BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 02.02.2022

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal Nos. 51 to 55 and 56 of 2021

N.K.Ravindran **(A.No.51/2021)**
N.K.Ravindran **(A.No.52/2021)**
Dr.A.P.Karthick **(A.No.53/2021)**
R.Sankar **(A.No.54/2021)**
M.Janani Priyadharshni **(A.No.55/2021)** ... Appellants/Home buyers

-Vs-

1.M/s. Govis Infra Pvt. Ltd.,
Rep. by its Managing Director,
S. Muthuramalingam .... 1st Respondent/promoter
2.N.Annamalai
3.N. Meyyappan
4.N. Veerappan
5.N. Chocklingam
6.N. Seetha
7.N. Lakshmi
8.N. Sivagami .... 2 to 8 Respondents/Land owners

A.No.56/2021

M/s. Govis Infra Pvt. Ltd.,
Rep. by its Managing Director,
S. Muthuramalingam ... Appellant/Promoter

-Vs-

1.N.Annamalai
2.N. Meyyappan
3.N. Veerappan
4.N. Chocklingam
5.N. Seetha
6.N. Lakshmi
7.N. Sivagami .... Respondents/Land owners

These appeals were taken on file on 15.4.2021 and came up for final hearing on 5.1.2022 in the presence of M/s. P.Alamelu Saruthri and C.Jeyachandran, Counsels for the appellants in A.Nos.51 to 55 of 2021 and M/s.R.Vijayakumar and F.Sajeetha Farveen, Counsel for 1st respondent in A.Nos.51 to 55 of 2021 and Counsel for appellant in A.No.56/2021 and AL.Ganthimathi, C.Santhosh Kumar and B.Prashanth Nadaraj, Counsels for 2 to 8 respondents in A.Nos.51 to 55 of 2021 and Counsels for the Respondents 1 to 7 in A.No.56/2021. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

COMMON ORDER

1. The home buyers preferred separate complaints against the promoter and land owners and the promoter filed a separate complaint against land owners. After contest the Regulatory Authority passed common order. Against that order even

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though separate appeals have been preferred and since they were arose from the common order in the appeal common order is pronounced.

2. These appeals A.Nos.51 to 55 of 2021 have been preferred by the home buyers against the promoter and land owners and A.No.56/2021 preferred by the promoter against the land owners with regard to the apartment situate at Door No.1, Subramaniam Pillai Street (5th Street, S.S.Colony), Soma Sundaram Colony, Madurai 625 016 comprised in New Survey No.65/6, Old R.S.No.21/1, plot Nos.5 and 9, Old R.S.No.21/2 part Plot No.9, T.S.No.73, Block No.6 (Municipal Corporation Ward No.18), Ward No.5A, Ponmeni Village, Madurai Corporation, Madurai South Taluk, Madurai District, admeasuring 8342 sq. ft. 16 apartments. Hereinafter, the appellants/home buyers are called as home buyers and the respondent/builder is called as promoter and the land owners are called as land owners as per their original rankings. The home buyers have preferred these appeals on the following main grounds:

- The Regulatory Authority in an attempt to strike a balance between the 1st respondent and 2 to 8 respondents has miserably failed to protect the interest of the home buyers.
- The home buyers paid almost entire sale consideration based on the joint venture agreement and special power of attorney dated 23.9.2013.
- The land owners failed to execute the sale deeds in favour of the home buyers since 2016.

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- As per clause 9 of the joint venture agreement the land owners duty bound to execute the sale deed as per Section 11(4)(f) and 17(1) of The Real Estate (Regulation and Development) Act, 2016

3. The learned counsel for the appellants in A.Nos. 51 to 55 of 2021 would submit that the above grounds were not properly appreciated by the Regulatory Authority and tried to balance between the promoter and the land owners and miserably failed to protect the interest of the home buyers which is against the very purpose of the RERA Act. Therefore these appeals have to be allowed.

4. The learned counsel for the appellant in A.No.56/2021 would submit that the promoter is in severe financial distress and thereby caused inordinate delay in completing the project. Though 98% of the 6 flats allotted to the land owners were completed worth Rs.1,79,00,000/- even then so far the land owners have executed undivided share only to one purchaser which worth only to a sum of Rs.6,76,875/- hence the land owners have not paid their sale consideration for the remaining flats. As per clause 9 of the joint venture agreement the land owners are duty bound to execute the sale deed as per Section 11(4)(f) and 17(1) of the Real Estate (Regulation and Development) Act, 2016. Therefore this appeal A.No.56/2021 has to be allowed.

5. The learned counsel for the respondents/land owners would submit that the promoter has not completed the construction and handed over possession within the stipulated time even after lapse of nearly 3 years construction was not completed. A

meeting was also arranged on 24.11.2018 and even thereafter the promoter had not completed the project as assured by him before March 2019 as per the time fixed by this authority hence the land owners had cancelled the joint venture agreement and also general power of attorney dated 23.9.2013. Therefore there are no merits in these appeals hence these appeals have to be dismissed.

6. According to the home buyers even though sale consideration for the apartments is fully paid the land owners failed to execute the undivided share. According to the promoter the land owners purposely avoided to execute the undivided share. According to the land owners the portions ear marked for them have not been completed by the builder and purposely delayed hence they refuse to execute undivided share and cancelled the joint venture agreement, special power of attorney, etc.,

7. From the above said pleadings of the parties the following points were raised for determination.

8. Points for consideration:

1. Whether the land owners are the promoters of this project?
2. Whether the land owners are entitled to cancel the joint venture agreement?
3. Whether the builder is liable to simultaneous completion of construction of portions ear marked for the land owners and the builder within the stipulated time as agreed?

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4. Whether the appeals are deserve to be allowed or not?

Point No.1:

9. The land owners are the owners of Door No.1, Subramaniam Pillai Street, Soma Sundaram Colony, Madurai – 16 by right of court auction purchase. They entered into joint venture agreement with M/s.Govis Infra Pvt. Ltd. Rep by its Managing Director Mr.S.Muthuramalingam on 23.9.2013 for construction of 16 apartments out of which 6 for land owners and 10 for builder. The builder paid Rs.10,00,000/- to the land owners as Security Deposit and the builder has agreed to pay further earnest money deposit of Rs.10,00,000/- to the land owners within one month from the date of the bhoomi pooja. The earnest money/security deposit would be repaid to the builder without interest on due completion of the venture. The period of completion of the apartments agreed between the parties was 15 months from the date of getting approval of building plan and the builder agreed to pay by way of liquidated damages in a sum of Rs.1000/- for every day of delay to land owners subject to force majeure. For the above said transaction the land owners gave the 'land' towards consideration and builder will give '6 flats' towards consideration to the land owners. Since the builder failed to complete the construction and hand over the flats to the land owners they have cancelled the joint venture agreement and General Power of Attorney dated 23.9.2013 by legal notice and refused to execute undivided share in favour of the home buyers. Hence the home buyers approached the Regulatory Authority by way of complaints. After contest the Regulatory Authority directed the land owners to execute undivided share to the home buyers and directed the builder to complete the construction ear

marked for the land owners. Aggrieved upon the same the home buyers preferred these appeals mainly on the ground that the Regulatory Authority failed to protect the interest of the home buyers. Both the land owners and the builder are blaming each other without caring the investors namely the home buyers. Under such circumstances what are the liabilities cast upon the land owners and the builder has to be decided. For that purpose the question arose whether the land owners and the builder are promoters?

10. The land owner decided to develop the A schedule property under Joint Development Scheme and identified the builder namely M/s Govis Infra Private Limited and designated them as their promoter by way of Joint venture agreement dated 23.9.2013. These are all admitted facts. Now both the land owners and the promoter neglected their duty to execute undivided share to the home buyers by blaming each other. The duties and the liabilities of the land owners have been fulfilled by them? Not yet. Admittedly the project of the promoter is a RERA registered project. Whether the land owners are having liability under this Act towards home buyers? We have to analyze answers for these questions. First of all we must start with the definition of the word 'promoter' under Section 2(zk). The definition is as follows:

> ***(zk) "promoter" means,—***
> ***(i)*** ***a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or***
> ***(ii)*** .. ..
> ***(iii)*** .. ..

(iv) ***.. ...***

(v) ***any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or***

(vi) ***.. ..***

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

11. As per Section 2(zk)(i) a person, who constructs or causes to be constructed, converting an existing building into apartments for the purpose of selling is the promoter. In this case, the land owners who causes to be constructed by converting an existing building into apartments for the purpose of selling hence all the land owners are promoters as per the definition.

12. As per Section 2(zk)(v) person who acts himself as a builder, developer acting as the holder of a power of attorney from the owner of the land on which the apartment is constructed is also the promoter as per the definition.

13. As per the explanation of this Section the person who converts the building into apartments for sale and the persons who sells apartments to different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such

for the functions and responsibilities specified, under this Act or the Rules and Regulations, made there under.

14. The land owners became the promoters under Section 2(zk)(i) and the builder became a promoter under Section 2(zk)(v) and both of them are liable for the functions and responsibilities as contemplated in the Real Estate (Regulation and Development) Act, 2016 and The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and Regulations of the Act. Therefore, the land owners as promoters and builder as promoter are jointly liable and responsible to the home buyers to redress their main and foremost grievance namely execution of undivided share to the home buyers. Therefore this Tribunal comes to a conclusion that the land owners as well as the builder are promoters of this project. Point No.1 is answered accordingly.

Point No.2:

15. The second point for consideration is with regard to cancellation of joint venture agreement and special power of attorney. Both the land owners and the builder/promoter entered into joint venture agreement on 23.9.2013 and the special power of attorney given to the builder/promoter by the land owners/promoters on the same day. The builder/promoter agreed to complete the construction within 15 months from the date of building approval. The builder/promoter has obtained required building permission on 21.4.2014 from Madurai Corporation and this project was registered with the RERA on 17.5.2018. As per the joint venture agreement they have to complete the construction within 15 months i.e., on 21.7.2015. But, the

builder/promoter has not completed the construction hence on 16.6.2018 the land owners/promoters issued legal notice to the builder/promoter claiming liquidated damages to the tune of Rs.10,50,000/- and also stated as follows:

> ***"failing which our client will be constrained to terminate the said agreement and proceed further as per law for your default, breach of contract, claiming damages and you will be held liable for all cost and consequences."***

16. For the above said legal notice the builder/promoter has not sent any reply but sent letter to the land owners on 30.7.2018 by stating as follows:

> ***"We have identified prospective buyers who are willing to buy the flats in our project and we are confident that we will be completing the project latest by March 2019 and hand over the flats to you and prospective buyers."***

17. Subsequent to that on 31.5.2019 again the land owners/promoters sent a legal notice again in which it has been specifically stated as follows:

> ***"In fact, you did not act according to the terms of agreement by delivering the flats to our clients within the stipulated period. Hence our clients refused to execute undivided share.***
>
> ***Hence the agreement for joint venture development dated 23.9.2013 entered into between our clients and yourself and the consequent general power deed 23.9.2013 executed by our clients to you are hereby cancelled for the reasons stated above. Hence you are hereby called upon to hand over the possession of our clients land to our clients within 15 days from the date of receipt of this notice."***

18. For the above said legal notice dated 31.5.2019 the builder/promoter sent a reply by stating that as per the clause 9 of the joint venture agreement the land owners have to execute the undivided share to the home buyers and due to RERA registration, demonization a serious impact on all the business and commercial activities throughout the country and his client was no exception to it. Further has stated that for the delay as per clause 16 of the Joint Venture agreement entitled

only for liquidated damages Rs.1000/- per day and the land owners /promoters have no right to repudiate or terminate the contract unilaterally.

19. The builder/promoter has not stated specific reason for the delay for the completion of the project. The only reply adduced by the builder/promoter by citing clause 16 of the joint venture agreement. Now let us see what is meant by joint venture and whether the land owners are entitled to cancel joint venture. Joint venture means: **A joint venture is a combination of two or more parties that seek the development of a single enterprise or project for profit, sharing the risks associated with its development.** According to joint venture it is a combination of two parties namely the land owners and the builder to develop the project for profit and sharing the risks associated with its development. The land owners seeking the flats within the stipulated time when failed by the builder/promoter the land owners/promoters cancelled the joint venture agreement and refused to take the sharing the risks associated with its development. The builder/developer narrated the risks namely demonization etc., for his non performance within the stipulated time. Now let us see the relevant clauses of the joint venture agreement.

9. After getting the building plan approval, the PROMOTER shall be entitled to collect money directly from the allottees of other flats (i.e. flats that are not ear marked for the LAND OWNERS) and appropriate the entire sale consideration thereof without any liability to account for the same and the LAND OWNERS agree to execute the sale deed infavour of the allottees for the other flats (being the nominee/nominees of the PROMOTER) for conveying to them their respective undivided share in the land in "A SCHEDULE". (It is also agreed that the execution of sale deed for the undivided share in the land in 'A

SCHEDULE" would be complied by the LAND OWNERS without any hitch or delay).

15. The PROMOTER undertakes to complete entire constructions and accomplish the project within fifteen months from the date of approval of the building plan and it is agreed that time is the essence of contract.

16. Time being the essence of contract, if the PROMOTER fails to complete the construction work within fifteen months from the date of getting approval of building plan then the PROMOTER shall be liable to pay by way of liquidated damages in a sum of Rs.1000/- for every day of delay to the LAND OWNERS and this clause would not come into operation in the event of any delay that is caused beyond the control of the PROMTER (FORCE MAJEURE).

20. As per the clause 9 the land owners permitted the builder/promoter to collect money directly from the allottees and appropriate the entire sale consideration thereof without any liability to account for the same and the land owners agreed to execute the sale deed in favour of the allottees and also agreed that the execution of sale deed for the undivided share would be complied by the land owners without any hitch or delay. As per clause 15 they agreed to complete within 15 months from the date of approval. As per clause 16 both the builder and land owners further agreed that if the builder fails to complete the construction work within 15 months from the date of getting the approval of building plan they shall be liable to pay by way of liquidated damages in a sum of Rs.1000/- for every day delay to the land owners subject to force majeure. These are the specific conditions accepted by both parties to the agreement. In the above said joint venture agreement nowhere in any of the clauses stated that any breach of contract or delay will leads to cancellation of agreement. Even then the land owners/promoters after

claiming damages by way of first legal notice dated 16.6.2018 they have not chosen to take any legal action through court of law as stated in their notice. But, on 31.5.2019 through the second legal notice against the terms of the joint venture agreement unilaterally cancelled the joint venture agreement and consequent special power of attorney. The special power of attorney was given to the builder/promoter for the specific purpose which runs as follows:

"WHEREAS the power of attorney has agreed to develop the A schedule property by putting up construction of residential flats"

21. For the purpose of converting the building into apartments the joint venture agreement and special power of attorney were entered into between the parties. Without completing the project and without any specific clause for cancellation of the joint venture agreement and special power of attorney unilateral cancellation by the land owners how far it is legally sustainable? For which the answer is available from the verdict of our Honble Supreme Court in the following judgment:

AIR 1969 SC 73

Seth Loon Karan Sethiya vs Ivan E. John And Ors

8. There is hardly any doubt that the power given by the appellant in favour of the bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the bank is irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was irrevocable.

Section 202 in The Indian Contract Act, 1872

202. "Termination of agency, where agent has an interest in subject-matter.—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

22. As per Section 202 of the Indian Contract Act, where the agent has himself an interest in the property the agency cannot be terminated in the absence of an express contract. In this case in the joint venture agreement or in the special power of attorney there is no specific clause with regard to cancellation. Furthermore, the property was handed over to the builder/promoter for converting into 16 apartments. On the strength of the special power of attorney the builder/promoter obtained sale consideration from the prospective buyers and completed the construction up to 95% and some of the flats were handed over to the home buyers. At this juncture, by unilateral cancellation seeking for the return of the land is an impossible one. That is why the provision as well as the Hon'ble Supreme Court has clearly clarified that the power given by the land owners to the builder/promoter is a power coupled with interest. The agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. In this case the builder/promoter has deposited Rs.10,00,000/- as security deposit and agreed to deliver 6 flats to the land owners for which in lieu of consideration land was handed over to the builder and the builder in lieu of consideration he promised to deliver 6 flats to the land owners. Therefore the agency created with the builder is coupled with interest and legally it cannot be cancelled unilaterally as per the verdict of the Hon'ble Supreme Court and

as per Section 202 of the Indian Contract Act. Therefore this Tribunal comes to a conclusion that the land owners are not entitled to cancel the joint venture agreement and special power of attorney. Point No.2 is answered accordingly.

Point No.3:

23. The specific allegation of the land owners/promoters is that the builder/promoter has completed the construction in the portions ear marked for the builder and failed to complete the construction in the portions ear marked for the land owners. In the joint venture agreement in this regard the relevant portion is as follows (Paragraph 7):

> ***"The PROMOTER agrees allocation of Five flats and Five sheltered car park to the LAND OWNERS (as per memorandum of understanding dated 29.8.2014 6 flats and 6 sheltered car parks) in the proposed construction as per specifications set out in Annexure-2. The promoter will have at his disposal the remaining 11 flats measuring about 8558 sft plus common area and non fsi areas. The parties here to agrees that in the event of obtaining sanction and construct over and below the intended 15015 sft (1.80% FSI) of allowable construction area excluding non FSI areas, the sharing ratio shall be in the same proportion of 43:57."***

24. As per the agreement the promoter has to allocate 6 flats for the land owners and 10 flats for the promoter. All the 16 have to be completed simultaneously and made ready for delivery to the land owners and for sale to the prospective buyers. This is the agreement reached by both parties. But the promoter instead of completing the whole construction simultaneously, the promoter has completed portions remaining with him and sold and handed over to the buyers and left the unfinished construction of the portions due to the land owners. In the above said agreement there are no specific stipulations that the promoter is entitled to complete his portion only and after selling the same he has to complete the portion

allotted to land owners. In such circumstances it is the bounden duty of the promoter to complete the construction of the portions allotted to the land owners and then retain the remaining. The word used in the paragraph 7 of the joint venture agreement that 'the promoter will have at his disposal the remaining 11 flats'. So the real intention of the agreement is to complete the flats due to the land owners first and then have the remaining for his disposal. The promoter without adhering to the wordings used in the agreement, he has completed his portion and sold and handed over and then try to complete by getting time after time and gave lame excuses. It is not fair on the part of the promoter since the appeals riped for arguments the promoter has failed to complete the construction of the portion due to the land owners. Therefore this Tribunal comes to a conclusion that the builder is liable to complete the construction due to the land owners along with portion ear marked for promoter. But the promoter failed to do so and committed breach of contract. Point No.3 is answered accordingly.

Point No.4:

25. The home buyers came forward with the complaints C.Nos. 464 to 466, 468 and 469 of 2019 for the reliefs of directing the land owners to execute sale deed and impose penalty on the land owners for non executing of undivided share sale deed. The promoter came forward with the complaint in C.No.470/2019 for the relief of directing the land owners to execute the sale deed to the prospective buyers and for unsold flats and impose penalty for non execution of undivided share sale deed and for liquidated damages for cancellation of the agreement and for harassment. The learned Regulatory Authority after contest directed the promoter to complete

the construction and hand over the share of flats to the land owners and also directed the land owners to execute the undivided share sale deeds to the prospective buyers and also directed to hand over title deeds, kept security with them and directed the security deposit to the promoter. Even then the home buyers not satisfied with the order of the Regulatory Authority has came forward with this appeal for the relief of direction for execution of sale deed and for direction to impose penalty to the land owners.

26. In these appeals, in point No.1 it was decided that the land owners are also the promoter of this project and in point No.2 it was decided that the land owners are not entitled to cancel the joint venture agreement and special power of attorney unilaterally. In point No.3 it was decided that the promoter/builder has failed to complete the construction ear marked for the portion due to the land owners is the breach of contract on the part of the builder/promoter. In such circumstances the claim of the home buyers for the relief of penalty is justifiable. But unfortunately the learned Regulatory Authority without imposing any penalty, even though the land owners have no right to cancel the agreement and power of attorney, simply directed the land owners and promoter to comply the order on 10.3.2021. So far they have not taken steps to comply the order of the Regulatory Authority. At this juncture the claim of the home buyers is absolutely tenable. Otherwise the purpose of the Act itself will be defeated.

27. Before going to discuss the merits of this point the background of this Act is to be borne in mind. The background of the Act is as follows:

"The Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha on 14th of August 2013. The Bill contains the Statement of Objects and Reasons which spells out the reasons behind initiating the legislation by way of this Bill. It inter alia states as follows-

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums."

Under such circumstances this bill was enacted as a law namely the Real Estate (Regulation and Development) Act, 2016 in which the preamble was inserted as follows:

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

28. The background of this legislation is lack of standardization, absence of professionalism and unregulated real estate sector. These are the main reasons for the central legislation of this Act. The enactment of this Act is to ensure sale of real estate project, in an efficient and transparent manner and to protect the interest of the consumers. Therefore the ultimate aim of this Act is to protect the consumer's interest. In these cases the home buyers even though paid full sale consideration to the promoter and in turn he has handed over the possession to the home buyers,

the poor home buyers, even fully paid entire purchase money, without any title to their homes they are residing. The promoter has no right or title over the land in which the construction has been completed. Only on the strength of the joint development agreement and special power of attorney executed by the land owners to the builder/promoter and on the strength of the following

> ***"14. On getting the plan approval the promoter will be at liberty to advertise for promotion and sale of flats in his own name" (paragraph 14 of the joint venture agreement).***

29. The land owners themselves permitted the builder/promoter to make advertisement for the promotion sale of flats. Now the promoter failed to complete the portion ear marked to the land owners. In such circumstances the land owners themselves have forgotten that they are also the promoters of this project and simply cancelled the agreement and refused to execute the undivided share for the home buyers. The land owners knowing fully well that they have no right to cancel the agreement and power of attorney and the only remedy open to them is by way of claiming liquidated damages at the rate of Rs.1000/- per day as per clause 16 of the joint venture agreement from the builder/promoter and without caring the liability towards the home buyers the cancellation of the joint venture agreement and special power of attorney is absolutely against the Real Estate (Regulation and Development) Act, 2016 and even though this real estate project is a RERA registered project the land owners without caring and without giving due respect to the RERA registration the cancellation of the joint venture agreement and special power of attorney certainly amounts to violation of the provisions of the Real Estate (Regulation and Development) Act, 2016. Therefore such a kind of mischief has to be prevented with iron hands otherwise compelling the registration of real estate

project would become a mockery. But unfortunately the learned Regulatory Authority took mild approach towards both the promoters hence it is not sufficient. Even though the Regulatory Authority has vested with ample powers to regulate the real estate sector in letter in spirit, the authority has failed to do so. Therefore this Tribunal comes to a conclusion that the order of the Regulatory Authority has to be set aside in part by allowing the appeal in part. Point No.4 is answered accordingly.

30. The builder/promoter himself has filed a separate complaint against the land owners for the relief of execution of sale deed for three unsold flats and sought for direction to impose penalty against the land owners and liquidated damages from the land owners. In point No. 3 it was decided that the builder/promoter himself is a defaulter. The person seeks equity must do equity. By applying that principle as contemplated in the following verdict of the Hon'ble Supreme Court:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO 8928 OF 2015 Etc. Etc.

CHAIRMAN AND MANAGING DIRECTOR FCI AND ORS Vs
JAGDISH BALARAM BAHIRA AND ORS

A person who, seeks equity must come with clean hands. He. who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour.

The builder/promoter is not entitled to any relief against the land owners by way of appeal. Hence this Tribunal comes to a conclusion the appeal filed by the builder/promoter is not deserves to be allowed.

A.Nos.51 to 55 of 2021

31. In the result, the appeals in A.Nos.51,52,53,54 and 55 of 2021 are allowed in part with cost of the appellants and order of the Regulatory Authority in C.Nos.464, 465, 466, 468 and 469 of 2019 dated 10.3.2021 is partly set aside and partly confirmed and this Tribunal issued the following directions:

(a) The land owners/promoters are directed to execute undivided share sale deeds in favour of the home buyers in A.Nos.51 to 55 of 2021 within 30 days from the date of this order failing which by invoking Section 64 of the Real Estate (Regulation and Development) Act, 2016, the land owners/promoters shall be punishable with imprisonment for a term of 3 years and with fine for every day delay, as default continues, which may cumulatively extend upto 10% of the estimated cost of the real estate project.

(b) The builder/promoter is directed to hand over construction completed apartments ear marked for the land owners in A.No.51 to 55 of 2021 within 30 days from the date of this order failing which by invoking Section 64 of the Real Estate (Regulation and Development) Act, 2016, the builder/promoter shall be punishable with imprisonment for a term of 3 years and with fine for every day delay, as default continues, which may cumulatively extend upto 10% of the estimated cost of the real estate project.

(c) Remaining portion of the order of the Regulatory Authority in C.Nos.464, 465, 466, 468 and 469 of 2019 are confirmed.

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A.No.56 of 2021

32. In the result, the appeal in A.No.56 of 2021 is dismissed without costs and the order of the Regulatory Authority in C.No.470 of 2019 dated 10.3.2021 is confirmed.

Connected Miscellaneous Applications are closed.

This Order is directly dictated to the Stenographer, typed in the computer by her, corrected and pronounced by us in the open court on 2nd Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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