., which is less than the required 16 mtrs. 120 The temporary NOC that was given by the CFO clearly states that the NBC 2005 must be complied with. However, as shown above, the provisions of NBC 2005 have not been complied with. Therefore, given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands PART E automatically cancelled in terms of the report dated 11 September 2009 and letter dated 18 August 2011.

E Consent of the RWA 121 Having held above that the sanction for the construction of T-16 and T-17 were given by NOIDA in contravention of the minimum distance requirement provided by the Building Regulations, we will advert to the next issue. It has been contended by RWA that the sanction could not have been revised without the consent of the flat purchasers in the original fifteen towers. While analyzing this issue, it is first important to consider the appellant's preliminary objection that the UP 1975 Act is not applicable to the present case. After addressing the preliminary objection, we shall analyze whether the consent was actually required under the UP 1975 Act and UP Apartments Act 2010.

E.1 Applicability of UP 1975 Act 122 The UP 1975 Act has been described in its long title as "an Act to provide for matters connected with the ownership and use of individual flats in buildings consisting of four or more flats". Section 2 of the Act states that the Act shall apply only to owners who submit

to the provisions of the Act by executing a declaration. Section 2 reads as follows:

> "2. Application of the Act. — This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in section 10:
>
> PART E Provided that no property shall be submitted to the provisions of this Act, unless it is actually used or is proposed to be used for residential purposes:
>
> Provided further that the sole owner or all the owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they shall grant a lease of such land to the owners of the flats, the terms and conditions of the lease being disclosed in the declaration either by annexing a copy of the instrument of lease to be executed to the declaration or otherwise."

123 Section 3(d) 26 contains the definition of common area and facilities. Section 4 27 stipulates that a flat shall be transferable and heritable property. Each owner of a flat is entitled to exclusive ownership and possession of their flat in accordance with the declaration. Moreover, a flat together with its undivided interest in the common areas and facilities shall be heritable and transferable immoveable property. Further, a flat together with its undivided interest in the common areas and facilities shall not be partitioned or sub-divided for any purpose.

" (d) "common areas and facilities" includes— (1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;

(2) the foundations, columns, girders, beams, supports, main wall, roofs, halls, corridors, lobbies, stairs, stair-way, fire-escapes and entrances and exits of the building; (3) the basements, cellars, yards, gardens, parking areas and storage spaces; (4) the premises for the lodging of janitors or persons employed for the management of the property; (5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage;

(6) the elevators, tanks, pumps, motors, expressors, pipes and ducts and in general all apparatus and installations existing for common use;

(7) such other common facilities as may be specially provided for in the Declaration; (8) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;" "4. Flat to be transferable and heritable property.—(1) Each owner of a flat shall be entitled to the exclusive ownership and possession of his flat in accordance with the Declaration. (2) Subject to the provisions of the second proviso to section 2, a flat, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

> Provided that no flat and the percentage of undivided interest in the common areas and facilities appurtenant to such flat shall be partitioned or sub-divided for any

purpose whatsoever." PART E 124 Section 5 provides for common areas and facilities in the following terms:

"5. Common areas and facilities. — (1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. (2) The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the owners of the flats expressed in an amended Declaration duly executed and registered as required by this Act.

(3) The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be conveyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument. (4) The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person for partition or division of any part thereof, unless the property have been withdrawn from the provisions of this Act.

(5) Each owner of a flat may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the owners of other flats.

(6) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws.

(7) The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary to have access to each flat from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency PART E repairs therein to prevent any damage to the common areas and facilities or to other flats." (emphasis supplied) Under sub-Section (2) of Section 5, the percentage of the undivided interest of each owner of a flat in the common areas and facilities, as expressed in the Declaration, shall not be altered without the consent of all the owners of the flats expressed through an amended Declaration which shall be executed and registered under the Act. Section 10 28 provides for the contents of such a Declaration. Further, Section 11 29 envisages that all the owners of flats may withdraw a property from the provisions of the Act by an instrument executed to that effect, following which it shall be deemed to be owned in common by the owners of flats wherein the share of each "10. Contents of Declaration.—(1) The declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely:—

> (a) description of the property, namely the description of the land on which the building is or is to be located, whether the land is freehold or leasehold and whether any lease of the land is to be granted in accordance with the second proviso to section 2, and description of the building or proposed building stating the number of storeys and basements and the number of flats;

(b) nature of interest of the owner or owners in the property;

(c) existing encumbrance, if any, affecting the property;

(d) description of each flat containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;

(e) description of the common areas and facilities;

(f) description of the limited common areas and facilities, if any, stating to which flats their use is reserved;

(g) value of the property and of each flat, and the percentage of undivided interest in the common areas and facilities appertaining to each flat and its owner for all purposes, including voting." "11. Withdrawal from the provisions of the Act.— (1) All the owners of flats may withdraw a property from the provisions of this Act by an instrument executed to that effect. (2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the owners of flats and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities. (3) Any encumbrance affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the owner of the flat in the property as provided therein. (4) The withdrawal provided for in sub-section (1) shall in no way bar the subsequent resubmission of the property to the provisions of this Act." PART E such owner shall be the percentage of undivided interest previously owned in the common areas and facilities.

125 The submission urged on behalf of the appellant is that the UP 1975 Act has no application to the present case, in view of the provisions of Section 2. Section 2, as we have seen, specifies that the Act applies only to a property, the sole owner or all the owners of which, submit it to the provisions of the Act by duly executing and registering a Declaration setting out the particulars as contained in Section 10. 126 Undoubtedly, in this case there was no declaration in terms of Section 2. However, significantly, the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, contains a stipulation in clause II(h) in the following terms:

> "II) AND THE LESSEE DOTH HEREBY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING:
>
> [...]

> h) The Lessee/sub-lessee shall make such arrangement as are necessary for maintenance of the building and common services and if the building is not maintained properly the Chief Executive Officer, Noida or any officer authorized by him will have the power to get the maintenance done through the Authority and recover the amount so spent from the Lessee/Sub-Lessee. The Lessee/Sub-Lessee will be individually and severally liable for payment of the maintenance amount. The rule/regulation of U.P. Flat Ownership Act, 1975 shall be applicable on the lessee/sub-lessee." (emphasis supplied) PART E

127 Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, advanced a submission that the last sentence of clause II(h) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. Clause II(h) states that in the event the building or common services are not maintained properly, NOIDA would be entitled to ensure the maintenance and recover the amount from the lessee/sub-lessee. 128 However, the application of clause II(h) cannot be brushed away on this basis, particularly since the sentence imposing the application of the UP 1975 Act on the lessee/sub-lessee must bear some meaning and content. In this context, during the course of his submissions, Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by NOIDA, with the appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sub- lease are:

> (i) Clause 16 contemplates that the occupant of the ground floor would be entitled to use a "sit-out area but the right of user shall be subject to the provisions of the UP Ownership Flat Act 1975";
>
> (ii) Clause 17 recognizes the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and
>
> (iii) Clause 27 envisages that all clauses of the lease executed by NOIDA in favour of the appellant on 16 March 2005 shall be applicable to the sub-lease deed as well.

PART E 129 In the backdrop of this provision, more particularly, clause II(h) of the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, the appellant was duty bound to comply with the provisions of the UP 1975 Act. By submitting before this Court that it is not bound by the terms of its agreement or the Act for want of a declaration under Section 2, the appellant is evidently attempting to take advantage of its own wrong.

E.2 Applicability of the UP Apartments Act 2010 130 In 2010, the State legislature enacted the UP Apartments Act 2010. The long title describes the legislation as:

> "An Act to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto"

131 Section 2 of the Act is in the following terms:

> "2. Application.- The provisions of this Act shall apply to all buildings having four or more apartments in any building constructed or converted into apartment and land attached to the apartment, where freehold, or held on lease excluding shopping malls and multiplexes." Thus, in contrast with Section 2 of the UP 1975 Act, the corresponding provision of the UP Apartments Act 2010 stipulates that the Act shall apply to all buildings with four or more apartments in any building and land attached to the apartment whether PART E freehold or held on lease. Further, unlike Section 2 of the UP 1975 under which the Act was to apply only when a declaration in terms of Section 10 was submitted, this Act does not require a declaration for it to apply.

132 The expression 'apartment owner' is defined by Section 3(d) of the Act as follows:

> "(d) "apartment owner" means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments to and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;"

133 The Act contains a definition of common areas in Section 3(i) and of limited common arears in Section 3(s):

> "(i) "common area and facilities" means—
>
> (i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
>
> (ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-

escapes and entrances and exits of the building;

(iii) the basements, cellars, yards, parks, gardens, community centers and parking areas of common use;

(iv) the premises for the lodging of janitors or persons employed for the management of the property;

(v) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;

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(vi) the elevators, tanks, pumps, motors, fans, cable pipe line (TV, gas, electricity etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

(vii) such other community and commercial facilities as may be specified in the bye-laws; and

(viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

[...]

(s) "limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;" 134 The general liabilities which have been cast upon promoters intending to sell an apartment are set out in Section 4(1), which reads as follows:

> "4. General liabilities of promoter.— (1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:
>
> (a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;
>
> (b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;
>
> (c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;
>
> (d) detail of all common areas and facilities as per the approved lay-out plan or building plan;
>
> (dd) built-up area and common area of an apartment.
>
> (e) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;

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(f) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be

made available with the Association;

(g) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

(h) such other information and documents as may be prescribed." Sub-Section (4) of Section 4 contains the following stipulations:

> "(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authorities. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reason's duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:
>
> Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as an not permissible in the building bye-laws." PART E Under clause (c) of sub-Section (1) of Section 4, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under clause (d), a disclosure has to be made in regard to the common areas and facilities in accordance with the approved lay-out plan or building plan. Once such a disclosure has been made, sub-Section (4) stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorized and verified by authorized Architects or Engineers. Apart from these minor additions or alterations which are contemplated by sub-Section (4), the proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars "without the previous consent of the intending purchaser". Mr Vikas Singh's submission, that this provision will apply to intending purchasers of Apex and Ceyane and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. The above proviso is evidently intended to protect persons to whom the plans and specifications were disclosed when they were the "intending purchasers". Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well its express provisions.

135 Section 5 of the Act provides for the rights of apartment owners in the following terms, insofar as is relevant:

> PART E "5. Rights of Apartment Owners.— (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him. (2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.
>
> (3)(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.
>
> (b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument."

136 It is important to clarify at this stage that the UP Apartments Act 2010 will not apply with retrospective effect to the second revised plan, which was sanctioned on 26 November 2009. However, the legislation, which came into force upon publication in the UP Gazette on 19 March 2010, will have consequences for the third revised plan sanctioned on 2 March 2012, as analysed below. E.3 Requirement of RWA's Consent 137 In terms of the third revised plan which was sanctioned on 2 March 2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat PART E purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas. As a matter of fact, it has also been submitted on behalf of the first respondent that the additional lease rent paid to NOIDA was also sought to be collected from the existing flat purchasers at the rate of Rs 190 per sq. foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first respondent. The purchase of additional FAR by the appellant cannot be used to trample over the rights of the existing purchasers. 138 Flats were sold on the representation that there would be a garden area adjacent to T-1. The garden adjacent to T-1 is clearly depicted in the first revised plan of 29 December 2006. It is this garden area which was encroached upon when the second revised plan was sanctioned on 26 November 2009. 139 However, according to the appellant, T-16 and T-17 form part of Phase II of Emerald Court, which had not encroached on any part of the common areas of Phase I, under which all the other towers fell. In this context, it would be material to note a letter dated 13 February 2012 addressed to the Circle Officer, City 3rd NOIDA, Gautam Buddh Nagar, by the Director of the appellant, in which it has been stated that:

> "Kindly, refer to your Letter Dt. 10.02,2012, received by us on 11.02.2012, regarding which written statement on behalf of M/s. Supertech Limited is presented as under:
>
> 1. That, [A]pex and [Ceyane] multi storey residential tower is being constructed over plot measuring nearly 6500 sq. meter which was acquired by the Company M/s. Supertech Limited PART E from NOIDA Development Authority in the year 2006, regarding which its supplementary lease deed was registered in the office of Sub-Registrar, Second, Gautam Buddh Nagar...
>
> 2. That, right from the beginning there was a pan for constructing separate complex viz. Apex and [Ceyane] and provisions have been separately made in both towers viz. swimming pool, car, club, parking and gym etc. The facilities of other old towers as shown in the brochure have been published by mistake, but concerned amendment was made in the brochure upon the company being informed by the residents residing in old towers... [...]
>
> 4. That, company has erected wall for the expansion of basement and above wall was erected by the company over its land and this basement area was not sold to any resident of old tower over which company has complete ownership.

No adverse effect is there on the interests of any resident in erecting above wall, rather the residents of old tower have been removed from the allotted basement area by it.

Company has full right to make construction over its land.

5. That, construction carried out earlier or being carried out by the company is completely legal and in accordance with Rules and company has not affected the interest of anybody and no fraud was committed by the company with anybody. Therefore, it appears that the complainant having presented this false complaint inspired by mala fides wants to harass the company and wants to earn undue advantage by not making payment of an amount which is payable to the company. Therefore, it is requested that complaint presented by the complainant is liable to be dismissed. In addition, it is also requested that any personal name be not used in any correspondence or inquiry, rather name of company through its Director be used." (emphasis supplied) PART E The above letter puts forth the case that T-16 and T-17 have been constructed as a separate project over the area which was obtained under the supplementary lease deed, and that it has separate provisions for all amenities and infrastructure. In fact, it indicates that the facilities of the older buyers were shown in the brochure but that representation was 'clarified' to be a 'mistake', which had been amended. 140 As such, it becomes important to refer to the supplementary lease deed, which was granted in favour of the appellant on 21 June 2006. The supplementary lease deed makes it clear that the demised premises admeasuring 6556.51 sq. mtrs. would form a part of the originally allotted plot. In the course of its affidavit before the High Court, the appellant contended that:

> "7. The Office bearers/members of the petitioners society has the right title & interest only in its flat and undivided interest in the common areas of the Emerald Court

> (phase I). He has the right to challenge if somebody is trying to encroach in his flat or in the Common area are intended to be used for the purpose of the residents. However, here this is not the case. It is stated that the "Apex & Ceyane" (Phase II) comprising of two towers has not encroached any area of the common of the Emerald Court (Phase I). Therefore the petitioner society does not have the locus to challenge the issues related with "Apex & Ceyane" (Phase- II)." In other words, the case which was sought to be set up was that the flat purchasers had an undivided interest in the common areas of Phase I of the Emerald Court, but since T-16 and T-17 formed a part of Phase II, it did not affect the rights of the original flat purchasers of T-1 to T-15. This contention is expressly contrary to the clear terms governing the supplementary lease deed, which indicates that the area PART E comprising of the demised premises would form part of the original plot. Furthermore, the appellant having utilized the FAR of the entire plot, including the area which forms the subject matter of the original lease and the supplementary lease, cannot be allowed to assert to the contrary.

141 Hence, it is abundantly clear that the construction of T-16 and T-17 in accordance with the second revised plan and the third revised plan reduced the value of the undivided interest held by each individual flat owner in the common areas and facilities, thereby violating Section 5 of the UP 1975 Act and Section 5 of the UP Apartments Act 2010, since the flat owners' consent was not sought. Further, the third revised plan encroached upon the garden area in front of T-1, thereby resiling from the representation that had been made to the flat owners at the time when they purchased the apartments in T-1, without their consent. Therefore, it constituted a violation of Section 4(1) read with the proviso to Section 4(4) of the UP Apartments Act 2010.

142 Finally, the appellant has also tried to argue that: (i) the consent of each individual flat owner could not be taken and it had to be taken from the RWA, as a collective body; (ii) the RWA only came into existence on 20 October 2013, when it adopted the Model Bye-Laws under the UP Apartments Act 2010l (iii) that this was after the third revised plan was sanctioned; and (iv) hence, there existed no association to take consent from. The High Court has dealt with this argument in the impugned judgment by observing:

> PART E "As per the averments of the respondent/company, the flats were handed over to the apartment owners by September 2009. The owners immediately formed Resident Welfare Association (RWA) and got it registered with the Registrar Societies, in the very same year. Adopting the model bye- laws, did not arise, as it was not enforced until 2011. After notification of Model bye-laws, the Deputy Registrar Firm, Societies and Chits, Meerut vide letter dated 14.12.2012 informed, that pending instructions from the Registrar Firm Societies and Chits Uttar Pradesh, no decision in the matter can be taken in respect of Model bye-laws and its registration. The Registrar Firm, Societies and Chits Uttar Pradesh vide circular dated 5.2.2013 addressed to all Deputy Registrars/District Registrars issued instructions for registration under Apartment Act, 2010 and directed that bye laws of existing RAW be accordingly amended. The petitioner/society vide resolution dated 20.10.2013

adopted the Model bye-laws and conducted elections and thereafter informed the Deputy Registrar.

The respondent/company has recognized the petitioners society as RWA of the Apartment owners since inception and has continuously corresponded with the petitioner society as RWA. Letter dated 9.10.2012, 27.9.2012, 4.9.2012 and January, 2013 addressed to the petitioner society regarding redressal of their grievance is on record..." Therefore, it is clear that: (i) the RWA came into existence in 2009 itself, when the first lot of apartment owners moved in; (ii) the appellant was communicating with the RWA ever since; and (iii) the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010, as soon as it was practicable. These averments have not been challenged before this Court during the oral submissions by the appellant, and hence, it will be held bound by its own conduct. In any case, rights under the UP 1975 Act and UP Apartments Act 2010 have been provided to individual flat owners, and not to collective bodies like the RWA. Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners. Indeed, however, when PART F such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually.

F Collusion and Illegal Construction

143 The record of this case is replete with instances which highlight the collusion

between the officers of NOIDA with the appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. The complicity of NOIDA has emerged, inter alia, from the following instances:

(i) The sanctioning of the second revised plan on 26 November 2009 in clear breach of the NBR 2006;

(ii) The refusal by NOIDA to disclose the building plans to the first respondent, in spite of a clear stipulation consistently in all the sanctioned plans that the plan would have to be displayed at the construction site of the appellant;

(iii) NOIDA's referral of RWA's request to access the sanctioned plans to the appellant to seek its consent and upon the refusal of the latter, a continuous failure to disclose them to the RWA;

(iv) Even when the CFO addressed a communication to NOIDA in regard to the violation of the minimum distance requirements in Emerald Court, it evinced no response and no investigation from them;

> (v) In pursuance of the second revised plan of 26 September 2009, the appellant would appear to have built a foundation to support two buildings of forty and PART F thirty-nine floors, while the sanction for the extension from twenty-four to forty or thirty-nine floors came about only on 2 March 2012 through the third revised plan; and
>
> (vi) The construction for T-16 and T-17 commenced in July 2009 by the appellant, five months before the sanction was received for the second revised plan on 26 November 2009, in spite of which NOIDA chose to take no action.

144 The High Court has dealt with the collusion between the officials of NOIDA and the appellant. This is writ large from the facts as they have emerged before this Court as well. The High Court has in these circumstances correctly come to the conclusion that there was collusion between the developer and the planning authority.

145 Condition 15 of the third revised plan dated 2 March 2012 stipulated that:

> "15. Compliance of provisions of Uttar Pradesh Apartment (promotion of construction, ownership & maintenance) Act 2010, and directions issued thereunder shall be ascertained. Sanctioned site plan/map is enclosed with this letter. Application for utility certificate would be made after completion of building work within validity of map/site plan, and without permission and certification building shall not be used..." In spite of this condition, NOIDA made no effort to ensure compliance of the UP Apartments Act 2010, as a result of which the rights of the flat purchasers have been brazenly violated. This cannot point to any conclusion, other than the collusion between NOIDA and the appellant to avoid complying with the provisions of the PART F applicable statutes and regulations for monetary gain, at the cost of the rights of the flat purchasers.

146 The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

147 From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly

violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. PART F Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

148 The judgments of this Court spanning the last four decades emphasize the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

149 In K. Ramadas Shenoy v. Chief Officer, Town Municipal Council30, Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising (1974) 2 SCC 506 PART F its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:

> "27...The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See Yabbicom v. King [(1899) 1 QB 444])." This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorized construction.

150 These principles were re-affirmed by a two judge Bench in Dr G.N. Khajuria v. Delhi Development Authority31 where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. Justice BL Hansaria, speaking for the Court, observed:

> "10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully (1995) 5 SCC 762 PART F inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens.

Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite." 151 In Friends Colony Development Committee v. State of Orissa 32, this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorized. Chief Justice RC Lahoti, speaking for a two judge Bench, observed:

> "24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, (2004) 8 SCC 733 PART F inconvenience and hardship which is posed to the occupants of the building." Noting that the private interest of land owners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations:

> "25...The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

152 In Priyanka Estates International (P) Ltd. v. State of Assam 33, Justice Deepak Verma, speaking for a two judge Bench, observed:

> "55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for (2010) 2 SCC 27 PART F this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder." The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are "given a seal of approval by Court", it was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

153 In Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai34, Justice GS Singhvi, writing for a two judge Bench, reiterated the earlier decisions on this subject and observed:

> "8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it." The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities (2013) 5 SCC 357 PART F provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the fore-front when the Court prefaced its judgment with the following observations:
>
> "1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task

of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise." Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held:

"56...We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas." PART F

154 These concerns have been reiterated in the more recent decisions of this Court in Kerala State Coastal Zone Management Authority v. State of Kerala 35, Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu 36 and Bikram Chatterji v. Union of India 37.

155 In the present case, once this Court has determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, UP 1975 Act and the UP Apartments Act 2010, it becomes its duty to take stock of the violations committed by the appellant in collusion with NOIDA. The appellant has raised false pleas and attempted to mislead this Court, while the officials of NOIDA have not acted bona fide in the discharge of their duties. The appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, we confirm the directions of the High Court including the order of demolition and for sanctioning prosecution under Section 49 of the UPUD Act, as incorporated by Section 12 of the UPIAD Act 1976, against the officials of the appellant and the officers of NOIDA for violations of the UPIAD Act 1976 and UP Apartments Act 2010.

(2019) 7 SCC 248

2018 SCC OnLine SC 3352

(2019) 19 SCC 161

PART

G Conclusion

156 To summarize our findings, the documentary materials referred to and analyzed in this judgment indicate that:

(i) The land allotted to appellant under the original lease agreement and the supplementary lease deed constitute one plot;

(ii) The land which was allotted through the supplementary lease deed forms a part of original Plot No 4, and would be governed by the same terms and conditions as the original lease deed;

(iii) The sanction given by NOIDA on 26 November 2009 and 2 March 2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005;

(iv) An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T- 1, T-16 and T-17 are part of one block is directly contrary to the appellant's stated position in its representations to the flat buyers as well as in the counter affidavit before the High Court. The suggestion that T-1, T-16 and T- 17 are part of one block is an after-thought and contrary to the record;

(v) After realizing that the building block argument would not pass muster, another false case was sought to be set up with the argument that T-1 and T- 17 are dead end sides, thereby obviating the need to comply with the PART G minimum distance requirements. This argument is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead end sides since both the sides have vents/egresses facing the other building;

(vi) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated;

(vii) The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26 November 2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T- 16 and T – 17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners; and

(viii) T-16 and T-17 are not part of a separate and distinct phase (Phase–II) with separate amenities and infrastructure. The supplementary lease deed stipulates that the they are part of the original

project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the UP Apartments Act 2010 and UP 1975 Act before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500; and PART G

(ix) The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of NOIDA and the appellant and its management.

157 For the reasons which we have indicated above, we have come to the conclusion that:

> (i) The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed;
>
> (ii) The work of demolition shall be carried out within a period of three months from the date of this judgment;
>
> (iii) The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of NOIDA. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing pleadings, NOIDA shall consult its own experts and experts from Central Building Research Institute Roorkee38;
>
> (iv) The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by NOIDA;
>
> (v) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant;

“CBRI” PART H

(vi) The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T -17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment; and

(vii) The appellant shall pay to the RWA costs quantified at Rs 2 crore, to be paid in one month from the receipt of this judgment.

H Interlocutory Applications

158 Mr Vikas Singh, learned Senior Counsel, has during the course of the hearing

tendered an additional affidavit to indicate the following position:

(i) The contention of RWA that the appellant has collected the onetime lease rent at the rate of Rs 190 per sq. foot from all the flat owners in T-1 to T-15 and that though an amount of Rs 16.75 crores was collected, only Rs 13.32 crores was payable to NOIDA is incorrect;

(ii) The appellant did not collect the lease rent payable to NOIDA from all allotees of T-1 to T-15. An amount of Rs 7.54 crores was received from some allotees;

(iii) The lease rent paid to NOIDA was in the amount of Rs 14.49 crores;

(iv) A total of 659 units were booked in T-1 to T-14; and

(v) Of these units 245 flats were booked till 28 December 2006; 141 flats were booked between 29 December 2006 and 25 November 2009, 114 flats were PART H booked between 26 November 2009 and 1 March 2012, while 159 units were booked after 2 March 2012.

On this basis, it has been submitted that 518 units were booked either before 28 December 2006 (before the first revised plan) or after 26 November 2009 (after the second revised plan). The figures which have been indicated by the appellant demonstrate that between the first revised plan on 29 December 2006 and the second revised plan on 25 November 2009, 141 flat purchasers had booked flats. They did so on the clear representation contained in the sanctioned plans. 159 During the pendency of these proceedings, two interim orders were passed by this Court on 6 September 2016 and 22 September 2017. By the order dated 6 September 2016, this Court directed the appellant to pay a return of ten per cent to those flat purchasers who continue to stay in the project. By the order dated 22 September 2017, an exit option was granted to those who sought refunds to take the amounts invested with interest at the rate of twelve per cent per annum. 160 The position as indicated to this Court by Mr Ravindra Kumar, learned Counsel, in respect of flats in Apex and Ceyane (T-16 and 17) is as follows:

(i) Number of flats: 915;

(ii) Number of shops: 21

(iii) Number of bookings: 633;

(iv) Persons who have reinvested in other projects of the developer: 133;

(v) Purchasers to whom refund has been granted: 248; and PART H

(vi) Remaining purchasers: 252.

161 The above position indicates that following the opt-out which was provided in terms of the order of this Court, 248 purchasers have opted for refunds while 252 purchasers in T-16 and T-17 remain committed to the project. 162 Mr Gaurav Agarwal, learned Amicus Curiae has rendered comprehensive assistance to the Court. Apart from urging his submissions in an objective and dispassionate manner, the Amicus Curiae has painstakingly complied the pleadings, documents and statutory provisions to facilitate the convenience of arguing Counsel and the Court. We record our appreciation for the assistance which has been rendered by the Amicus Curiae. The Amicus Curiae has also prepared a note for the purpose of segregating the applications which have been filed by home buyers into distinct categories, and suggesting reliefs to each category based on the outcome of the proceedings. These categories are:

Category I

163 Buyers who have received ROI payments:

(i) By its orders dated 6 September 2016 and 11 January 2017, this Court directed that those home buyers who have chosen to stay on with the project and do not desire refund should be paid ROI at ten per cent per annum; and

(ii) Thirteen persons filed applications before this Court claiming that ROI payments were not made by the appellant. The appellant has intimated the payments which are due till July 2021. Though, the home buyers claim higher PART H amounts, the Amicus Curiae has proceeded on the figures furnished by the appellant which are tabulated as follows:

Sr. Name IA no. Interest due till 1st Name of AOR No. July, 2021 as per email received from Supertech 1 Aarti Puri 55556/2021 Rs. 16,78,720 Nishe Rajen Shonker 2 Divay Puri 80599/2021 Rs. 16,78,548 Do 3 Jatin Vardi 55562/2021 Rs. 11,65,686 Do 4 Amit Khanna 56228/2021 Rs. 11,65,686 Do 5 Narinder Thakur 55550/2021 Rs. 10,41,578 Do 6 Manju Kohli 142969/2014 Rs. 6,78,524 Do 7 Namrata Tuli 142975/2018 Rs. 8,26,616 do 8 Mahesh Jaura 80916/2019 Rs.1,11,160 do 9 Kavita Jaura 80875/2019 Rs. 2,01,299 do 10 Hemendra Varshney 80879/2019 Rs. 1,33,980 do 11 Shachi Varshney 80881/2019 Rs. 1,31,988 do 12 Bandana Kedia 80918/2019 Rs. 1,31,700 do 13 Sapna Ahluwalia 43555/2021 Rs. 19,87,020 do

164 The submission of the Amicus Curiae is that if the buildings were to stand, the home buyers may be paid the above ROI. On the other hand, if the buildings are to be demolished, the home buyers should receive refund with interest and the amounts would be subsumed in the interest to be paid. Since this Court has come to the conclusion that the buildings are to be demolished, the general directions in regard to refund together with interest will subsume the claims of the above home buyers.

Category 2 165 Homebuyers to whom principal has been paid but interest payments have remained:

PART H

(i) By an order dated 30 July 2018, this Court directed that homebuyers who had registered on the portal and were willing to take twelve per cent simple interest per annum from the date of deposit till the date of payment towards full and final payment would be refunded the principal sum together with interest at the above rate on filing affidavits to that effect; and

(ii) The registry has refunded the principal sum to thirteen homebuyers but since their affidavits were not received by the Amicus Curiae within time, interest remained to be paid. The details have been tabulated by the Amicus Curiae as follows:

Sr. No.	Name	Interest payable	IA no.	Name of AOR
1	Anuj Goyal	Rs. 31,40,704	69916-69917 of 2019	Abhijeet Si
2	Sumit Goel	Rs. 28,97,199		
3	Priya Goel	Rs. 28,97,199		
4	Mukta Jain	Rs. 30,10,253		
5	Subhash Chand Jain	Rs. 29,05,957		
6	Abhishek Jain	Rs. 30,42,129		
7	Abhishek Jain	Rs. 30,22,785		
8	Herbinder Singh	Rs. 32,84,789		
9	Vineet Kapoor	Rs. 28,90,491		
10	Vishal Maheshwari	Rs. 22,45,399	24823/2020	Nishe Ra Shonker
11	Shipli Maheshwari	Rs. 15,30,585	24834/2020	do
12	Poonam Lata Kushwaha	Rs. 29,22,513	120666/2019 &	Sweta Rani
13	Paramita Ray	Rs. 40,65,228		In-person

166 The Amicus Curiae has submitted that irrespective of the fate of the pleadings, the appellant should be directed to refund the interest as computed above since the above homebuyers have exited from the project. We accept the PART H submission and direct the appellant to refund interest payments to the thirteen homebuyers as tabulated above within two months.

Category 3 167 Home buyers under a 'subvention scheme':

(i) Under the subvention scheme, a home loan is taken in the name of the homebuyer but EMIs are to be paid by appellant till possession is granted.

Certain homebuyers are governed by the subvention scheme. There is a default by the appellant in paying the EMIs;

(ii) By an order dated 30 July 2018, this Court directed the appellant to continue paying the EMIs. Sixteen homebuyers have moved this Court for a direction for payment of the balance EMIs due;

(iii) The Amicus Curiae has tabulated the interest payable to the homebuyers (as computed by them and by the appellant separately):

Sr. Name Interest as Interest as IA no. Name of AOR No. indicated by indicated by homebuyer Supertech 1 Parvinder Rs. 11,71,110 Rs. 8,81,847 24814, Khaitan & Co.

	Singh			24825,	
2	Amit Mangla	Rs. 12,09,052	Rs. 12,09,052	24839,	
3	Binod Kumar	Rs. 11,73,902	Rs. 8,43,073	24848,	
4	Shailesh Kr	Rs. 11,69,640	Rs. 8,51,310	24972,	
	Singh			24973,	
5	Dev Verma	Rs. 11,73,919	Rs. 8,58,311	24974,	
6	Naveen	Rs. 16,08,467	Rs. 11,07,792	24978,	
	Kumar			24984,	
7	Vaibhav	Rs. 11,66,778	Rs. 8,37,666	24985,	
	Mishra			24989,	
8	Mandar	Rs. 11,66,826	Rs. 8,53,381	24992,	
	Hastekar			24996,	
9	Ashish	Rs. 11,73,092	Rs. 8,25,030	24997, 29374	
	Sharma			&	
10	Hrisikesh-Kshitiza Bawa	Rs. 11,73,919	Rs. 8,39,984	29386/2020	
11	Babneet Singh	Rs. 11,74,308	Rs. 8,40,383		
12	Romit Agarwal	Rs. 11,66,182	Rs. 8,59,768		
13	Bhupinder-Puran Das Pruthi	Rs. 11,51,855	Rs. 9,43,782		
14	Nilay Ashmi	Rs. 11,67,529	Rs. 8,29,579		
15	Manoj Kr Pamneja (*)	Rs. 8,10,866	Nil	25950/18	Krishnam K
16	Sandeep Jain	Rs. 8,10,866	nil	67854 &	Arjun Ga

The Amicus Curiae submits that the amounts calculated above be paid.

168 The Amicus Curiae submitted that if the buildings are ordered to be demolished, the appellant may close the home loans and refund the amounts contributed by the homebuyers with such interest as this Court may determine. On the other hand, if the buildings stand, the appellant may be directed to clear the outstanding EMIs and continue paying them until possession. Since the buildings have been ordered to be demolished under the directions of this Court in the present judgment, the appellant shall close the home loans and refund the amounts contributed by each of the above home buyers with interest at the rate of twelve per cent per annum within two months.

PART H Category 4 169 There are two IAs in which the homebuyers have a dispute with the appellant relating to the amounts due to the homebuyers:

(i) In IA No 56187/2021, Mr DP Tripathi was allotted Flat No 1105 in Apex. A total amount of Rs 31,70,410 was paid for the flat. Out of this amount, Rs.

14,25,000 was funded by loan. The appellant paid the loan pursuant to an order of this Court. However, the applicant has paid the balance amount of Rs 17,45,410 out of his own funds towards the flat, and Rs 6,58,700 as loan repayments before it was ultimately settled by the appellant. ROI payments for 27 months amounting to Rs 5,20,315 have been received from the appellant. Thus, the case of the applicant is that a sum of Rs 18,83,795 remains invested by the applicant, which may be ordered to be refunded. In contrast, the appellant has stated that this dispute has been settled by the Debt Recovery Tribunal and nothing is payable; and

(ii) In IA No 67028/2017, Mr Raj Kishore had purchased Flat No 3507, in respect of which the amount has been refunded along with interest. A cheque of Rs 67,319 bearing no 213233 for the last payment remained to be encashed due to oversight. The Amicus Curiae has suggested that the appellant may be directed to issue a fresh cheque pertaining to this payment. 170 With regards to IA No 56187/2021, since the underlying dispute regarding payment is pending in this IA, it is de-linked and will be heard separately. In IA No PART H 67028/2017, the appellant is directed to provide a fresh cheque for an amount of Rs 67,319 to the applicant within one month.

Category 5 171 Application of homebuyers which have been rendered infructuous. The Amicus Curiae has tabulated applications which have been rendered infructuous, indicating the reasons for the same:

Applications of home buyers which are rendered infructuous Sr. Name of homebuyers IA no. Name of AOR Reasons No. 1 Leo VIII Films Pvt. 18211/2018 Nitish Massey Refund received Ltd. 18217/2018 with interest 2 Raj Kishore 67028/2017 Mahima Gupta Refund received with interest 3 Sajeev Katarya 24785/2017 Rajeev Singh Refund received with interest 4 Girish Arun Singpote

175122 & 175124 UNUC Legal LLP Applicants have of 2018 not applied in portal 5 Darpan Bhargav 137549/2018 Gopal Jha Applicant has not applied in portal 6 1)Arvind Kaur Sodhi 18064-18066/2020 Gopal Jha Applicants have

2) Amarjit Singh not applied in Rana & Jasjit Kaur portal 7 Poonam Kulbir 6919/2018 Aparna Bhat This does not Krishnan relate to this project, but it relates to the project in Gurgaon 8 Sanjay Bahl 24785/17 Rajeev Singh Refund already paid @12% 9 Mini Kohli & Ors. 68049/17 PK Jain Refund already paid with interest 10 Vibhav Bindal 96289/17 Pinky Behera Refund already paid with interest 11 Sayed Asad Ahmad 11/15 in SLP Shantanu Applicant has not PART H 14314/14 Krishna applied in portal 12 Vivek Sharma & 12/2015 in SLP Rajeev Singh Applicant has not others 14314/14 applied in portal 13 Usha Rani & others 14/16 in SLP Rajeev Singh There are 14314/14 number of applicants in this application.

Some of them got refund with interest. Others did not apply.

14	Vishal Raj Singh	IA 15/2016 in SLP 14314/14	Rajeev Singh	Applicant has applied in por
15	Ishwar Kumar Singh	IA 16/2016	Amit Anand Tiwari	Refund already paid with inte
16	Sanjeev Katariya	IA 17/2016 in SLP 14314/14	Rajeev Singh	Refund already paid with inte
17	Ms. Raj Kishore & another	IA 18/2016 in SLP 14314/14	Mahima Gupta	One appl has already pa refund interest and o did not apply portal
18	Mini Kohli & others	IA 21/17 in SLP 14314/14	PK Jain	Some applicant have alr paid refund wi interest and o did not apply port.
19	Rashmi Arora	121826,121828/17	MC Dhingra	Refund already paid with inte
20	Jitendra Kumar Sabharwal & others	IA 121085/17	Rajeev Singh	Some applicant have alr paid refund wi interest and o did not apply port.
21	Poonam Kulbir Krishan	14898/18	Aparna Bhat	This does not relate to pres project.
22	Usha Rani & others	35845/21	Avjit Mani Tripathi	Most of applicants hav get refund of 12%. Now they want

					interest.
23	Manprit Kaur	IA 20/18 & 95793/16 in SLP		Anupam Lal Das	Refund already paid with inte
					PART H
24	Sajeev Aggrawal	IA 121841/17 121842/17	&	MC Dhingra	Refund already paid with interest

172 The above applications are disposed of as infructuous. 173 The appeals shall stand disposed of in the above terms. The contempt petitions are disposed of accordingly.

174 Pending application(s), if any, stand disposed of.

... ... J [Dr Dhananjaya Y Chandrachud] .....J [MR Shah] New Delhi;

August 31, 2021