2026:AHC:222997-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 21821 of 2025

AFR

Reserved on 01.10.2026

Delivered on 27.10.2026

Suresh Chander and 10 others

…..Petitioner(s)

Versus

State of U.P. and 2 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Manjari Singh, Rahul Jain
Counsel for Respondent(s)	:	Abhinav Gaur, C.S.C., Manu Ghildyal, Tejasvi Misra, Vibhu Rai

With

WRIT - C No. - 68187 of 2015

Gulmohur Greens Residents Welfare Association

…..Petitioner(s)

Versus

Ghaziabad Development Authority and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Abhinav Gaur, Dinesh Kumar Singh, Nirvikar Gupta, Priyansh, Vibhu Rai
Counsel for Respondent(s)	:	Anoop Trivedi (senior Adv.), Mahesh Narain Singh, Nikhil Kumar, S.C., Shivam Yadav, Vrindavan Mishra, M.n.singh

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.
(Delivered by Hon'ble Saral Srivastava,J)

1. Heard Sri Ashish Singh, learned Senior Advocate assisted by Ms. Manjari Singh, learned counsel for the petitioner, Sri Shashi Nandan, learned Senior Advocate assisted by Sri Tejasvi Mishra, learned counsel for respondent no.2 and Sri Shivam Yadav, learned counsel for respondent no.3 appearing in Writ C No.21821 of 2025.

2. Heard Sri Sanjeev Singh, learned Senior Counsel assisted by Sri Priyansh, learned counsel for the petitioner and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Mahesh Narain Singh, learned counsel for GDA appearing in Writ-C No.68187 of 2015.

3. These two connected petitions involve common question, therefore, they are being decided by this common judgement.

4. We have summoned the original record of Ghaziabad Development Authority for our perusal.

5. For convenience, facts are being delineated from Writ-C No.21821 of 2025. However, if necessary, the facts stated in the connected Writ-C No.68187 of 2015 shall be referred to at an appropriate place in the judgement.

6. The petitioner in the present writ petition have approached this Court with the following prayer:-

> *"i. Issue a writ, order or direction in the nature of certiorari quashing the compounding order dated 18.12.2024.*
>
> *ii. Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to issue any more approvals to the original sanctioned map without taking consent from apartment owners as provided under the U.P. Apartment Act, 2010.*
>
> *iii. Any other or further relief which the Court may deem fit and proper under facts and circumstances of the case.*
>
> *iv. Award the cost of the writ petition."*

7. The facts, in brief, are that the petitioners are the owners and residents of apartment situated at Gulmohar Greens Residential Society, situated at 95, Katori Mill, Mohan Nagar, Sahibabad, District Ghaziabad (hereinafter referred to as ‘Apartment’).

8. The record also reveals that M/s S.V.P. Builders India Limited-respondent no.3, a Company incorporated under the Companies Act, 2013 is the partner and general power of attorney of M/s Friends Land Developers Private Limited, a partnership firm (hereinafter referred to as the 'Promoter'), which had applied for sanction of map for establishing a Group Housing Scheme in respect of land comprised in Khasra Nos. 955 to 960, 1010, 1011, 1014, 1015, 1017 to 1051 situated in Village Karheda, District Ghaziabad i.e. 95 Katori Mill, Mohan Nagar, Sahibabad, District Ghaziabad. Under the said Group Housing Scheme, the Promoter had proposed to construct 34 towers having a total number of 904 units/flats. As would be evident from the records the sale deed of the flats so constructed has been executed in favour of the purchasers by M/s S.V.P. Builders India Limited-respondent no.3 on behalf of Promoter.

9. It is stated that the map was sanctioned on 29.05.2006. As per the sanctioned map dated 29.05.2006, the details of each Tower is reproduced herein-below:-

Sl. No.	*Tower*	*Specification*
1.	*T-1*	*B+G+8*
2.	*T-2*	*B+G+8*
3.	*T-3*	*B+G+7*
4.	*T-4*	*B+G+7*
5.	*T-5*	*B+G+7*
6.	*T-6*	*B+G+7*
7.	*T-7*	*B+G+7*
8.	*T-8*	*B+G+7*
9.	*T-9*	*B+G+7*
10.	*T-10*	*B+G+7*
11.	*T-11*	*B+G+7*
12.	*T-12*	*B+G+7*

13.	*T-13*	*B+G+7*
14.	*T-14*	*B+G+7*
15.	*T-15*	*B+G+7*
16.	*T-16*	*B+G+7*
17.	*T-17*	*B+G+5*
18.	*T-18*	*B+G+7*
19.	*T-19*	*B+G+7*
20.	*T-20*	*B+G+7*
21.	*T-21*	*B+G+7*
22.	*T-22*	*B+G+7*
23.	*T-23*	*B+G+6*
24.	*T-24*	*B+G+6*
25.	*T-25*	*B+G+6*
26.	*T-26*	*B+G+6*
27.	*T-27*	*B+G+6*
28.	*T-28*	*B+G+6*
29.	*T-29*	*B+G+6*
30.	*T-30*	*B+G+6*
31.	*T-31*	*B+G+6*
32.	*T-32*	*B+G+6*
33.	*T-33*	*B+G+6*
34.	*T-34*	*B+G+6*

10. It appears that an objection was raised about the title and ownership of Khasra Nos.955 to 960, 1010, 1011, 1014, 1015, 1017 to 1051 by the officers of Air Force at Hindon Air Base due to which the map was cancelled on 03.07.2010.

11. The record further reveals that before cancellation of map, the Promoter had already constructed 720 units in terms of original layout plan dated 29.05.2006 out of 904 sanctioned dwelling units. It appears that the Promoter submitted the first compounding map with 374 additional dwelling units as 720 units were already constructed before cancellation of original map. The total number of dwelling units which the Promoter applied by way of first compounding map was 1094 units.

12. The first compounding map was sanctioned on 15.11.2011 by which 720 pre-existing dwelling units were compounded against 904

dwelling units, which was sanctioned by way of original map dated 29.05.2006.

13. By the first compounding map, 374 new proposed units were also sanctioned. The details of Towers containing 720 constructed units till cancellation of sanctioned layout plan dated 03.07.2010 as per note sheet appearing on page-56 of original record annexed as Annexure-5 to the counter affidavit are being reproduced below:-

Sl. No.	*Tower No.*	*Exist FAR*	*Exist Level*	*Units*
1.	*T-2*	*6691.99*	*B+G+8*	*36*
2.	*T-3*	*6691.99*	*B+G+8*	*36*
3.	*T-4*	*5120.81*	*B+G+8*	*32*
4.	*T-5*	*5120.81*	*B+G+8*	*32*
5.	*T-6*	*5265.91*	*B+G+8*	*36*
6.	*T-7*	*5265.91*	*B+G+8*	*36*
7.	*T-8*	*4062.00*	*B+G+8*	*36*
8.	*T-9*	*4062.00*	*B+G+8*	*36*
9.	*T-10*	*4062.00*	*B+G+8*	*36*
10.	*T-11*	*4062.00*	*B+G+8*	*36*
11.	*T-12*	*4062.00*	*B+G+8*	*36*
12.	*T-12A*	*4311.71*	*B+G+8*	*36*
13.	*T-14*	*4493.35*	*B+G+8*	*36*
14.	*T-15*	*4493.35*	*B+G+8*	*36*
15.	*T-24*	*5156.92*	*B+G+8*	*36*
16.	*T-25*	*5156.92*	*B+G+8*	*36*
17.	*T-26*	*5156.92*	*B+G+8*	*36*
18.	*T-30*	*4931.37*	*B+G+8*	*32*
19.	*T-31*	*5019.04*	*B+G+8*	*36*
20.	*T-32*	*5019.04*	*B+G+8*	*36*
21.	*T-33*	*530.07*	*B+G*	*4*
22.	*T-34*	*530.07*	*B+G*	*4*
23.	*T-35*	*530.07*	*B+G*	*4*
24.	*Community*	*599.21*	*G+F*	*-*
		100395.46		*720*

14. The Promoter has also deviated in the area and set-back and also in *mumty* and machine room which is evident from the compounding

calculation appearing on page-57 of the counter affidavit of Development Authority for the purpose of granting approval to the first compounding. The compounding calculation appearing on page 57 of the counter affidavit is reproduced below:-

"ग़ाज़ियाबाद विकास अधिकरण, ग़ाज़ियाबाद

(टिप्पड़ियां एवं आदेश)

शमन गणना-

1. ***Permissible but not sanctioned***

FAR	=	*100395.46 m²*
Basement	=	*31689.01 m²*
Mumty & Machine Room	=	*1148.94 m²*
Fire Stair	=	*3846.72 m²*
Total area	=	*137080.13 m²*
Penalty 137080.13 m² @ Rs.25 per m²	=	*Rs.34,27,004.00-(A)*

2. ***Area in Set Backs.***

a. For Basement Tower 2 & 3	=	*206.06 m²*
Penalty 206.06 m² @ 18000/2	=	*Rs.1854540.00-(B)*
b. For Ground Floor Tower 2 & 3	=	*314.50 m²*
Between Tower 12 & 12A	=	*22.10 m²*
Between Tower 12A & 14	=	*27.76 m²*
	=	*364.36 m²*
Penalty 364.36 m² @ 18000	=	*Rs. 6558480.00-©*

3. ***Extra Covered in Balcony***

Tower 2 & 3	*111.76 x 2*	=	*223.52 m²*
Tower 4 & 5	*75.32 x 2*	=	*150.64 m²*
Tower 6 & 7	*81.32 x 2*	=	*162.64 m²*
Tower 8 to 12	*80.42 x 5*	=	*402.10 m²*
Tower 12A	*79.96 x 1*	=	*79.96 m²*
Tower 14 & 15	*145.70 x 2*	=	*291.40 m²*
Tower 24, 25, 26	*64.88 x 3*	=	*194.64 m²*
Tower 30	*48.32 x 1*	=	*48.32 m²*

Tower 31 & 32 48.32 x 2 = 96.48 m²

Tower 33, 34 & 35 4.16 x 3 = 12.48 m²

= 1662.18 m²

Penalty = 1662.18 m² @ 200 per m² = 332436.00-(D)

कुल शमन शुल्क *= A + B + C + D = Rs.1,21,72,460.00*

पार्किंग*:*

आवश्यक *906 Ecs*

प्रस्तावित *906 Ecs"*

15. The aforesaid note sheet contains a calculation for the purpose of compounding. It is evident from the aforesaid note sheet that the Promoter has made deviation in basement, mumty and machine room, in basement and ground floor of Tower nos.2 & 3. He had also made deviation in extending the balconies of flats shown at point no.3.

16. Under the first compounding, the details of proposed additional towers appearing on page-63, part of Annexure-5 to the counter affidavit of GDA are given below:-

"**प्रस्तावित**

क्र.सं.	**टावर / विवरण**	**क्षेत्रफल**
1	टावर 16 व 17 (G+8)	7259.17 वर्गमी.
2	टावर 18 (G+8)	3327.58 वर्गमी.
3	टावर 19 (G+8)	3327.58 वर्गमी.
4	टावर 27 (G+3)	2445.24 वर्गमी.
5	टावर 28 (G+6 व G+7)	4594.16 वर्गमी.
6	टावर 29 (G+3)	2445.24 वर्गमी.
7	टावर 33 (1 to 8)	4168.48 वर्गमी.
8	टावर 34 (1 to 8)	2664.302 वर्गमी.
9	टावर 35 (1 to 8)	4168.48 वर्गमी.
10	टावर 01 कन्वीनियन्ट शॉप (G)	405.00 वर्गमी.
11	टावर 36 व 37 (G+3)	3230.07 वर्गमी.
12	टावर 38 व 39 (G+4)	4035.89 वर्गमी.
	कुल	**42071.266** वर्गमी**.**

17. The aforesaid deviation, addition and construction of additional towers have been approved by the first compounding on 15.11.2011.

18. After the first compounding, the Promoter made deviations from first compounding map. He, therefore, submitted another application for compounding which was allowed on 13.01.2015. The details of Towers of second compounding are given below:-

Sl.No.	***Tower***	***Specification***	***Status***
1.	*T-1*	*Convenient Shops*	*Proposed*
2.	*T-2*	*B+G+8*	*Already Compounded*
3.	*T-3*	*B+G+8*	*Already Compounded*
4.	*T-4*	*B+G+6+PH (7th & 8th)*	*Already Compounded*
5.	*T-5*	*B+G+6+PH (7th & 8th)*	*Already Compounded*
6.	*T-6*	*B+G+8*	*Already Compounded*
7.	*T-7*	*B+G+8*	*Already Compounded*
8.	*T-8*	*B+G+8*	*Already Compounded*
9.	*T-9*	*B+G+8*	*Already Compounded*
10.	*T-10*	*B+G+8*	*Already Compounded*
11.	*T-11*	*B+G+8*	*Already Compounded*
12.	*T-12*	*B+G+8*	*Already Compounded*
13.	*T-12A*	*B+G+8*	*Already Compounded*
14.	*T-14*	*B+G+8*	*Already Compounded*
15.	*T-15*	*B+G+8*	*Already Compounded*
16.	*T-16*	*G+8*	*Existing*
17.	*T-17*	*G+8*	*Existing*
18.	*T-18*	*G+8*	*Existing*
19.	*T-19*	*G+8*	*Existing*
20.	*T-24*	*B+G+8*	*Already Compounded*
21.	*T-25*	*B+G+8*	*Already Compounded*
22.	*T-26*	*B+G+8 (Existing)*	*Already Compounded*
23.	*T-27*	*Under Construction*	-
24.	*T-28*	*Under Construction*	-
25.	*T-30*	*B+G+6+PH (7th & 8th)*	*Already Compounded*
26.	*T-31*	*B+G+8*	*Already Compounded*
27.	*T-32*	*B+G+8*	*Already Compounded*
28.	*T-33*	*B+G+10 (Existing)*	*For Compounding*
29.	*T-34*	*B+G+10 (Existing)*	*For Compounding*
30.	*T-35*	*B+G+10 (Existing)*	*For Compounding*

31.	*T-36*	*B+G+3*	*Proposed*
32.	*T-37*	*B+G+3*	*Proposed*
33.	*T-38*	*B+G+4*	*Proposed*
34.	*T-39*	*B+G+4*	*Proposed*

19. The Promoter again made deviation in the second compounding map. Accordingly, he submitted an application for third compounding which was allowed by the respondents on 18.12.2024. The details of blocks/flats are being reproduced below:-

Sl.No.	***Tower***	***Specification***	***Status***
2.	*T-2*	*B+G+8*	*Already Compounded*
3.	*T-3*	*B+G+8*	*Already Compounded*
4.	*T-4*	*B+G+6+PH (7th & 8th)*	*Already Compounded*
5.	*T-5*	*B+G+6+PH (7th & 8th)*	*Already Compounded*
6.	*T-6*	*B+G+8*	*Already Compounded*
7.	*T-7*	*B+G+8*	*Already Compounded*
8.	*T-8*	*B+G+8*	*Already Compounded*
9.	*T-9*	*B+G+8*	*Already Compounded*
10.	*T-10*	*B+G+8*	*Already Compounded*
11.	*T-11*	*B+G+8*	*Already Compounded*
12.	*T-12*	*B+G+8*	*Already Compounded*
13.	*T-12A*	*B+G+8*	*Already Compounded*
14.	*T-14*	*B+G+8*	*Already Compounded*
15.	*T-15*	*B+G+8*	*Already Compounded*
16.	*T-16*	*G+10 (Existing)*	*G+8 Already Compounded*
17.	*T-17*	*G+10 (Existing)*	*G+8 Already Compounded*
18.	*T-18*	*G+10 (Existing)*	*G+8 Already Compounded*
19.	*T-19*	*G+10 (Existing)*	*G+8 Already Compounded*
20.	*T-24*	*B+G+8*	*Already Compounded*
21.	*T-25*	*B+G+8*	*Already Compounded*
22.	*T-26*	*B+G+8 (Existing)*	*Already Compounded*
23.	*T-27*	*B+G+4*	*Existing*
24.	*T-28*	*B+G+4*	*Existing*
25.	*T-30*	*B+G+6+PH (7th & 8th)*	*Already Compounded*
26.	*T-31*	*B+G+8*	*Already Compounded*

27.	*T-32*	*B+G+8*	*Already Compounded*
33.	*T-33*	*B+G+10 (Existing)*	*Already Compounded*
34.	*T-34*	*B+G+10 (Existing)*	*Already Compounded*
35.	*T-35*	*B+G+10 (Existing)*	*Already Compounded*

20. The State of U.P. enacted Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (hereinafter referred to as 'Act, 2010') and Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011 (hereinafter referred to as 'Rules, 2011') were framed on 19.11.2011.

21. Under the Rule 2 (c) of the Rules, 2011, the Vice Chairman, Ghaziabad Development Authority in whose development area the building is situated is the 'Competent Authority'. Hence, in the present case, the Vice Chairman, Ghaziabad Development Authority is the Competent Authority under the Act, 2010.

22. The object of the Act, 2010 is to provide for ownership of an individual apartment in a building of an undivided interest in the common areas and facility appurtenant to such apartment and to make such apartment and interest heritable, transferable and for matters connected therewith. Thus, the preliminary object of the Act, 2010 is to protect and preserve the interests and rights of the apartment owners.

23. The grievance of the petitioners is that the Promoter while getting the map compounded time and again violated Section 5 (3) (a) of the Act, 2010, as no consent was taken from the petitioners before submitting the map for compounding on all occasions.

24. According to the petitioners, the object of promulgation of Act, 2010 is to make sure that the rights of apartment owners are protected and they are not harassed by the Promoter and interest of individual apartment owner is protected and guarded against the Promoter as he is in a dominant position.

25. The petitioners have stated in the writ petition that the Promoter has violated the provisions of Act 2010, but the Competent Authority

namely, Vice Chairman, Ghaziabad, who is entrusted with the duty to ensure the compliance of the Act, 2010 did not take any step to enforce the provisions of the Act, 2010.

26. It is also the further case of the petitioners that the provisions of Act, 2010 and Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter referred to as the 'Act,1973') and the Compounding Rules have been violated with impunity inasmuch as respondent no.2 has compounded those offences which could not have been compounded under the Rules.

27. It is pleaded in the writ petition by the petitioners that Promoter has included the Air Force land in his plot while calculating permissible FAR and ground coverage and the respondent no.2 without verifying the title of the Promoter over the entire land has approved the compounding. The FAR compounded in third compounding is in excess of permissible FAR area which is impermissible under the law.

28. The case of respondent no. 2 is that total dwelling units which were permissible in terms of Building Bye-laws was 1603, therefore, compounding has been done within the sanctioned limit being that of 1094 dwelling units by way of first compounding map dated 15.11.2011.

29. It is stated that the Promoter's application for third compounding was within the permissible FAR. Accordingly, the same was compounded in terms of the Building Bye-laws.

30. Respondent No.2 states that the consent in terms of Section 5 (3) (a) of the Act, 2010 is applicable only when Promoter seeks changes in the original layout plan i.e. if the Promoter intends to increase sanctioned limit of dwelling units, then in such case, the consent is required. However, if there is no change in the original layout plan, then there is no application of Section 5(3) (a) of the Act, 2010 as is in the present case, the compounding has been done within the sanctioned limit of 1094 units sanctioned on 15.11.2011 by way of first compounding.

31. The Promoter has also filed an affidavit raising preliminary objection in respect to maintainability of writ petition on the ground that

individual flat owners may maintain a writ petition only where Residents Welfare Association is not in existence.

32. It is stated that in the present case, Gulmohar Greens Residents Welfare Association (GGRWA) is in existence and has approached this Court by instituting a Writ-C No.68187 of 2015, therefore, the present writ petition on behalf of individual flat owners is not maintainable.

33. Further, it is the case of the Promoter that the petitioners purchased their respective flats long after layout came to be sanctioned on 15.11.2011. The registered sale deed of petitioner no.1 is dated 07.09.2012, which is subsequent to the date of sanction of layout on 15.11.2011. Accordingly, it is pleaded that as the petitioners purchased their respective flats with full knowledge and notice of the sanctioned layout plan, therefore, the petitioners are estopped by their conduct in complaining about the layout.

34. It is pleaded that the writ petition of the petitioners is barred by delay and laches inasmuch as the petitioners seek to reopen the first layout compounded map dated 15.11.2011 and second compounded map dated 13.01.2015, which are sought to be assailed after lapse of nearly 14 years & 10 years respectively.

35. It is also stated that allegation of petitioners that the Promoter wrongly included Air Force Land (Khasra no.1034 & 1035) while computing the permissible FAR and ground coverage is incorrect.

36. The Promoter stated that the plot having an area of 87930 Sq. meter is lawful holding of the Promoter being it's private/freehold land together with the land secured under the land exchange deed.

37. The Promoter also states that no consent contemplated under Section 5 (3) (a) of the Act, 2010 is required in the present case. It is further stated that the Promoter has applied for completion certificate, and respondent no.2 did not intimate the rejection of completion certificate, therefore, the completion certificate shall be deemed to have been issued by the Authority.

38. It has also been pleaded that Rule 2 (1) (h) (iv) of Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (hereinafter referred to as the 'Rules, 2016') provides that the project in which the development work has been completed and in respect of which an application for completion certificate has been made to the Competent Authority need not be registered under the Rules, 2016.

39. It is stated that in view of Section 15A (1) of the Act, 1973 and in terms of scheme of Section 4 (5) of the Act, 2010, the completion certificate applied for by the Promoter having remained undecided far beyond the stipulated period stood deemed to have been issued, and the Promoter bonafidely and legitimately proceeded on the footing that the completion certificate stood deemed to have been granted in his favour.

40. Challenging the third compounding map, Sri Ashish Singh, learned Senior Counsel for the petitioners has contended that it is amply clear from the record that respondent Nos.2 & the Promoter are hands in glove with each other. It is submitted that multiple compounding of layout plan/map by respondent no.2 has been done to benefit the Promoter which is against the express mandate and object of the Act, 2010.

41. It is contended that Section 5(3)(a) of the Act, 2010 mandates that the Promoter cannot change the original layout plan or get the map compounded multiple times without taking prior written consent from all the apartment owners. Accordingly, it is urged that in the instant case, Promoter has deviated from the original layout plan multiple times without taking written consent of all the apartment owners, therefore, the compounding of map without complying with the mandate of Section 5(3)(a) of the Act, 2010 is impermissible and illegal.

42. The contention of the petitioners is that the collusion of respondent no.2 with the Promoter is evident from the fact that respondent no.2 is the competent authority to enforce the provisions of the Act, 2010 and has been entrusted with wide powers to take action against the offences committed under Sections 25 & 26 of the Act,

2010, but respondent no.2 did not take any punitive action against the Promoter for deliberately violating the provisions of the Act, 2010.

43. It is urged that in the present case, the Promoter has violated the provisions of Section 5 (3) (a) of the Act, 2010 which requires consent from all the apartment owners in case of change in the layout plan, and has also violated Section 4 (5) of the Act, 2010 which cast a duty upon the Promoter to obtain a completion certificate from the prescribed sanctioning authority concerned as per the Building Bye-laws, and only after that, the Promoter can transfer flats, but in the instant case, the Promoter has transferred the flats without complying with the requirement of obtaining completion certificate envisaged under Section 4 (5) of the Act, 2010.

44. It is submitted that multiple compounding of map is not permitted under the Compounding Bye-laws. It is submitted that deviation from map is an offence under Section 32 of the Act, 1973, which provides for composition of offences. It is also urged that the Authority is not empowered to compound the offences committed under the Act, 1973 multiple times under the aforesaid section, thereby, allowing the illegality to perpetuate.

45. In other words, it is contended that multiple compounding of offenses is not permitted under Section 32 of the Act, 1973 and the Compounding Bye-laws framed under Section 57 (bb) of the Act, 1973, therefore, the sanction of third compounding is *per se* illegal and without jurisdiction.

46. It is also submitted that the compounding of map has been done in violation of Compounding Bye-laws, 2009 inasmuch as the uncompoundable offences under the Compounding Bye-laws has been compounded by respondent no.2. It is also submitted that FAR has been calculated by including the land owned by Indian Air Force, and if the total area of Khasra nos.1034 & 1035, which comes to 2720 Sq. meters, owned by Indian Air Force (Hindon) is excluded for the purpose of

calculating FAR, the FAR compounded in third compounding is in excess of permissible FAR area, which is impermissible under law.

47. Sri Sanjeev Singh, learned Senior Counsel appearing in Writ-C No.68187 of 2015 has contended that Promoter has sold the common areas alongwith the ground floor flats, which is in complete violation of Section 4 (5) of the Act, 2010. He further contends that the present case is governed by the bye-laws of 1997, which does not provide for any relaxation in permit.

48. *Per contra*, Sri Shashi Nandan, learned Senior Counsel appearing for the respondents has contended that the writ petition on behalf of individual apartment owner is not maintainable since there exists an association, namely, Gulmohar Greens Residents Welfare Association (GGRWA). Thus, he submits that the writ petition is not maintainable on behalf of the petitioners and is liable to be dismissed on the ground of their *locus standi* to prefer the present writ petition.

49. He further submits that under the approved original layout plan dated 29.05.2006, 34 Towers having 904 dwelling units and one Community Centre was sanctioned. However, the map was cancelled on 03.07.2010. It is submitted that 720 units were constructed by Promoter till the date of cancellation of map. He contends that the reason for cancellation of map was the title dispute between the Promoter and the land owners.

50. He submits that after the title dispute was resolved, the Promoter submitted an application for fresh sanction of 374 units and for compounding of already constructed 720 units. He contends that 720 units were constructed under a valid sanctioned map as the aforesaid units have been constructed before cancellation of original layout map dated 29.05.2006. Thus, it is contended that 720 units cannot be termed as ‘unauthorized construction’ as having been constructed under a sanctioned layout plan.

51. He submits that after cancellation of original layout plan, no further construction could be raised by the Promoter, and in the instant

case, after cancellation of original layout plan, the Promoter did not raise any further construction. He further submits that as there is no violation of Building Bye-laws, therefore, construction of 720 units is valid construction under the sanctioned plan, therefore, the compounding of said units has been rightly done by the respondent no. 2.

52. He further submits that as per available FAR, the Promoter could construct 374 additional units, therefore, there is no illegality in the sanction of first compounding dated 15.11.2011 granting permission to the Promoter to construct 374 fresh units.

53. It is also urged that since there were certain deviations which were compoundable, therefore, the Promoter submitted second compounding map, and the Authority did not commit any illegality in issuing the second compounding map as it was permissible because of the availability of required FAR.

54. He further contends that the total number of sanctioned units under the first compounding map was 1094, which number was not changed nor there was any alteration in layout plan, therefore, the respondent No.2 has acted within the framework of law in approving and sanctioning the second compounding map.

55. He contends that it is evident from the prayer in the writ petition that the petitioner has not prayed for quashing of first and second compounding map, and in the absence of any specific prayer in this regard, this Court cannot grant the relief of cancellation of first and second compounding map.

56. As far as the third compounding dated 18.12.2024 is concerned, it is evident that only two flats have been added in the earlier sanctioned 1094 flats, which is permissible as per the available FAR to the Promoter, therefore, there is no illegality committed by the respondent no.2 in sanctioning the third compounding map.

57. He further contends that the law does not prohibit multiple compounding, and therefore, the Authority has not committed any error in sanctioning the third compounding map.

58. It is vehemently contended that as per available FAR, the Promoter could construct 1603 units whereas the Promoter had sought approval to construct only 1096 units, and as such, there is neither any reduction in the common area of apartment owners nor in the common facility, therefore, provision of Section 5(3)(a) of the Act, 2010 is not attracted in the instant case.

59. He further urges that so far as Regulation 3.2.10 of the Compounding Bye-laws, 2009 relied upon by the learned counsel for the petitioners to contend that addition of two floors in Tower Nos.16, 17, 18 & 19 is not compoundable is concerned, it is not applicable in cases of Group Housing Scheme inasmuch as the said Regulation will apply only in respect of plotted developments. Thus, it is contended that there is no illegality in raising additional two floors in the aforesaid towers.

60. Shri Shivam Yadav, Advocate, in addition to the aforesaid submissions of learned Senior Counsel for the respondent-Authority has contended that it is evident from the stay order granted by this Court that the petitioners have obtained stay order from this Court by placing incorrect facts.

61. He further contends that there is no pleading in the writ petition regarding the first and second compounding map. Further, no objection has been raised by any residents of Tower nos.16, 17, 18 and 19, and addition of two floors in the said towers did not prejudice any right of the petitioners. Therefore, writ petition on behalf of petitioners is misconceived and does not warrant any interference by this Court.

62. Further reliance is placed upon Regulations 2 (21), 5, 10, 13 & 15 of The Ghaziabad Development Authority Area Building Regulations, 2002 (hereinafter referred to as ‘Regulations, 2002’) to contend that Regulations, 2002 permits the additions/alterations in the sanctioned plan.

63. It is also urged by him that additions/alterations in the plan can be done by the Promoter as many times as the need be, inasmuch as

Regulation, 2002 does not prohibit the alterations/additions in building plan to only a limited number of times.

64. Accordingly, he submits that if the Regulation, 2002 permits the alterations/additions in the layout plan any number of times, the Promoter can make alterations/additions in the plan and get it compounded as many times as required according to need.

65. Hence, it is submitted that the multiple compounding of map is permissible under law, and since the alterations in the map had been made within the permissible limit of FAR, therefore, respondent no.2 has not committed any illegality in sanctioning the third compounding map.

66. We have considered the rival submissions advanced by the learned counsel for the respective parties and perused the records of writ petition and original record of respondent no.2.

67. Coming to the preliminary objection raised by the learned counsel for the respondents with regard to *locus standi* of the petitioners to prefer the present writ petition being individual flat owners, we may record that respondents do not dispute that petitioners are the owners of flats in the Gulmohar Greens Residential Society.

68. The petitioners have come up with a case that Promoter has not taken their written consent as required under Section 5(3)(a) of the Act 2010, and since the change in layout by the Promoter and getting the same compounded has resulted in reduction in the common area and common facility of the petitioners, and has also resulted in reduction of undivided interest in the land underneath the towers which is their vested right under the condition no.3 of the sale deed, therefore, in our opinion, they are aggrieved persons as their individual right vested in them by virtue of Section 5 (3)(a) of the Act 2010 has been violated.

69. The Apex Court in the case of ***Jashbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed (1976) 1 SCC 671*** has eloquently explained ‘when a person has a *locus standi* to invoke extra ordinary jurisdiction under Article 226 of the Constitution of India’. Paragraph no.34 of the said judgement is being reproduced below:-

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. (see State of Orissa v. Madan Gopal Rungta 1952 SCR 28; Calcutta Gas Co. v. State of W.B. AIR 1962 SC 1044; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa (1967) 1 SCA 413; Gadda Venkateshwara Rao v. Government of A.P. AIR 1966 SC 828; State of Orissa v. Rajasaheb Chandanmall (1973) 3 SCC 739; Dr. Satyanarayana Sinha v. M/s. S. Lal & Co. (1973) 2 SCC 696.)"

70. In the case of ***A. Subash Babu Vs. State of A.P. and Another*** reported in ***(2011) 7 SCC 616***, the Apex Court has explained 'aggrieved person' and has held as under:

"*The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."*

71. The Apex Court in the case of ***H. Anjanappa and Others Vs. A. Prabhakar and Others AIR 2025 SC 924*** has also explained the expression 'person aggrieved' and has held in paragraph no.35 as under:-

"35. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (see : Shanti Kumar R. Canji v. Home Insurance Co. of New York, (1974) 2

SCC 387 and State of Rajasthan and Ors. v. Union of India and Ors., (1977) 3 SCC 592)."

72. In view of the aforesaid discussion, we do not find any substance in the submission of learned counsel for the respondents regarding maintainability of writ petition preferred by the petitioners. Therefore, the judgement of Apex Court in the case of ***Supertech Limited Vs. Emerald Court Owner Resident Welfare Association & Others (2021) 10 SCC 1*** relied upon by the learned counsel for the respondents does not come to aid to the respondents.

73. Thus, we are of the view that petitioners have *locus standi* to file the present writ petition and their writ petition is maintainable.

74. Now the first question which the Court proceeds to consider is whether the multiple compoundings are permissible under the law; and whether then respondent-Authority while compounding the first, second and third compounding has strictly followed the necessary provisions and rules in respect to compounding.

75. The original records indicate that the Promoter purchased 51 Khasras details of which are noted in the noting on the order sheet of the original record and submitted a layout plan for constructing a Group Housing. The noting of the Assistant Engineer (भू-अर्जन अनु0) dated 26-11-2005 is being reproduced below:-

"**सहायक अभियन्ता (भू-अर्जन)**

आपके उक्त स्वकीय आदेश दिनांक *18.11.05* के अनुपालन में अवगत कराना है कि मैसर्स फ्रेंड्स लैंड्स डेवेलपर्स द्वारा राजस्व ग्राम करहेडा, परगना लोनी, तहसील व जिला गाजियाबाद के खसरा नम्बर *955, 956, 957, 958, 959, 960, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029,1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061* कुल खसरा नम्बरान *51* की *25.926* एकड़ भूमि पर मानचित्र स्वीकृति दाखिल किया है। उपरोक्त ग्राम करहेडा के सभी नम्बरानों का अर्जन अभी तक गाजियाबाद विकास प्राधिकरण द्वारा नहीं कराया गया है।

स्वामित्व के सम्बन्ध में प्रार्थी कम्पनी द्वारा फर्द खतौनी वर्ष*1412-1417* फसली की दाखिल की है। उक्त फर्द में उपरोक्त लिखे कुल*51* खसरा नम्बरान रकवा *8.7330* हेक्टेयर पर टाटा आईल मिल कम्पनी लिमिटेड द्वारा ब्रुश स्ट्रीट फोर्ट बम्बई का नाम अंकित है। प्रार्थी कम्पनी द्वारा बैनामे की छायाप्रति दाखिल की है जिसके मैसर्स फ्रेन्डस लेण्डस डेवेलपर्स श्री अतुल गर्ग पुत्र श्री डी० सी ० गर्ग निवासी *58* जी०टी० रोड, गाजियाबाद मुख्य स्थान के०डी०-*14* कविनगर गाजियाबाद का नाम लगभग *42.930* एकड़ पर बतौर क्रेता अंकित है। भू-उपयोग, उपयोगिता एवं आवश्यक्ता के सम्बन्ध में आख्या सी०ए०टी० अनुभाग से प्राप्त की जानी वांछित है । इस *42.930* एकड़ भूमि में से *25.926* एकड़ भूमि पर मानचित्र स्वकृति हेतु प्रस्तुत किए गये है। अग्रिम कार्यवाही हेतु आख्या सेवा प्रेषित है।"

76. The aforesaid noting reveals that Promoter in support of his title submitted Khatauni of Fasli year 1412-1417 and photocopy of sale deeds. It further reveals that name of Tata Oil Mills Company Limited was recorded in respect of aforesaid 51 Kharas.

77. The note sheet dated 29.05.2006 submitted by the C.A.T.P., Chief Engineer and Secretary of Ghaziabad Development Authority to the Vice Chairman records that for the purpose of calculation of FAR, total plot area of all Khasras referred in the note sheet dated 26.11.2005 had been taken. Relevant extract of the note sheet is being reproduced below:-

*"**उपाध्यक्ष** :*

कृपया ग्राम करहेड़ा, लोनी, गाजियाबाद के खसरा नं*0 955, 956,957,958, 959,960, 1010, 1011,1014,1015,1017-1054, 1056-1061* के भू-भाग पर पक्ष मैसर्स फेन्ड्स लैण्ड डवलपर्स द्वारा पार्टनर श्री अतुल गर्ग एवं श्री राकेश गर्ग द्वारा आवासीय ग्रुप हाऊसिंग मानचित्र प्रस्ताव नवनिर्माण की स्वीकृति हेतु प्रस्तुत किया गया है जिसका अवलोकन करने का कष्ट करें। प्रश्नगत खसरा नम्बरान के सम्बन्ध में भू-अर्जन अनुभाग की आख्या जो पृष्ठ संख्या *1* और *2* पर अंकित है, भी अवलोकनीय है। जिसके अनुसार उक्त खसरा नम्बरानों का अर्जन अभी तक गाजियाबाद विकास प्राधिकरण द्वारा नहीं कराया गया है। उक्त क्रम में पक्ष द्वारा तहसीलदार *(*सदर*)* गाजियाबाद का अनापत्ति प्रमाण पत्र प्रस्तुत किया है जिसके अनुसार संदर्भित भूमि पर खसरा सं*0 1055* की *0.0760* है० भूमि को छोड़कर *(*जो ग्राम समाज/नगर निगम की भूमि उल्लेखित है।*)* मैसर्स फेन्ड्स लैण्ड डवलपर्स का स्वामित्व उल्लेखित है भू-उपयोग के सम्बन्ध में आख्या नियोजन अनुभाग से ले ली गयी है जो कि पत्रावली में पृष्ट संख्या *4* पर अंकित है जिसमें शासनादेश संख्या सी.एम. *15/8-3-2006-14* महा/*2005* दिनांक

21.4.2006 के क्रम में प्रस्तुत प्रकरण में भू-उपयोग परिवर्तन की कार्यवाही न किये जाने का औचित्य स्पष्ट रूप से उल्लेखित है।

संदर्भित स्थल लोनी रोड *(*दो तरफ मुख्य मार्गों*)* गाजियाबाद पर स्थित है। आवेदक द्वारा प्रस्तुत मानचित्र में मोहननगर चौराहे से हिन्डन एअर फोर्स स्टेशन चौराहे को मिलाने वाली रोड पर स्थित साईड में मुख्य मार्ग हेतु रोड बाईडिनिंग हेतु भूमि छोड़ते हुए प्रस्तावना दी गयी है रोड़ बाईडिनिंग की भूमि पर आवेदक द्वारा कम्पनसेंट्री एफ.ए. आर. की मांग की गई है तथा आवेदक द्वारा इस आशय का शपथ पत्र दिया गया है कि भविष्य में इस मार्ग का विस्तार किया जाता है तो मेरे द्वारा निःशुल्क भूमि स्थानान्तरित कर दी जायेगी, इस आशय का शपथ पत्र पत्रावली पर संलग्न है। लोक निर्माण विभाग, उ०प्र० का अनापत्ति प्रमाण पत्र मानचित्र निर्गत होने से पूर्व प्रस्तुत करना होगा।

अतः उपरोक्त क्रम में प्रस्तुत ग्रुप हाऊसिंग मानचित्र के सम्बन्ध में तकनीकी आख्या व अन्य विवरण निम्नवत् है *:-*

Total Plot Area	=	*87330 Sqm.*
Area under Road Widening	=	*1042.47 Sqm.*
Net Plot Area	=	*86287.53 Sqm."*

78. Thereafter, the Vice Chairman approved the plan for construction of 34 Towers on 29.05.2006. The details of each Tower sanctioned under 29.05.2006 layout plan have been given in paragraph no.9 of this judgement.

79. The Promoter after obtaining sanction to layout plan started raising construction. However, it transpires from the record that Group Captain Sri B. Bhatanagar from Hindon Air Base by Letter No. 028303/S.200/1/WKS dated 02.02.2007 and Letter dated 14.06.2007 informed the Development Authority that Khasra nos.1034, 1035, 1051, 1054, 1058, 1060, 1061 and 1063 had been acquired by the Defence Ministry and requested the Development Authority to stop construction on the aforesaid Khasras and remove the construction existing on the aforesaid Khasras.

80. In view of the aforesaid objection, Assistant Engineer submitted a noting to the City Planner requesting for taking actions as stated in the said noting. Relevant extract of the noting is reproduced herein below:-

"उपरोक्त से स्पष्ट है कि वर्तमान में प्रश्नगत प्रकरण पर निम्न कार्यवाही आपेक्षित है :-

1. सर्वप्रथम हिन्डन एयर फोर्स की भूमि सम्बन्धी विवाद का निस्तारण किया जाना आवश्यक है उसके उपरान्त ही किसी भी प्रकार की कार्यवाही किया जाना उचित होगा अर्थात जबतक हिन्डन एयर फोर्स से विनिन्न खसरों के स्वामित्व के सम्बन्ध में निर्णय नहीं हो जाता है तबतक विवादित भूमि पर किसी प्रकार का निर्माण कार्य न किया जाये तथा यदि निर्माण कार्य किया गया है तो उसे तत्काल हटा दिया जाये। हिन्डन एयर फोर्स के भू-स्वामित्व विवाद के सम्बन्ध में अर्जन विभाग से भी राय लिया जाना उचित होगा।

2. विन्दु संख्या-*1* के क्रियावचन के उपरान्त सर्वप्रथम आन्तरिक विकास शुल्क की बैंक गारन्टी का नवीनीकरण प्रस्तुत करना होगा।

3. बिन्दु संख्या *1* व *2* के निस्तारण के साथ-साथ पक्ष को पुनः स्मारक पत्र भेजा जाना उचित होगा कि भू-उपयोग परिवर्तन शुल्क शासनादेशों के क्रम में प्रश्नगत प्रकरण में वापिस किये जाने का प्राविधान नहीं है।

कृपया उपरोक्तानुसार सूचनार्थ एवं आदेशार्थ नगर नियोजक महोदय को अग्रसारित करने का कष्ट करें।"

81. It transpires that thereafter, notice has been issued to the Promoter seeking an explanation about the title dispute, but when the Promoter did not respond to the notice, a noting addressed to Assistant Engineer was prepared and forwarded by S.K. Tiwari, Junior Engineer, Mohd. Naseem, Junior Engineer, Ghanshyam Verma, Junior Engineer,, N.K. Chowdhary, Assistant Engineer asking for issuing an order for cancellation of the map. The noting dated 22.06.2010 is being reproduced herein below:-

"सहायक अभियन्ता

कृपया पत्रावली के नोटशीट क्रमांक *40* व *41* पर प्रेषित आख्या का अवलोकन करने का कष्ट करें। उक्त आख्या दिनांक *29.01.10* के क्रम में पक्ष को उपाध्यक्ष महोदय द्वारा क्रमशः पत्र सं*0 338/*मा० प्ला०*/10* दिनांक *08.02.10* व अनुस्मारक सं*0 548/*मा०प्ला०*/10* दिनांक *18.05.10* भेजा जा चुका है। उक्त क्रम में पक्ष द्वारा दिनांक *10.06.2010* तक का समय दिये जाने सम्बन्धी अनुरोध किया गया था, परन्तु

पक्ष द्वारा अधतन कोई भी कार्यवाही नहीं की गई है। इससे स्पस्ट है कि पक्ष द्वारा प्रकरण को अनावश्यक रूप से विलम्बित कर निर्माण पूर्ण करने का प्रयास किया जा रहा है। कृपया मानचित्र को उ०प्र० नगर योजना एवं विकास अधिनियम की धारा *15 (ए)* के अन्तर्गत निरस्त करने व निर्माण को सील करने के आदेश प्रवर्तन अनुभाग को दिये जाने के आदेशार्थ पत्रावली प्रस्तुत है।"

82. It appears that thereafter layout plan dated 29.05.2006 was cancelled on 03.07.2010. It further transpires from the record that the building was sealed. However, according to respondent no. 2, thereafter, an application was filed by the Promoter for compounding of map.

83. According to respondents, till the date of cancellation of map, the Promoter had constructed 720 dwelling units, whereas 904 dwelling units were sanctioned. After the cancellation of map, according to respondents, the Promoter submitted first compounding map with 374 additional dwelling units. Thus, total number of dwelling units as per the first compounding plan was 1094 units.

84. We asked learned counsel for the respondent no.2 to show the order of cancellation of map dated 03.07.2010. We also inquired from him whether any legal remedy was availed by the Promoter against the order of cancellation of map, and also as to whether the order of cancellation of map was set aside or any permission was granted by the competent authority to file fresh application, however, the learned counsel for the respondents informed that the order of cancellation dated 03.07.2010 is not traceable in the original record. He further informed that record does not indicate that any remedy in law had been availed by the Promoter against the cancellation order dated 03.07.2010.

85. We also inquired from the counsel for the respondent- Authority to place the application along with first compounding map submitted by the Promoter before the Court to ascertain the prayer of the Promoter in the said application. Learned counsel for the respondent no.2 informed that any such application is also not available in the original record.

86. We have also perused the original records and we also could not find the order dated 03.07.2010 cancelling the map and the application submitted by the Promoter along with first compounding map seeking the compounding on record. However, the first compounding map was sanctioned on 15.11.2011. In the first compounding map, number of dwelling units was increased from 984 to 1094.

87. The perusal of the first compounding map would indicate that the Promoter has made substantial changes in the first compounding from original layout.

88. The Development Authority in the counter affidavit has filed the noting addressed to J.S(M)/CATP. The said noting reveals that the Promoter had submitted 'No Objection Certificate' in respect to land in dispute from UPSIDC, and thereafter, the total area of land was increased from 87330.00 Sq. meter to 87930 Sq meter.

89. Perusal of the said noting does not reveal that the Promoter has also resolved the title dispute with the Indian Air Force. The relevant extract of noting dated 02.11.2011 appearing on page-55, annexed as Annexure-5 to the counter affidavit of Ghaziabad Development Authority is reproduced herein-below:-

"प्रश्नगत भूखण्ड का मानचित्र पूर्व में संख्या *568/THA/GH/08* दिनांक *29.05.2006* द्वारा भूखण्ड क्षेत्रफल *87330.00* वर्गमीटर बहुखण्डीय भवनों हेतु स्वीकृत था परन्तु भूस्वामित्व सम्बन्धी विवाद होने के कारण उपाध्यक्ष महोदय के आदेश दिनांक *03.07.2010* द्वारा दी गई स्वीकृति निरस्त की जा चुकी है। पक्ष द्वारा स्थल पर किये गये अनाधिकृत निर्माण के विरुद्ध प्रवर्तन अनुभाग द्वारा नियमानुसार उ०प्र० नगर योजना एवं विकास अधिनियम *1973* की धारा *27* व *28* की कार्यवाही पूर्व में दिनांक *15.02.2010* को की गयी थी जिसके क्रम में पक्ष द्वारा भूस्वामित्व सम्बन्धी विवाद समाप्त करते हुये यू०पी०एस०आई०डी०सी० से समायोजन कर अर्जन एवं तहसील से अनापत्ति प्राप्त करते हुये भूखण्ड क्षेत्रफल*87930.00* वर्ग मीटर पर किये गये निर्माण, प्रस्तावित निर्माण, स्वीकृति हेत मानचित्रप्रस्तुत किया गया है। भूस्वामित्व सम्बन्धी विस्तृत विवरण पृष्ठ संख्या *63* व *64* पर अराजी संख्या व क्षेत्रफल सहित अवलोकनार्थ उपलब्ध है। चूंकि पक्ष द्वारा पूर्व स्वीकृति के क्रम में आंशिक निर्माण कर लिया गया है जिसे शमन हेतु आवेदन किया गया है। चूंकि मानचित्र निरस्त है अतः किये गये

निर्माणका शमन अनुमन्य परन्तु बिना स्वीकति मानते हुये गणना की जा रही है। उपविभाजन एवं मानचित्र हेतु सुविधाओं सहित अन्य समस्त देय शुल्क की गणना मानचित्र अनुभाग द्वारा किया जायेगा।"

90. After the aforesaid noting, the compounding calculation has been recorded.

91. Perusal of the first compounding map reveals that the Promoter has made substantial change in the layout plan inasmuch as in the original layout plan, the Promoter had obtained sanction in respect to 34 Towers having 904 dwelling units, whereas in the first compounding layout plan, the Promoter has sought compounding of 720 apartments constructed till cancellation of sanctioned plan on 03.07.2010 and construction of additional 374 units.

92. In the first compounding layout, the Promoter has shown Tower no.2 (B+G+8), Tower no.3 (B+G+8), Tower no.4 (B+G+8), Tower no.5 (B+G+8), Tower no.6 (B+G+8), Tower no.7 (B+G+8), Tower no.8 (B+G+8), Tower no.9 (B+G+8), Tower no.10 (B+G+8), Tower no.11 (B+G+8), Tower no.12 (B+G+8), Tower no.12A (B+G+8), Tower no.14 (B+G+8), Tower no.15 (B+G+8), Tower no.24 (B+G+8), Tower no.25 (B+G+8), Tower no.26 (B+G+8), Tower no.30 (B+G+8), Tower no.31 (B+G+8), Tower no.32 (B+G+8), Tower no.33 (B+G) & Tower no.34 (B+G) as existing Towers.

93. He has also shown in the first compounding layout Tower no.16 (B+G+8), Tower no.17 (B+G+8), Tower no.18 (B+G+8), Tower no.19 (B+G+8), Tower no.27 (B+G+3), Tower no.28 (B+G+6), Tower no.29 (B+G+3), Tower no.33 (B+G+8) [B+G (existing)] , Tower no.34 (First to + 8 (proposed) [B+G (existing)], Tower no.35 (B+G+8) (proposed) [B+G (existing)], Tower no.36 (B+G+3), Tower no.37 (B+G+3), Tower no.38 (B+G+4), Tower no.39 (B+G+4) as proposed Towers for construction.

94. It appears that after the first compounding, the Promoter in addition to 720 units, could construct only 264 units and has made

further deviation from the first compounding map which resulted into the consumption of extra FAR with respect to areas such as balcony etc. Therefore, the Promoter again submitted second compounding map in which construction of two additional floors in Tower nos. 33, 34, 35 thereby raising the said towers from eight floors to ten floors have been sought to be regularized by second compounding which was sanctioned by second compounding on 13.01.2015.

95. After the second compounding map, the Promoter could construct total 984 units. The Promoter, thereafter, submitted a third compounding map for compounding two additional floors (9^{th} & 10^{th}) in Tower nos.16, 17, 18 & 19 total 32 units, two additional Tower nos. 27 & 28 (G+4 each, 8 units per floor). According to respondents, after the third compounding, total FAR consumed is 1,42,092.84 Sq. meter which is less than permissible FAR 1,42,430.21 Sq. meter.

96. It appears that when the third compounding application was filed by the Promoter, an objection was raised by the respondent no.2 that the Promoter has not obtained 'NOC' from the Indian Air Force. In response to the said objection, the Promoter had written letter dated 1/2.06.2021 to the respondent no.2, which was received by the respondent no.2 on 02.06.2021, wherein the Promoter has stated that the Air Force had taken possession over the land over which the Indian Air Force has ownership. Therefore, there is no need of 'NOC' from Indian Air Force Station for the purpose of compounding of project. The letter dated 1/2.06.2021 is being reproduced below:-

"To

The Vice Chairman
Ghaziabad Development Authority
Ghaziabad, Uttar Pradesh, India

Subject: Regarding compounding of Gulmohur Greens project, 95, Katori Mill, Mohan Nagar, Ghaziabad, Uttar Pradesh

Respected Madam,

We had applied for compounding of the project but due to an observation from GDA authority that one NOC from the Hindon

Airforce station has not been obtained from us, therefore, due to which the compounding has not been done by GDA.

In this regard, we wish to inform you that the land on which Hindon Air Force Station has its ownership and possession, with the assistance of district administration Ghaziabad, the Hindon Air Force Station has taken the charge over the said land and now, there is no such need of any NOC from Hindon Air Force Station regarding the purpose for the compounding of the project. Further, after taking the possession over the said land, the Hindon Air Force Station authority has created a boundary wall over the said land and affix therein a sign board regarding the possession over the said land with Hindon Air Force Station.

Therefore, as there is no need of NOC now, therefore, we are requesting you to compound the said project."

97. It is evident from the noting on the note sheet for recommending third compounding appearing on page-82 of the counter affidavit that encroachment in set back of common area have been done which has not been included for the purposes of calculation. Relevant extract of the noting is being reproduced below:-

"**सहायक अभियन्ता**

कृपया दांयी ओर संलग्न मै० फैण्डस् लैण्ड डवलपर्स प्रा०लि० द्वारा खसरा सं*0-955* से *960, 1010, 1011, 1015, 1017* से *1051*, ग्राम करहेड़ा, *95.* कटोरी मिल पर निर्मित ग्रुप हाउसिंग पर स्वीकृत निर्माण से अतिरिक्त निर्माण को शमन करने का अनुरोध किया है। प्रश्नगत प्रकरण के सम्बन्ध में अवगत कराना है कि उपरोक्त भूमि पर पूर्व में स्वीकृत मानचित्र सं*0-568/*टी.एच.ए./जी.एच./*06* दिनांक *29.05.06* के विरुद्ध किये गये निर्माण, जिसमें टावर सं*0-2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12*ए, *14, 15, 24, 25, 26, 30, 31, 32, 33, 34, (*बेसमेन्ट+भूतल*)* व कम्यूनिटी एवं शॉप का निर्माण कर शमन दिनांक-*15.11.11* एवं दॉवर सं*0 33, 34, 35 (*बेसमेन्ट ग्राउण्ड *10*वीं तल*)* व टावर सं*0-16, 17, 18* व *19* के अन्तर्गत *(*ग्राउण्ड+*8)* फ्लोर तक निर्माण पूर्ण कर शमन दिनाक *13.01.15* को कराया गया है। पूर्व स्वीकृत / शमनित के अतिरिक्त टावर सं*0-27* व *28* के अन्तर्गत *(*बेसमेन्ट+ग्राउण्ड+*4* फ्लोर*)* के अन्तर्गत प्रत्येक टावर में *40+40=80* यूनिट्स तथा। टॉवर सं*0-16, 17, 18* व *19* के अन्तर्गत *9*वें व *10*वें फ्लोर का अतिरिक्त निर्माण करते हुए *32* फ्लैट्स अर्थात कुल *112* यूनिट्स के शमन हेतु आवेदन दिनांक-*19.11.2024* को किया

गया है। इनके द्वारा शमन हेतु निर्धारित प्रारूप पर दो शपथ पत्र प्रस्तुत नहीं किया गया है। यहाँ यह भी अवगत कराना है कि प्रश्नगत ग्रुप हाउसिंग निर्माण पर पूर्व में किये गये अतिरिक्त निर्माण को शमन कराने हेतु पूर्व में भी विकासकर्ता द्वारा लगातार अनुरोध किया गया है, लेकिन स्थल पर सैट बैंक/ कॉमन एरिया में किये गये अतिक्रमण के कारण शमन की कार्यवाही पूर्ण नहीं की जा सकी। उपरोक्त निर्माण के शमन हेतु उपाध्यक्ष महोदय द्वारा सचिव महोदय की अध्यक्षता में दिनांक-*21.03.2024* को समिति गठित की गयी है, जिन टावरों के कॉमन एरिया में अतिक्रमण किया गया है, उन्हें वर्तमान प्रस्ताव में शामिल नहीं किया गया है।"

98. The calculation of FAR for the purpose of third compounding appearing on page-84 of the counter affidavit of respondent no.2 reveals that the total plot area which had been taken for calculation of FAR was 87930.00 Sq. Meter. It is evident from the note sheet dated 26.11.2005 that calculation of total plot area 87330 Sq. Meter includes the area of eight Kharsas i.e. Khasra Nos.1034, 1035, 1051, 1054, 1058, 1060, 1061 & 1063 acquired by Indian Air Force and were not owned by the Promoter. It is reiterated at the cost of repetition that total area of plot was later on enhanced to 87930 Sq. Meter after the execution of exchange deed by the Promoter with UPSIDC. The total area of aforesaid eight Khasras owned by Hindon Air Force is 4560 Sq. Meter which is evident from the note sheet of the original record of the Development Authority appearing on page-38 & 39 reproduced in paragraph no.130 of the judgement.

99. The Promoter has also admitted in his letter dated 1/2.06.2021 that Indian Air Force has taken possession over the land. In such view of the fact, 4560 Sq. Meter of the aforesaid eight Khasras owned by the Indian Air Force should have been excluded by the respondent no.2 for calculation of FAR etc., therefore, the calculation shown in the note sheet appearing on page-84 of the counter affidavit of respondent no.2 is patently erroneous. For convenience, the table under the heading 'स्वीकृत मानचित्र -2011/शमन मानचित्र-2015 एवं वर्त्तमान में प्रस्तावित शमन का विवरण' is being reproduced below:-

Sl	*Particulars*	*Permissible*	*Sanctioned*	*Compounded*	*Now to be*	*Up to Date*	*Remark*

No.	*of Items*		*2011*	*in 2015*	*Compounded (2024)*	*Achieved (2024)*	
1	*Plot Area*	*-*	*87930.00*	*87930.00*	*87930.00*	*87930.00*	*4110.72 Sqm Road Widening area left for future use on the Master plan report on the note sheet no- 116 dt 26-06-15*
2	*Road Widening*	*-*	*4110.72*	*4110.72*	*-*	*-*	
3	*15% Green*	*12572.89*	*12572.89*	*12572.89*	*12572.89*	*12572.89*	
4	*Net Plot Area*	*-*	*71246.39*	*71246.39*	*71246.39*	*71246.39*	
5	*FAR @ 1.5 (at 71246.39 m2)*	*106869.58*	*106869.58*	*-*	*-*	*-*	
6	*Purchasable FAR*	*35560.63*	*35560.63*	*-*	*-*	*-*	
	Total FAR (5+6) =	*142430.21*	*142430.21*	*130922.68 (100395.46+ 30527.22)*	*11169.86 (T-16,17=1654.86), (T-18=776.94), (T-19=776.94), (T-27=3980.56) & (T-28=2980.56)*	*142092.54*	
7	*Towers*	*-*	*35*	*25*	*9th & 10th Floor of tower no. 16, 17, 18,19 & B+G+4 Floor of Tower 27 & 28*	*25 + 2 = 27*	
8	*Non FAR*						
	Basement	*74442.47*	*68067.15*	*45449.19*	*2942.00*	*48391.19*	
	Mumty	*-*	*1219.83*	*1008.68*	*104.60*	*1113.28*	
	Machine Room	*-*	*372.30*	*257.80*	*-*	*257.80*	
	Fire Stair Case	*-*	*5679.49*	*4149.20*	*193.36*	*4342.56*	
	Total =	*-*	*75338.77*	*50864.87*	*3239.96*	*54104.83*	
	ESS Platform	*-*	*-*	*-*	*95.00*	*95.00*	
	Guard Room	*-*	*-*	*-*	*19.26*	*19.26*	
	H.T.	*-*	*-*	*-*	*24.00*	*24.00*	

	Meter Room						
	L.T Pannel Room	*-*	*-*	*-*	*122.30*	*122.30*	
	Total =	*-*	*-*	*-*	*3500.52*	*54365.39*	*54104.83+95+19.26+24+122.30*
9	*Ground Coverage (35%)*	*24936.23*	*18536.515*	*14747.78*	*1610.00*	*16357.78*	
10	*Units*	*1603.00*	*1094.00*	*984.00*	*112.00*	*1096.00*	*Provided 1359 ECS (1160 ECS in Basement 199 ECS in Open)*
11	*Parking (For 1096 Flats)*	*1358 ECS (Required)*	*-*	*1224 ECS*	*134 ECS*	*1358 ECS.*	
12	*Height in meter*	*27*	*25.5*	*32.75*	*32.45*	*32.75*	
13	*Required Set Back*						
	Front	*9.00*	*9.00*	*11.00*	*11.00*	*11.00*	
	Rear	*9.00*	*9.00*	*11.00*	*11.00*	*11.00*	
	Side-1	*9.00*	*9.00*	*11.00*	*11.00*	*11.00*	
	Side-2	*9.00*	*9.00*	*11.00*	*11.00*	*11.00*	
14	*Total Built up Area*		*217768.995*	*181787.55*	*14670.38*	*196457.93*	

100. The details at serial no.7 in the aforesaid table shows that the Promoter has sought compounding of 9th & 10th floor of Tower nos.16, 17, 18 & 19 & addition of two towers i.e. Tower nos.27 & 28 having B+G+4 floor.

101. The third compounding application was approved by respondent no.2 on 18.12.2024. Under the third compounding, two additional floors (9th & 10th) in Tower nos. 16, 17, 18 & 19 (total 32 units) were raised, and two additional Towers i.e. Tower nos. 27 & 28 (G+4 each, 8 units per floor) i.e. 80 units in all were compounded.

102. Regulation 2 (21) of Regulation, 2002 defines 'Layout' which reads as under:-

> *"**2 Definitions-***
>
> *(21) 'Layout Plan'-A plan of the entire site showing location of plots/building blocks, roads, open spaces, entry/exits, parking, landscaping etc. indicating the activity for all land parcels."*

103. Regulation 5 of Regulation, 2002 provides for 'Application for building permit'

104. Regulation 10 of Regulation, 2002 deals with 'Sanction or refusal of building permit'.

105. Regulation 13 & 15 of Regulation, 2002 have been heavily relied upon by the learned counsel for the respondents in support of their argument that the aforesaid Regulation permits the Promoter to make any addition or alteration in the layout plan.

106. For convenience, Regulations 13 & 15 of Regulation, 2002 are being reproduced herein-below:-

> *"13. **Additions or alterations during construction**. If any external additions or alterations from the sanctioned plans are intended to be made, permission of the Chief Executive Officer shall be obtained in writing before the proposed additions/alterations are carried out. It shall be incumbent upon the applicant to whom a building permit has been sanctioned to submit amended plans for such additions or alterations. The provisions relating to an application for permit shall also apply to such amended plans with modification that the time limit referred to in Regulation 10 (ii) shall be thirty days."*
>
> *"15. **Work to be carried out in full accordance of Zoning Regulations, Building Regulations and Directions.**-Neither the granting of the permit nor the approval of the drawings and specification, nor inspection made by the Authority during erection of the building shall in any way relieve the owner of such building from full responsibility for carrying out the work in accordance with the*

requirements of Zoning Regulations of Master Plan, these Regulations or Planning and Development Directions. In case any violations are found during construction or after obtaining completion the owner shall be required to rectify the same to the satisfaction of the Authority within a period of 15 days from the time such violations are intimated to the owner. In case the owner fails to comply, the Authority shall ensure compliance and the expenditure incurred on doing so shall be recovered from the owner before issue of completion certificate. In case completion certificate has already been obtained, such expenditure shall be recovered from the owner, if not paid within stipulated time, as arrears of land revenue."

107. A reading of Regulation 13 discloses that if the Promoter intends to make any external addition or alteration from the sanctioned plan, the Promoter shall obtain permission from the Chief Executive Officer before the proposed additions/alterations are carried out.

108. It further cast a duty upon the Promoter to whom building permit has been sanctioned to submit amended plan for such additions or alterations.

109. In Regulation 13 of Regulation, 2002, the word 'proposed additions/alterations are carried out' is preceded by the word 'before' which means the Promoter has to obtain permission in advance or prior for carrying out proposed additions/alterations. In other words, the Promoter cannot execute the structural modification first and seek approval retroactively, he is legally required to secure formal permission in advance.

110. Learned counsel for the Development Authority has placed Regulation 2.1.7 of Building Bye-laws which reads as under:

***"2.1.7* विकास के समय विचलन-विकास के दौरान यदि स्वीकृत प्लान में कोई विचलन है या विचलन किया जाना अभिप्रेत है, तो प्रस्तावित विचलन निष्पादित करने के पूर्व प्राधिकरण से अनुज्ञा प्राप्त की जाएगी।"**

111. Regulation 2.1.7 also casts an obligation upon the Promoter to obtain prior sanction/permission before carrying out any alteration/deviation in the layout plan.

112. So in order to take the benefit of Regulation 13 and Regulation 2.1.7 of Building Bye-laws, an obligation is cast upon the Promoter to obtain permission from the Chief Executive Officer in writing before the proposed additions or alterations are carried out.

113. For obtaining such permission from the Chief Executive Officer, the Promoter to whom permit has been granted shall submit amended plan for such additions or alterations.

114. We have perused the compliance affidavit and counter affidavit filed by the Promoter as well as counter affidavit filed by the Development Authority. We do not find any pleading with regard to fact that the Promoter in this case had submitted amended plan seeking additions or alterations in the plan before carrying out the additions or alterations, nor we find any pleading in the affidavits and counter affidavit filed by the Promoter that the Promoter had obtained permission from the Chief Executive Officer in respect to external additions or alterations in the plan. There is nothing which indicates either in the Court records or the original records of the Authority that the Promoter had submitted an amended plan to the Chief Executive Officer seeking external additions or alterations in the layout before carrying out any alteration nor there is anything on record indicating that the Chief Executive Officer has ever granted permission to the Promoter before he carried out the proposed alterations.

115. In absence of compliance of necessary conditions envisaged in Regulation 13 of Regulation, 2002 justifying the alterations/additions in the plan, the Promoter cannot take shelter of Regulation 13 that the said Regulation permits the Promoter to make addition or alteration in the plan any number of times, as the Promoter desires.

116. Reading of Regulation 15 of Regulation, 2002 suggests that the Promoter is under obligation to carry out the work in accordance with

the requirement of zoning regulations of master plan, these Regulations i.e. Regulation, 2002 or Planning and Development directions. Much emphasis has been laid by learned counsel for the Promoter on the second part of Regulation 15 which permit the Promoter to rectify any violations of these Regulations occurred during the construction or after completion to the satisfaction of the authority within a period of 15 days from the time, such violations are intimated to the Promoter.

117. Regulation 15 permits the Promoter or the owner only minor violations of these Regulations i.e. Regulation, 2002, but under the garb of leave to the Promoter under Regulation15 to rectify such violation to the satisfaction of the Authority within a period of 15 days from the time such violations are intimated to the owner cannot be construed to mean that it permits the Promoter/owner to make any external addition or alteration from the sanctioned plan without complying with the requirement of Regulation 13.

118. If the interpretation given by learned counsel for the respondent is accepted, that would render Regulation 13, which mandates the Promoter/Developer to obtain prior permission in writing from the Chief Executive Officer for making any external addition or alteration from the sanctioned plan ineffective or otiose .

119. The law is settled that provision in a Statute should be interpreted in a manner so as to achieve the purpose and object of such provision in the Statute/Regulation. Therefore, if the promote/developer/owner intends to make any external addition or alteration from the sanctioned plan, he has to obtain prior permission from the Chief Executive Officer for making such external addition or alteration, and he cannot resort to Regulation 15 which permits minor violations of these Regulations to contend that he can do so as many times as needed. Therefore, Regulation 15 is of no help to the Promoter in the present case.

120. It will not be out of place to mention that admittedly in the instant case, the sanction layout dated 29.05.2006 was cancelled and same was not challenged in any legal proceeding by the Promoter.

121. Though, there is no order of cancellation of map on record, but the noting on the file of original record suggest that the original file in relation to sanction of map was forwarded for issuing cancellation order, therefore, we presume that cancellation order must have been issued and served upon the Promoter. It may be that the cancellation order has been misplaced from the record.

122. The record does not reflect that any proceeding for setting aside the cancellation order of map was initiated by the Promoter, therefore, cancellation order still survives.

123. Sri Shashi Nandan, learned Senior Counsel has submitted that since 720 units out of 904 units under the sanctioned layout plan dated 29.05.2006 were constructed under a valid sanction order, therefore, cancellation of such sanction order would not make the said construction unauthorized or illegal because Promoter has not deviated from the building bye-laws and had constructed the said units strictly in accordance with the approved layout dated 29.05.2006. Therefore, even if the cancellation order has not been set aside, the Development Authority can compound the map.

124. We do not concur with the aforesaid contention of the learned Senior Counsel for two reasons; firstly, the aforesaid contention is against the record inasmuch as B+G+7 in Tower nos. 3 to 12, Tower nos.14 & 15, and B+G+6 in Tower nos.24 to 26 & Tower nos. 30 to 32 were sanctioned in the original layout whereas the Promoter had deviated from the aforesaid sanction and constructed B+G+8 in all the aforesaid Towers, thereby, adding one additional floor in Tower nos.3 to 12, Tower nos.14 & 15 and two additional floors in Tower nos. 24 to 26 and Tower nos.30 to 32. He has further made deviations in Tower nos.33 & 34 inasmuch as he has constructed B+G whereas as per original layout, Tower nos.33 & 34 had sanction of B+G+6. We have detailed the number of sanctioned Towers and specification of each Tower as per original layout plan dated 29.05.2006 in paragraph no.9 of the judgement and details of existing level of the aforesaid Towers in first compounding

map in paragraph no.13 of the judgement. Therefore, the aforesaid contention of Sri Shashi Nandan is against the record.

125. Secondly, the sanctioned map dated 29.05.2006 was issued subject to various conditions, and one such condition was that title of the land over which the construction is proposed should be clear and not disputed.

126. Chapter-II of the Building Bye-laws deals with the condition for grant of permission for development.

127. Regulation 2.1.2 provides for 'सूचनाएं एवं दस्तावेज' and Regulation 2.1.2.2 provides for the documents and information to be submitted by the Promoter. Regulation 2.1.2.2 of Chapter-II of Building Bye-laws reads as under:-

> *"**2.1.2.2 अन्य क्षेत्रों/योजनाओं में-**आवेदन पत्र यथास्थिति निम्नलिखित सूचनाओं और दस्तावेजों के साथ जमा किया जाएगा:—*
>
> ***(I)** आवेदक के स्वामित्व समर्थक दस्तावेज की प्रति या रजिस्ट्रीकृत विलेख।*
>
> ***(II)** साइट प्लान (जिसमें भू-खण्ड संख्या और क्षेत्रफल/भवन की संख्या, गाँव, मोहल्ला का नाम, आदि का उल्लेख होगा)।*
>
> ***(III)** नजूल अथवा इम्प्रूवमेन्ट ट्रस्ट की भूमि होने की दशा में सम्बन्धित विभाग से फ्री-होल्ड डीड अथवा अनापत्ति प्रमाण-पत्र।"*

128. Regulation 2.1.2.2 (i) states that the applicant shall have to submit the document relating to title or registered sale deed.

129. In the instant case, the sanctioned layout was cancelled because the title of Promoter with respect to Khasra nos.1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063 was disputed as the land comprised in the aforesaid Khasra numbers is owned by the Indian Air Force. Therefore, we are of the view that even if when 720 units were constructed by the Promoter, the approved plan dated 29.05.2006 was in existence, but once it had been cancelled because of fault of the Promoter for non-disclosing the correct information with regard to the title of land, such construction cannot said to be authorised or valid construction.

130. The noting on the file of the Development Authority, which have been extracted above, shows that the total plot area before the approval of map on 29.5.2006 was 87330 Sq. meter which included the area of plots of Khasra nos.1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063. However, inclusion of aforesaid Khasras has been objected by Indian Air Force.

131. When the objection was raised by the Air Force, the Promoter had filed Khatauni for the Fasli Year 1412-1417 showing that the name of M/s Tata Oil Mill Company Limited in respect to aforesaid Khasra numbers had been deleted and in its place name of M/s Friends and Land Developers, 14 Kavi Nagar Ghaziabad through its partner Atul Garg had been recorded on 27.09.2010. The contents of order under which the name of Promoter has been recorded in Khatauni as Fasli Year 1412-1417 is reproduced herein-below:-

"1418-फ. आदेश श्रीमान तहसीलदार गाजियाबाद मि.न. *1149/10/ 20.9.10* को आदेश हुआ कि खाता न. *220* के खसरा न. *957*मि./*0.1490, 958*मि./*0.2910, 964*मि./*0.0130, 1010*मि./*0.1640, 1015*मि./*0.0510, 1017*मि./*0.0650, 1018*मि./*0.2530, 1019/0.0130, 1021*मि./*0.5440, 1022*मि./*0.5310, 1023/0.5310, 1038/0.4680, 1039/0.215, 1043/0.215, 1055/0.0760, 960*मि/*0.0510, 1009/2/0.0480, 1011*मि./*0.0730, 1014*मि./*0.0380, 1020/0.2020, 1031/0.1830, 1032/0.0890, 1035*मि./*0.0760, 1037*मि./*0.1390, 1034*मि./*0.1960, 1061*मि./*0.3420, 955*मि./*0.0350, 956*मि./*0.1530, 1009/1/0.1140, 1024/0.1140, 1026*मि./*0.1640, 1027*मि./*0.1140, 1030/0.1390, 1033/0.1140, 1036*मि./*0.1260, 1040/0.2530, 1042*मि./*0.2530, 1044/0.1640, 1045/0.3290, 1048/0.2530, 1051/1/0.2440, 1054*मि./*0.1050, 1057*मि./*0.1010, 1058*मि./*0.1140, 1025/0.1140, 1028/0.0380, 1029/0.1260, 1041/0.2780, 957*मि./*0.0790, 961*मि./*0.0540, 1012*मि./*0.1180, 959*मि./*0.0160, 1015*मि./*0.0050* कुल *53* किता रकबा *0.8733* है. मा.गु. *119.20* रु से विक्रेता मैसर्स टाटा आइल मिल्स कम्पनी लि० रजि० आफिस हिन्दुस्तान लिवर हाउस *165/66* बैवके रिक्लामेशन मुम्बई द्वारा अधिकृत मैसर्स हिन्दुस्तान लि० मुम्बई आपरेटर गुरदीप सिंह पुत्र कुलभूषण सिंह निवासी उपरोक्त का नाम खारिज करके क्रेता मैसर्स फ्रेन्ड्स लैण्ड डेवलपर्स के०डी० *14* कविनगर गाजियाबाद द्वारा पार्टनर अतुल गर्ग पुत्र डी०सी० गर्ग नि. के०डी०-*14* कविनगर गाजियाबाद व राकेश गर्ग पुत्र

स्व. पी.एस. गर्ग नि. *58* जी.टी. रोड गाजियाबाद का नाम बतौर बैनामा दर्ज हो। ह.अ.र.का. *27.9.10*।"

132. Perusal of the aforesaid order as contained in the Khatauni of Fasli Year 1412-1417 reveals that the aforesaid Gatas have been purchased by the Promoter from M/s Tata Oil Mills Company Ltd. Despite there being several letters of Squadron Leader, Flight Commander Works Hindon Air Force to the Town Planner, Development Authority Ghaziabad informing that Gata nos.1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063 are owned by Hindon Air Force, and in this respect Writ-C No.14251 of 1990 is pending, the Development Authority did not make any endeavour to verify as to nature of dispute involved in the said writ petition. The Development Authority without verifying the title of Promoter in respect to aforesaid Khasra numbers concluded on the basis of the mutation order, reproduced above that the title dispute of Promoter with Air Force has been resolved.

133. We have summoned the record of Writ-C No.14251 of 1990 and we found that the aforesaid plot owned by the Air Force were acquired under the Defence of India Act, 1962. The following facts are noted from the record of Writ-C No.14251 of 1990.

134. In the aforesaid writ petition, petitioner-Tata Oil Mills Company Ltd. has pleaded that 18 plots have been acquired by respondent Union of India under the Defence of India Act, 1962, but besides the said 18 plots, eight plots i.e. 1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063 were not acquired by the Union of India, therefore, the aforesaid plots have wrongly been included in L.A. Reference No.266/1977 (Tata Oil Mills Company Ltd. Vs. Union of India) and the award in respect of aforesaid plots has also been wrongly made.

135. The record of the aforesaid writ petition reveals that the petitioner in the said writ petition submitted modification application registered as Misc. Application No.1 of 1988 in L.A. Reference No.266/1977 for modifying the award by deleting from paragraph no.2 of the award with

respect to aforesaid eight plots, which application was rejected by the Reference Court by order dated 14.03.1990.

136. In paragraph no.1 of the aforesaid writ petition, the petitioner-Tata Oil Mills Company Ltd. has detailed the plots owned by it and has categorized the same in three following Schedules:-

"That the petitioner is owner of :

Plot No.	***Area (Bigha-Biswa)***	***Category / Schedule***
1035	*0-3-0*	*Plots in Dispute (Schedule I)*
1034	*0-5-0*	
1051	*0-16-0*	
1054	*0-11-0*	
1058	*0-3-0*	
1060	*0-9-0*	
1061	*0-12-0*	
1063	*1-10-0*	
962	*0-10-0*	*Plots Derequisitioned (Schedule-II)*
1011	*0-19-0*	
1015	*2-8-0*	
961	*0-2-0*	*Plots not Disputed (Schedule III)*
964	*0-2-0*	
1009	*0-8-0*	
1010	*0-10-0*	
1012	*0-5-0*	
1014	*1-15-0*	
965	*0-3-0*	
966	*0-11-0*	
967	*0-2-0*	
968	*1-18-0*	
969	*1-3-0*	
970	*1-17-0*	
971	*1-3-0*	
974	*0-18-0*	
975	*0-10-0*	
982	*0-10-0*	

1008	*1-16-0*
1013	*0-19-0*

137. In paragraph no. 4 of the aforesaid writ petition, the petitioner-Tata Oil Mills Company Ltd. has categorically stated that the eight plots of Schedule-I were also mentioned in the order of requisitioned lands, whereas they were never requisitioned. Relevant pleadings in paragraph 4 of the Writ-C No.14251 of 1990 is being reproduced below:-

Plot No.	***Bigha-Biswa***
961	*0-2-0*
964	*0-2-0*
1009	*0-8-0*
1010	*0-11-0*
1012	*0-5-0*
1014	*1-15-0*
965	*0-3-0*
966	*0-11-0*
967	*0-2-0*
968	*1-18-0*
969	*1-3-0*
970	*1-17-0*
971	*1-3-0*
974	*0-18-0*
975	*1-10-0*
982	*0-10-0*
1008	*0-16-0*
1013	*0-19-0*
1035	*0-3-0*
1034	*0-5-0*
1051	*0-16-0*
1054	*0-11-0*
1058	*0-9-6*
1060	*0-9-0*
1061	*0-12-0*
1063	*1-10-0*

This clearly shows that 8 plots of Schedule I were also mentioned in the order of requisitioned lands actually they were never requisitioned in fact. As a matter of fact both parties were under mutual mistake. Govt. never intended to take these plots and petitioner thought that government having no need and even though mentioned in the order were actually not requisitioned."

138. On the basis of the aforesaid pleadings, the petitioner-Tata Oil Mills Company Ltd. has prayed for the following relief in the aforesaid writ petition:-

"i. To issue a writ, order or direction in the nature of writ of Certiorari calling upon the respondent No.1 to produce the record of the petitioner's case and to quash the order of the respondent No.1 dated 14.3.90.

ii. To issue such other writ order or direction as this Hon'ble court deem fit and proper in the circumstances of the case so that justice be done.

Iii. To award cost of the petition to the petitioner in the aforesaid case."

139. The respondent-Union of India in the counter affidavit filed in the said writ petition took a specific stand that it had requisitioned 26 plots which included the aforesaid eight plots, and the possession of plots had been taken by possession memo dated 02.12.1963 by Tehsildar, Ghaziabad, for Collectorate, Meerut.

140. The judgment in L.A. Reference No.266 of 1977 (Tata Oil Mills Company Limited Vs. Union of India) establishes that the award had been given in respect to aforesaid eight plots i.e. 1034, 1035, 1051, 1054, 1058, 1060, 1061 & 1063. Relevant extract of the said award is being reproduced herein below:-

"The land of the claimant is plot no.966 measuring 0-11-0 Bighas, 967 0-200 Bigha, 982 0-10-0 Bigha, 1010 0-10-0 Bigha, 1012 0-5-0 Bigha, 964 0-2-0 Bigha, 1013 0-19-0 Bigha, 969 1-3-0 Bigha, 970 1-17-0 Bigha, 971 1-3-0 Bigha, 1014 1-15-0 Bigha, 960 1-18-0 Bigha, 1035

0-3-0 Bigha, 1008 1-16-0 Bigha, 1009 0-8-0 Bigha, 1034 0-5-0 Bigha, 961 0-2-0 Bigha, 965 0-3-0 Bigha, 974 0-18-0 Bigha, 975 0-10-0 Bigha, 1051 0-16-0 Bigha, 1054 0-11-0 Bigha, 1050 0-3-0 Bigha, 1060 0-9-0 Bigha, 1061 0-12-0 Bigha and 1063 1-10-0 Bigha situated in Village-Karhera, Pargana-Loni, Tehsil-Ghaziabad, District Meerut (now District Ghaziabad) was requisitioned under Section 29 of the Act on the proposal of the Military Estate Officer, Meerut Circle, Meerut for setting up of Hindon Airfield. The acquisition was made in one phase and the possession was taken over on 02.12.1963."

141. The record of the writ petition further reveals that during the pendency of the writ petition, an amendment was sought by petitioner-Tata Oil Mills Company Ltd. challenging the order/notice dated 26.03.1965 relating to aforesaid eight plots i.e. 1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063 which amendment application was allowed, and the grounds raised in the amendment application challenging the acquisition notices and the prayer were incorporated in the writ petition. The prayer incorporated in the writ petition by way of amendment is being reproduced herein-below:-

"1(a) issue an appropriate writ, order or direction quashing the acquisition orders / notices dated 26.3.1965 as contained in Annexures no. IV (1) to VI (8) to the memo of writ petition in so far as they relate to the eight plots i.e. plots no. 1034, 1035, 1051, 1054, 1060, 1061, 1063 situate at Village Karehra, District Ghaziabad.

1(b) issue an appropriate writ, order or direction commanding the respondents concerned to release the eight plots in question i.e. plots no. 1034, 1035, 1051, 1054, 1060, 1061, 1063 situate at Village Karehra, District Ghaziabad from acquisition in favour of the petitioner."

142. The aforesaid writ petition was dismissed by this Court by judgment and order dated 01.03.2012 on the ground of delay and laches. The judgement and order of this Court dated 01.03.2012 is being reproduced below:-

"This petition was initially filed against the order of the Additional District Judge, Meerut, passed in land acquisition reference no. 266 of 1977. It is worthwhile to reproduce the prayer originally made in the writ petition, which read as follows:

"1. To issue a writ order or direction in the nature of writ of Certiorari calling upon the respondent No. 1 to produce the record of the petitioner's case and to quash the order of the respondent No. 1 dated 14.3.90.

2. To issue such other writ order or direction as this Hon'ble Court deem fit and proper in the circumstances of the case so that justice be done.

3. To award cost of the petition to the petitioner in the aforesaid case."

From the aforesaid, it is apparently clear that at the time of filing of the writ petition in the year 1990 the petitioner did not make any prayer for the acquisition notification being set aside nor there was any prayer that the petitioner may not be dispossessed from the plots, which have been mentioned in the acquisition notification.

This Court may record that the order of the Additional District Judge, Meerut in Reference Case No. 266 of 1977 was made on a reference made under Section 37(2) of The Defence of India Act, 1962. Section 37(2) of the Act confines the power of the reference court to the issue of determination of compensation only in respect of the property which has been acquired under the said Act. The reference court has no jurisdiction to enter into any issue as to whether the acquisition is legally justified or not.

The petitioner could plead hardly any ground before this Court for challenging the amount of compensation, which has been determined by the reference court under the order impugned. Therefore, this Court finds no good ground to interfere with the order of the reference court dated 14.03.1990. In order to keep the record straight, it may be noticed that after 27 years of the filing of the present petition and after 44 years of the issuance of the acquisition notification under The

Defence India Act, the petitioner made an amendment application for addition of the following prayer:

"1(a) issue an appropriate writ, order or direction quashing the acquisition orders/notices dated 26.3.1965 as contained in Annexures no. IV(1) to VI(8) to the memo of writ petition in so far as they relate to the eight plots i. e. plots no. 1034, 1035, 1051, 1054, 1060, 1061, 1063 situate at Village Karehra, District Ghaziabad.

1(b) issue an appropriate writ, order or direction commanding the respondents concerned to release the eight plots in question i. e. plots no. 1034, 1035, 1051, 1054, 1060, 1061, 1063 situate at Village Karehra, District Ghaziabad froom acquisition in favour of the petitioner."

This amendment application has been allowed and the petitioner on the strength of the amended prayer made an attempt to challenge before this Court the notification pertaining to the acquisition of the land made as early as in the year 1963.

I am of the considered opinion that it is too late in the day to permit the petitioner to raise any such challenge. The petitioner has acquiescenced to the acquisition notification, as for the reasons best known to him he did not challenge the acquisition notification for 44 years.

This Court is also of the opinion that the amendment, as has been prayed and granted is outside the scope of the petition itself and has the effect of enlarging the boundaries of the proceedings which have given rise to the present petition.

Writ petition is dismissed."

143. Thus, in the light of aforesaid facts, it can be easily concluded that eight plots i.e. 1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063 had been acquired by the Union of India for establishment of Hindon Air Base and possession of the aforesaid Khasras were taken by possession memo dated 02.12.1963, award in respect of aforesaid land had also

been given, which is also evident from the award dated 30.09.1985. Therefore, no sale deed in respect to aforesaid plots could have been executed by the erstwhile owner Tata Oil Mills Company Ltd. Registered Office, Hindustan Lever House, 165/166 Backbay Reclamation, Bombay through authorized M/s Hindustan Ltd. Bombay Operator Gurdeep Singh, son of Kulbhushan Singh in favour of Promoter. In such view of the fact, the sale deeds executed in respect to the aforesaid plots are void and do not confer any title upon the Promoter in respect to the aforesaid eight plots.

144. Therefore, for the reasons stated above, the aforesaid eight plots could not not be included by the Development Authority in determining the land area under the project nor can be included for calculating the FAR.

145. The Promoter while submitting the application for sanction of layout did not disclose the correct facts and when the objection was raised by the Indian Air Force, the Development Authority without verifying the correct facts only on the basis of report of Tehsildar and Khatauni for the Fasli Year 1412-1417 presumed that the Promoter has title over the aforesaid plots.

146. Given that the Promoter had submitted an application to establish a large Group Housing Society exceeding 1000 dwelling units, the Development Authority should have acted more cautiously. Furthermore, once an Air Force Officer informed the Authority about the pendency of Writ-C No.14251 of 1990, the Authority should have verified the nature of dispute involved in the said writ petition.

147. The petitioner in paragraph no.16 of Writ-C No.14251 of 1990 has categorically stated that Promoter has included Khasra no. 1034 and 1035 belonging to Indian Air Force. Paragraph no.16 of the aforesaid writ petition is being reproduced herein-below:-

> *“16. That the Plot area- 87930 sq. mt consist of khasra nos. 955 to 960, 1010, 1011, 1015 & (1017 to 1051). The Khasra no.1034 & 1035 =2720 sq.m belongs to Defense Air Force Hindan. The respondent no.*

3 included Air Force Land in his plot land while calculating permissible FAR & ground coverage and respondent 2 without verification approved the compounding. The FAR compounded in III compounding is in excess of permissible FAR area which is impermissible under the law."

148. The respondent no.2 has replied to the paragraph 16 of the writ petition in paragraph no.45 of the counter affidavit wherein it has denied the factum of paragraph no.16 of the writ petition. Paragraph no.45 of the counter affidavit of the Development Authority is being reproduced below:-

"45. That the contents of paragraph no. 16 of the writ petition is not admitted, being misconceived. Owing to the land dispute, the map was cancelled by the answering respondent on 03.07.2010, however only when the dispute was resolved by the developer itself, the 1st compounding map came to be sanctioned on 15.11.2011."

149. The Promoter in his affidavit dated 06.09.2026 in paragraph no.22, has refuted the allegation of the petitioner that the Air Force land has been wrongly included in computing the permissible FAR. Paragraph no.22 of the affidavit of Promoter dated 06.09.2026 titled as 'compliance affidavit' is being reproduced below:-

"22. That the allegation that the answering respondent wrongly Included defence/Air Force land (Khasra Nos. 1034 and 1035) while computing the permissible FAR and ground coverage is wholly incorrect and is denied. The plot area of 87,930 sq. mtr. is the lawful holding of the answering respondent, being its private/freehold land together with the land secured under the Land Exchange Deed, and the plot area, FAR and ground coverage were examined and verified by Respondent No. 2."

150. We have perused the entire record and we did not find any document except Khatauni of Fasli Year 1412-1417 in respect of of title of land, which has been placed on record in respect to aforesaid eight plots.

151. However, from the facts delineated above from Writ-C No.14251 of 1990 filed by the Tata Oil Mills Company Limited, it is manifest that Gata nos.1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063 were acquired under the Indian Defence Act, 1962, and the possession of the aforesaid Gatas had been taken by possession memo dated 02.12.1963 and award in respect to the aforesaid Gatas had also been given in L.A. Reference No.266 of 1977, and Modification Application No.1 of 1988 for excluding the aforesaid Gatas from the award was rejected by the Court of Additional District Judge, Meerut by order dated 14.03.1990. The Writ-C No. 14251 of 1990 of Tata Oil Mills Company Ltd. wherein it had challenged the order 14.03.1990 and had also challenged the acquisition order dated 26.03.1965 of the aforesaid eight plots, and prayed for exclusion of the aforesaid plots by amendment, was also dismissed vide order dated 01.03.2012.

152. The aforesaid fact establishes that Indian Air Force has a title over Khasra nos.1034, 1035,1051, 1054, 1058, 1060, 1061 & 1063, therefore, the Promoter is guilty of including aforesaid Khasras for the purpose of calculation of FAR and ground coverage under the project. The Development Authority is also equally guilty of sanctioning compounded map by including the aforesaid eight plots without verifying about the dispute involved in Writ-C No.14251 of 1990, which was brought to its notice by the Officer of Air Force through several letters.

153. It is also relevant to reproduce the relevant extract of note sheet of the original record of the Development Authority appearing on pages-38 & 39 prepared by Mohd. Haroon, Junior Engineer, Satendra Solanki, Junior Engineer, Sudheer Kumar Pandey, Junior Engineer and Arun Kumar Sharma, Assistant Engineer which reads as under:-

"मानचित्र अनुभाग द्वारा उपरोक्त उल्लिखित बिन्दु सं० *1* व *2* पर क्रियान्वयन हेतु निर्माणकर्ता फर्म मै० फैन्ड्स लैण्ड डेवलपर्स को प्रवर्तन अनुभाग से पत्रांक *741/*प्र०ख०-*2/09* दिनांक *26.08.09* प्रेषित किया गया। प्रत्रोत्तर में फर्म के भागीदार ने अपने पत्र में उल्लेख किया है कि प्रश्नगत खसरा नम्बरों *1034*मि., *1035*मि., *1054*मि., *1060,*

*1061*मि. की भूमि में से लगभग *4560* वर्ग मी० भूमि पर कोई निर्माण कार्य नहीं किया जा रहा है तथा स्थलानुसार किए गए कार्य को सुपर इम्पोज प्लान में गहरे रंग से दर्शाया गया है एवं यह भी उल्लेख किया गया है कि इन खसरा नम्बरों की उक्त भूमि के अधिपत्य के संबंध में मा० उच्च न्यायालय में वाद विचाराधीन है तथा फर्म के पक्ष में स्थगन आदेश भी पारित है जिसकी छाया प्रति पत्र के साथ संलग्न की गयी है। पक्ष द्वारा अपने अन्य पत्र के साथ आन्तरिक विकास कार्य हेतु वांछित बैंक गारन्टी नवीनीकरण कर प्रस्तुत की गयी है।

अतः प्रश्नगत प्रकरण में पूर्व पृष्ठ *34* पर उल्लेखित अर्जन अनुभाग के प्रभारी अधिशासी अभियंता महोदय की आख्या के क्रम में अधिनियम की धारा *15* के अन्तर्गत निर्माण अनुज्ञा के पुनरीक्षण/पुनविचार हेतु पत्रावली मानचित्र अनुभाग को अग्रसारित करने का कष्ट करें।"

154. The note sheet, extracted above, clearly reveals that the Development Authority was aware of the fact that the dispute of title in respect of aforesaid eight plots was pending before the High Court. The original record does not reflect that any endeavour was made by the respondent-Authority to verify the nature of dispute pending before the High Court.

155. In the noting, extracted above, it has been mentioned that a stay order was operating in favour of the Promoter. From the record, it appears that Promoter had preferred Writ-C No.40643 of 2006 praying for quashing of the letter dated 02.06.2006 of the Development Authority to the extent it demanded Rs.16,80,88,109.00/- from the petitioner-Promoter towards external development fee. The prayer in the aforesaid writ petition is being reproduced herein below:-

"(i). Issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 2.6.2006 issued by the respondent Development Authority to the extent it demands Rs.16,80,88,109.00/- from the petitioners towards external development fee.

(I-A). Issue a writ, order or direction in the nature of certiorari quashing the resolutions of the Ghaziabad Development Authority dated 22.8.1997 and the order dated 1.6.2006 (Annexure 'CA-2' and 'CA-3' to the Counter Affidavit filed by the Authority) and directing the Authority to refund the entire amount deposited by the petitioners towards development fees.

(ii). Issue a writ, order or direction in the nature of mandamus commanding the Ghaziabad Development Authority to sanction and release the map as submitted by the petitioners in respect of their residential group housing to be constructed on 95 Katori Mill, Loni Road, Ghaziabad without charging any external development fee.

(iii). Issue a writ, order or direction in the nature of mandamus commanding upon the Ghaziabad Development Authority to charge external development fee, if so leviable, as per the directions contained in paragraph 3(Kha) of the Government Order dated 29.12.2005.

(iv). Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper and to which the petitioners may be found entitled to in the facts and circumstances of the case

(v). Award costs of this petition to the petitioners."

156. In the said writ petition, following stay order had been granted on 04.08.2006 which is being reproduced herein below:-

"Counter affidavit may be filed within one month. Rejoinder affidavit may be filed within two weeks thereafter.

List thereafter.

On the petitioner's depositing the entire demand made by the Ghaziabad Development Authority, the G.D.A. shall release the map. If the petitioner's writ petition succeeds the G.D.A. will refund the amount."

157. Later on, the said writ petition was disposed off by this Court on 01.07.2010.

158. It is pertinent to note that in the Writ-C No.40643 of 2006, the issue with regard to title of land acquired by the Indian Air Force in respect of aforesaid eight Khasras was not involved rather an entirely different issue was involved, and the Promoter had obtained a stay order in respect to the demand of the external development charges. However, it transpires from the record that Promoter has given wrong fact before the Authority by asserting that stay order was operating in favour of the petitioner-Promoter in respect of aforesaid eight Khasras acquired by Indian Air Force. The challenge to the acquisition of aforesaid eight

Khasras owned by Indian Air Force was in Writ-C No.14251 of 1990 filed by Tata Oil Mills Company Ltd. in which no stay order was passed.

159. Despite the fact that title of the aforesaid eight plots were disputed, the Development Authority proceeded to include those plots for the purpose of calculating FAR.

160. Note sheet, extracted above, shows that the area of the aforesaid eight plots is 4560 Sq. Meter. If the area of 4560 Sq. Meter of eight plots are excluded from the total area of land of the Promoter under the project, it would obviously reduce the FAR available to the Promoter substantially.

161. The law is settled that Development Authority cannot legally sanction or compound a layout or building plan for a housing scheme or plots when Promoter or applicant does not hold a valid title or clear ownership rights.

162. Learned counsel for the respondents has also relied upon Regulation 3.1.7 of Chapter III of the Building Bye-laws which is also reproduced herein below:-

> ***"3.1.7* निर्माण कार्य के समय विचलन-** निर्माण कार्य के दौरान यदि स्वीकृत प्लान से कोई विचलन है या विचलन किया जाना अभिप्रेत है, जो भवन उपविधि के प्रस्तर *3.1.1* के अन्तर्गत नहीं है, तो प्रस्तावित विचलन निष्पादित करने से पूर्व संशोधित मानचित्र जो अनुज्ञापित तकनीकी व्यक्ति द्वारा प्रमाणित हो, प्राधिकरण में जमा कर अनुज्ञा प्राप्त की जाएगी। भवन निर्माण के समय किये गये ऐसे परिवर्तन/विचलन जो उपविधि के प्रस्तर-*3.1.1* से आच्छादित है, में निर्माण के समय पुनरीक्षित भवन मानचित्र प्रस्तुत किया जाना अथवा ऐसे परिवर्तनों हेतु निर्माण अनुज्ञा प्राप्त करना आवश्यक नहीं होगा। परन्तु ग्रुप-हाउसिंग, व्यावसायिक एवं अन्य बहुखण्डीय भवनों के प्रकरणों में पुनरीक्षित मानचित्र जमा कराया जाना अनिवार्य होगा।"

163. On the strength of the aforesaid Regulations of the Building Bye-laws, it has also been submitted by learned counsel for the respondents that the aforesaid Regulations provide that if during construction or development, if variation takes place from the approved plan, which does not come under Regulation 3.1.1 of Building Bye-laws, the Promoter shall submit a revised map.

164. Accordingly, it is submitted that the deviation from the approved plan within the permissible limit is permitted, and that can be compounded under the Compounding Bye-laws, 2009 framed by the State Government under Section 57 (bb) read with Section 32 of Act, 1973.

165. The aforesaid contention of respondent no.2 is entirely misplaced and proceeds on a manifest misreading of the plain text of Regulation 3.1.7 of the Building Bye-laws. A plain reading of Regulation 3.1.7 of the Building Bye-laws suggest that if the deviation or proposed deviation in the sanctioned layout plan is not covered under Regulation 3.1.1 of the Building Bye-laws, then before making any such deviation, an amended map duly certified by the authorized technical person shall be submitted in the Development Authority and permission is obtained. In other words, Regulation 3.1.7 casts an obligation upon the Promoter to submit a revised or amended layout certified by an authorized technical person to the Development Authority and explicitly secure the formal approval of Development Authority. It is only in cases where deviation is covered under Regulation 3.1.1, the formal approval/ sanction from the Development Authority is not required. We have recorded a detailed finding while dealing with the argument of learned counsel for the respondents in respect of Regulation 13 of Regulation, 2002 and Regulation 2.1.7 that Promoter has not obtained any prior sanction from the Chief Executive Officer in original layout before making deviations and alterations in construction.

166. According to the learned counsel for the petitioners, there is no provision under the Act, 1973 which permits the compounding of construction which has been raised in contravention to the sanctioned plan/map.

167. It is submitted that deviation from the sanctioned map is an offence and that offence can only be compounded under Section 32 of the Act, 1973. Compounding Rules, 2009 have been promulgated with

an object to provide procedure and conditions for compounding of offence under Section 32 of Act, 1973.

168. To appreciate the argument of learned counsel for the petitioners, it would be apt to reproduce Section 32 of the Act, 1973:-

> *"32. **Composition of Offences.**—(1) Any offence made punishable by or under this Act may either before or after the institution of proceedings, be compounded by [the Vice-Chairman (or any officer authorised by him in that behalf by general or special order)], on such terms, including any term as regards payment of a composition fee, as [the Vice-Chairman] (or such officer) may think fit.*
>
> *(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded."*

169. This is a peculiar case where the Development Authority has approved the compounding map where no original sanctioned map/layout is in existence inasmuch as the original sanction layout/map dated 29.05.2006 was cancelled on 03.07.2010, and the cancellation order was neither set aside nor recalled by the competent authority.

170. The illegality did not stop here. The Promoter, after first compounding, started raising further dwelling units and again deviated from the so called first compounding map and submitted another compounding map, which was approved by the Authority on 06.04.2015 and is called as 'second compounding'.

171. After obtaining the second compounding, the Promoter again deviated from the second compounding and raised two additional floors i.e. floor 9th and 10th in Tower nos 16, 17, 18, 19 and added Tower no.27 and Tower no.28.

172. At this stage, it would be apposite to reproduce Regulation 2.2 of Compounding Bye-laws, 2009 which reads as under:-

> "2.2 शमन योग्य निर्माण से सम्बन्धित अपराध का शमन इस प्रतिबन्ध के साथ किया जाएगा कि अशमनीय निर्माण से सम्बन्धित अपराध को अभियुक्त आगे गतिमान नहीं

रखेगा तथा अशमनीय अवैध निर्माण अथवा विकास कार्य अथवा उपरोक्त शमनीय अपराध का शमन करने के आदेश देने वाले अधिकारी द्वारा निर्दिष्ट अवधि के भीतर, जो *30* दिन से अधिक न होगी, समाप्त कर देगा, अन्यथा उसके विरुद्ध पुनः अभियोजन एवं ध्वस्तीकरण की कार्यवाही हेतु विकास प्राधिकरण स्वतन्त्र होगा।"

173. A perusal of the aforesaid Regulation reveals that the compounding of a map shall be done on taking an undertaking from the offender that the offence shall not be repeated again, and after the map is compounded, the uncompoundable construction shall be demolished by the applicant otherwise Development Authority shall be at liberty to demolish uncompounded construction.

174. We are of the view that the Promoter cannot use the tool of compounding to evade the regulations and execute major structural changes viz adding unapproved floors to an existing block; constructing additional towers that were not part of originally sanctioned layout plan, shrinking mandated open spaces, green zones or common amenities promised to the apartment owners.

175. In the present case, the Promoter has made deviation in the original layout while submitting the first compounding map by adding additional floors in several Towers. He has again made the similar deviation in the second compounding map by adding additional floors in several Towers. He again has made substantial changes in layout by adding two floors in Tower nos.16, 17, 18 & 19 and has further added two Towers i.e. Tower nos. 27 & 28.

176. In view of the aforesaid fact, it is established from the record that the Promoter has sought compounding of identical offences which he had committed while submitting the first and second compounding applications, which establishes that the Promoter had violated the layout purposefully again and again after submitting the undertaking under Regulation 2.2. Therefore, in such circumstances, the repeated offences committed by the Promoter after first compounding are explicitly barred from compounding by virtue of Regulation 2.2 of Compounding Bye-laws.

177. The Act, 1973 does not contemplate or permits the authorities to regularize the construction, and it is only the offence which has been committed by the accused under Section 32 of the Act, 1973 by making deviation and violating the sanctioned map which is compounded. Therefore, under the garb of compounding, the accused cannot be permitted to perpetuate and commit same offence time and again and get it compounded under Section 32 of the Act, 1973.

178. So, Section 32 of the Act, 1973 read with Regulation 2.20 of Compounding Bye-laws, 2009 permits the compounding of offence in respect to same or identical offence only once and not beyond. Therefore, after the offence committed by a person/Promoter/Builder under Section 32 of the Act, 1973 has been compounded under Compounding Bye-laws, 2009, subsequent identical offence is not compoundable nor the Authorities can permit the subsequent compounding.

179. It is trite law that the compounding only waives or satisfies criminal liability/fines. It cannot be used as a tool to regularize architectural changes that runs counter to the layout plan.

180. It has been pointed out by the learned counsel for the Promoter as well as Development Authority that after the sanction of layout plan in the case of Housing Schemes, the construction is done phase-wise and it is altogether impossible to raise construction in one go of the entire Housing Scheme, and thereafter, get the deviations permissible under the law from sanctioned map compounded, because in a big Housing Scheme, huge finance is involved, and it is not possible for a Promoter to invest such huge amount and complete the project in one go, starts selling the flats so constructed.

181. We are conscious of this fact. However, answer to the aforesaid contention can be found in the Explanation to sub-section (5) of Section 4 of the Act, 2010 which provides that completion of construction work of a building as a whole or the completion of an independent block of such building, as the case may be.

182. At this point it would be apt to refer to Section 15A of the Act 1973, which provides for completion certificate, and also sub-section (5) of Section 4 of the Act, 2010. Section 15A of the Act, 1973 and sub-section (5) of Section 4 of the Act, 2010 are reproduced below:-

*"**15A. Completion Certificate.**—(1) Every person or body having been granted permission under sub-section (3) of Section 15, shall complete the developments according to the approved plan and send a notice in writing of such completion to the Authority, and obtain a completion certificate from the Authority in the manner prescribed or provided in the bye-laws of the Authority :*

Provided that if completion certificate is not granted and refusal to grant it is not intimated within three months after receipt of the notice of completion, it shall be deemed that the completion certificate has been granted by the Authority.

(2) No person shall occupy or permit to be occupied any commercial building or use or permit to be used such part thereof affected by any work until:

(a) completion certificate has been issued by the Authority; or

(b) Authority has failed for three months after the receipt of the notice of completion to intimate its refusal of grant of the said certificate.

Explanation.—For the purposes of this section the expression "commercial building" shall have the meaning assigned to it in the Uttar Pradesh Municipal Corporation Act, 1959."

Section 4 of the Act, 2010

4. General liabilities of promoter:-

(5) An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws. The completion certificate shall be obtained by promoter from prescribed authority [within the period specified for completion of the project in the development permit or the building permit as the case may be.]

Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority;

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.

Explanation—For the purposes of this sub-section "completion" means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be."

183. Section 15A(1) of the Act, 1973 mandates a person or body having been granted permission under sub-section (3) of Section 15 to complete the developments according to the approved plan and send a notice in writing of such completion to the Authority and obtain a completion certificate from the Authority in the manner prescribed or provided in the bye-laws of the Authority.

184. The proviso to sub section 15A(1) of the Act, 1973 provides that if the completion certificate is not granted and refusal to grant it is not intimated within three months after receipt of notice of completion, the completion certificate is deemed to be granted by the Authority.

185. So, the person or body having permission under sub-section (3) of Section 15A of the Act, 1973 on completing developments according to the approved plan, shall give a notice in writing of such completion to the Authority and obtain a completion certificate from the Authority.

186. However, if the Authority does not grant or refusal to grant completion certificate is not intimated by the authority within three months after receipt of notice of completion certificate, the completion certificate is deemed to have been granted.

187. After promulgation of Act, 2010, provisions of Act, 2010 would apply. Further, Section 4 of the Act, 2010 provides the duties and liabilities of Promoter.

188. Section 4 (5) of the Act, 2010 prohibits the Promoter to transfer apartment to a person without obtaining the completion certificate from the prescribed sanctioning authority concerned as per Building Bye-laws.

189. The second proviso to sub-section (5) of Section 4 of the Act, 2010 also stipulates that in case the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of application by the Promoter complete with all certificates and other documents required, the completion certificate shall be deemed to have been issued after expiry of three months.

190. Explanation to sub-section (5) of Section 4 of the Act, 2010 contemplates that 'completion' under the aforesaid sub-section means the completion of construction work of a building as a whole or completion of independent block of such building as the case may be.

191. The Section 15A of the Act, 1973 and Section 4 (5) of the Act, 2010 must be construed harmoniously to achieve the purpose and object of both enactments. The Group Housing consists of many independent blocks. In such cases, the Promoter can complete a block in all respect and, thereafter, obtain a completion certificate in respect of that block under the Building Bye-laws from the prescribed authority, and, thereafter, the Promoter can transfer the apartment in such block.

192. The whole object of incorporating the Explanation to sub-section (5) of Section 4 of the Act, 2010 in giving liberty to the Promoter to complete one block of Housing Society and obtain completion certificate in respect of that block is to ease out the financial burden of the Promoter as well as purchaser of the flats inasmuch as on selling the flats and apartments in completed block, the Promoter would get money to invest in the construction of other blocks, on the other hand the apartment owners who have invested the money in purchasing flats can reap the benefit of such investment, and if the apartment owner had purchased the apartment after taking loan from a financial institution, he

may be eased out from additional burden of paying rent and his liability to pay EMIs of the loan is also eased out.

193. In the instant case, despite there being a provision under the Act, 2010 for obtaining a completion certificate after completing construction of a tower/block viable for living, the Promoter did not do so in respect of that tower where the construction has been completed rather applied for completion certificate as per his own convenience. He has altered the layout/map to reap the maximum financial gain.

194. In our opinion, such alteration/addition is not permissible for the reason that as per Regulation 13 of Regulation, 2002, if the Promoter wants any addition or intends to alter sanction plan, he shall have to obtain permission from the Chief Executive Officer before the proposed additions/alterations are carried out.

195. We further record that in a Group Housing Scheme, the Promoter can make the construction of each Tower sanctioned under the layout plan and while constructing the Tower as per original layout plan, if there is deviation in each block within permissible limit, he can seek the compounding in respect of each block, but under the garb of compounding, he is not permitted to make alteration and deviation in the layout plan by adding some floors in a block beyond sanctioned limit as per original layout or by adding additional Tower in layout plan thereby, evading Regulation 13 of Regulation 2002, Regulation 2.1.7 and 3.1.7 of Building Bye-laws which mandates the Promoter to obtain prior permission before making any external addition or alteration in the layout plan.

196. Perhaps, envisaging the difficulty faced by Promoter, the Legislature in Explanation to Section 4 (5) of the Act, 2010 has allowed the Promoter in case of Group Housing to construct one tower/block under the sanctioned layout plan and get a completion certificate in respect to that block. Thus, Legislature in other words has treated one tower/block in a Group Housing Scheme as one unit and allowed the Promoter to obtain completion certificate, and thereafter, transfer the

apartment and possession to the vendee (purchaser). Therefore, in such case compounding of deviation in each block within permissible limit without making any external addition or alteration in sanctioned layout is permissible, and we, in such sense, can call that multiple compounding is permissible in Group Housing Scheme.

197. Now coming to the impugned compounding map dated 18.12.2024, we find that the two additional floors have been constructed by the Promoter in Tower nos. 16, 17, 18, 19.

198. It has been argued by counsel for the petitioners that addition of floors cannot be compounded in view of Regulation 3.2.10 of Compounding Bye-laws, 2009 which reads as under.

> *"3.2.10* भूखण्डीय विकास के अन्तर्गत तलों की संख्या परिवर्तित किए बिना अनुमन्य ऊँचाई का *10* प्रतिशत से अधिक ऊँचाई का निर्माण।"

199. He submits that a reading of the aforesaid Regulation shows that without changing the number of floors in a tower or building, the height of the tower or building can be raised up to 10%.

200. However, learned counsel for the respondents has contended that Regulation 3.2.10 is not attracted in the instant case as it is only in respect of plotted developments and not in case of Group Housing Scheme as the Group Housing Scheme has been treated differently from the plotted developments. In this respect, reliance has been placed on Regulations 3.3, 3.3.5 and 3.3.11 of Compounding Bye-laws, 2009 which reads as under:-

> *"3.3* मानचित्र में भवन निर्माण एवं विकास उपविधि के अनुसार अनुमन्य निर्माण एवं अवैध निर्माण अलग-अलग दर्शाए जाएंगे। *'*फ्रन्ट*', '*साइड*'* एवं पीछे के सेट बैक में अनाधिकृत निर्माण मुख्य भवन की निरन्तरता *(Contiguity)* में ही शमनीय होगा तथा अनुमन्य भू-आच्छादन एवं तल क्षेत्रफल से अधिक निर्माण निम्नलिखित सीमा तक शमनीय होगा *:-*

3.3.5 ग्रुप हाउसिंग तथा बहुमंजिले व्यवसायिक, कार्यालय एवं संस्थागत भवनों में अग्निशमन सुरक्षा हेतु वांछित न्यूनतम सैट-बैक कम न होने की दशा में अनुमन्य भू-आच्छादन का अधिकतम *10* प्रतिशत तक अतिरिक्त निर्माण।

3.3.11 आवासीय भवनों में अनुमन्य इकाइयों के अतिरिक्त शमनीय इकाइयों की अधिकतम संख्या भूखण्ड के क्षेत्रफल के आधार पर निम्नवत होगी:-

(क) भूखण्डीय विकास में अधिकतम एक इकाई।

(ख) ग्रुप हाउसिंग में शमनीय अतिरिक्त एफ.ए.आर./क्रय-योग्य एफ.ए.आर. के प्रतिशत के सापेक्ष समानुपातिक इकाइयां।"

201. We find substance in the submission of counsel for the petitioners inasmuch as Regulation 3.2.10 permits raising of height of building or block up to 10% without changing the number of floors. The said Regulation does not lay any distinction between plotted developments and Group Housing Scheme. It applies to the building or blocks in a multi-storey building and also to plotted developments.

202. The reason why we say so is that the word 'भूखण्डीय विकास' in Regulation 3.2.10 refers to land development or plot development.

203. In our opinion, the land development refers to a sustainable development with an object to have a society where living conditions and sources meet human needs without undermining planetary integrity.

204. In other words, sustainable development aims to balance the needs of economy, environment and society. So, in our view, the word 'भूखण्डीय विकास' referred in Regulation 3.2.10 has been used to achieve the aforesaid object. Therefore, we are of the view that the distinction sought to be made by the learned counsel for the respondents that the said Regulation is applicable only in respect to plotted developments and not in respect to Group Housing Scheme would frustrate the very object of the provisions of Regulation 3.2.10.

205. We also find no rationale in the submission of counsel for the respondents for the reason that in case of plotted developments where small plots are used for individual living, such a restriction is applicable,

and not in cases of multi-storey residential units inasmuch as strict regulation to regulate multi-storey building are needed in order to secure and protect the life of large number of families living in such multi-storey buildings. Therefore, for this reason also, the distinction sought to be made by learned counsel for the respondents does not appeal to our conscience. Therefore, we hold that the construction of two additional floors in Tower nos.16, 17, 18, 19 was not compoundable.

206. Further, we have already held that if any external additions or alterations from the sanctioned map are intended to be made, the Promoter/Builder has to obtain prior approval from the Chief Executive Officer in writing before the proposed additions or alterations are carried out.

207. In the instant case, under the third compounding plan, the Promoter had erected additional block nos.27 and 28 which amounts to alteration in the layout plan, and before carrying such alteration, the Promoter had to obtain prior permission in respect of proposed alteration, which has not been done in the present case, therefore addition of two blocks which amounts to change in the layout plan in violation of Regulation 13 of Regulation, 2002 is illegal and cannot be compounded only on the ground that Promoter has permissible FAR.

208. We have already held that Promoter has included land owned by by the Indian Air Force, and the Development Authority has included the aforesaid land for calculating FAR which is *per se* illegal, therefore, FAR has wrongly been calculated and for this reason also, the third compounding is illegal.

209. Neither the Act nor Bye-laws permits the regularization of construction and it is only the offence which has been compounded. In this respect, it would be apt to refer to the judgment of this Court in the case of ***Tula Ram and Others Vs. Kanpur Development Authority 2016 (118) ALR 174.*** Paragraph nos. 31, 32, 33, 34 and 45 of the said judgement are being reproduced herein below:-

"31. This Court finds no provision under the Act, 1973 which entitles the Authority to go for profiteering on an illegal act of encroachment or unauthorized construction in the name of compounding. The compounding contemplated in section 32 is in respect to offences punishable under the Act. It nowhere provides that once an offence is compounded, an act, which is in violation of Plan, shall also stand regularized or become valid. The effect of compounding is provided in sub-section (2) of section 32 that an offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect to the "offence" compounded. This is with regard to criminal liability fastened upon the person for committing an offence under Act, 1973. But the prohibition contained in the Act and statutory obligation upon Authorities to set right a person who has faulted/breached such provision by taking appropriate action, e.g. demolition of building by exercising power under section 27 has not been made inoperable when an offence is compounded. The proceeding prevented as a result of compounding an "offence" relates to offence and illegality/irregularity so prohibited/controlled is under another provision.

32. It may also be noticed that by U.P. Act No. 3 of 1997 (hereinafter referred to as "Act, 1997"), certain other offences have been provide vide sections 26-D and 28-A. However, removal of any raised construction in contravention of Plan and removal of encroachment etc. are governed by a different procedure and steps which would remain uneffected by such compounding. In other words, compounding under the Act, 1973 is to avoid criminal liability and punishment on conviction but not to regularize a construction prohibited under the Act for which no relaxation is permissible except when the plan is amended in accordance with section 13 of the Act.

33. In the garb of compounding, a resolution of authority or Development Authority itself will not cure the patent defect going to the root of the matter and an illegality will not stand cured and legal with the consent of KDA or any other development authority since statute provides a particular procedure and nothing can be done in a manner other then the procedure prescribed in the statute.

34. When law requires something to be done in a particular manner, things done otherwise are prohibited. This principle was recognized in Nazir Ahmad v. King-Emperor AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which I do not propose to refer all but would like to refer a few recent one.

45. The reason for making an approved plan sacrosanct and not to be touched easily is very evident. In the developed countries a lot of emphasis is on the planned development of cities and urban areas. In fact there dividing line in the urban and rural areas is getting obliterated and one can say that every kind of local body is supposed to proceed with an objective of planned development. The object of planned development can be achieved by rigorous enforcement of plans prepared after careful study of intricate issues of city management, scientific research, rationalization of loss and other issues. The people of developed countries have successfully achieved the objective of planned development contributing largely by strictly adhering to plans, local laws and other directions including restrictions necessary for effective implementation of such plans. They respect the laws enacted by legislature for regulating planned development of cities. There, one finds seldom complaint of violation of master plan etc. in construction of building; residential, institutional or commercial."

210. It is also the case of the petitioners that there is a violation of Section 5 (3) (a) of the Act, 2010, which mandates that the percentage of undivided interest of each apartment owner in the common area and facilities shall have a permanent character.

211. The aforesaid submission has been made on the strength that with the increase in number of flats, the percentage of undivided interest of petitioners in the common areas and facilities shall be altered and reduced which cannot be done without the consent of all the apartment owners and approval of the competent authority.

212. However, it is contended by the learned counsel for the respondents that in the present case, as per available FAR, the Promoter

could construct 1603 flats, whereas he has been permitted to construct only 1096 units which is lesser than the permissible limit. Accordingly, no consent is required as the common areas and facilities which have a permanent character have not been altered.

213. It is also urged that the petitioners are not the residents of those towers in which additions of floors have been made, therefore, petitioners cannot allege the violation of Section 5 (3) (a) of the Act, 2010.

214. In our considered view, the aforesaid contention of learned counsel for the respondents is misplaced in view of the law enunciated by this Court as well as the Apex Court.

215. In this respect, it would be pertinent to refer to the judgment of this Court in the case of ***M/s Designarch Infrastructure Pvt. Ltd. and Another Vs. Vice Chairman, Ghaziabad Development Authority and Others 2013 (9) ADJ 594 (DB).*** Paragraph no.65(7) of the said judgement is being reproduced herein below:-

"65. To sum up the conclusions drawn by us are as follows:

...

(7). Under Section 5 (1) of the U.P. Apartment Act, 2010 every person to whom any apartment is sold or transferred by the promoter shall subject to other provisions of the Act be entitled to exclusive ownership and possession of the apartment so sold or otherwise transferred. He is under sub-section (2) entitled to the exclusive ownership and possession of apartment and 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. Such percentage of undivided interest under sub-section (3) (a) 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, and which shall not be separated from the apartment to which it pertains. It shall be deemed to be conveyed or encumbered with apartment, even

though such interest is not expressly mentioned in the conveyance or other instrument. The common areas and facilities under sub-section (4) can not be transferred and will remain undivided with the apartment. These can not be partitioned or subject to any division and will be enjoyed by the apartment owner under sub-section (5), without hindrance or encroaching upon the lawful rights of the other apartment owners."

216. In this respect, it would also be useful to have a glance at paragraph nos. 153,154 & 155 of the judgment of the Apex Court in the case of ***Supertech Limited (supra)*** which reads as under***:-***

"153. 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 U.P. Act, 1975 and Section 5 of the U.P. 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 U.P. Apartments Act, 2010.

154. 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 20.10.2013, when it adopted the Model Bye-laws under the U.P. Apartments Act, 2010; (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: (Emerald Court Owner Resident Welfare Assn. case, SCC OnLine All paras 20-21)

"20. 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 RWA 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.

21. 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."

155. 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 U.P. 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 U.P. Act, 1975 and U.P. 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 such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually."

217. Chapter II of the Act, 2010 provides the duties and liabilities of the Promoter. Section 4(1)(c), (d) & (f) of the said Chapter being relevant in the present case are reproduced below:-

*"**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)...

(b)...

(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 layout plan or building plan;

(dd)...

(e)...

(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;"

218. Clause (c) of sub-section (1) of Section 4 of the Act, 2010 casts a duty upon the Promoter, who intends to sell apartments, to make a full and true disclosure in writing, the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part.

219. Clause (d) of sub-section (1) of Section 4 of the Act, 2010 cast a duty upon the Promoter to furnish and disclose the details of all common areas and facilities as per approved layout plan or building plan.

220. Sri Ashish Singh, learned Senior Counsel for the petitioners in support of his submission has placed the following paragraphs of sale deed of petitioner no.1 which reads as under:-

"AND WHEREAS the VENDOR has developed and constructed a Multi-Storied Group Housing Complex known as "GULMOHUR GREENS" after obtaining requisite sanctions and approvals from authorities concerned and the Ghaziabad Development Authority, Ghaziabad has sanctioned the Group Housing Layout Plan vide their letter no.568/THA/GH/06 dated 29.5.2006 and the construction of the Phase-I of the said Group Housing Complex has been completed upto the June, 2010."

221. He has also relied upon paragraph nos.3, 9a, 9c and 10 of the sale deed of petitioner no.1, which are being reproduced herein-below:-

"3. The VENDOR doth hereby grant to the VENDEE proportionate undivided, indivisible or impartiable ownership rights, in the free hold plot of land underneath the said Complex, situated in Karhera, Ghaziabad, Pargana Loni, Tehsil & District Ghaziabad, as also in common areas and common facilities, TO HOLD the same jointly and in common with Purchaser(s)/Owner(s) of other Flats in the said Complex."

9. a. The basement, corridors, passage, stair case, mumties, lift rooms, terraces, roofs & parapet walls in the said complex shall continue to be property of VENDOR who shall be entitled to use them for any purpose whatsoever. Any Flat owner or the said Maintenance Agency/Association will not be allowed any type of encroachment/construction or claim on the terraces, roofs, etc.

c. Any type of encroachment/construction in the entire Complex including roads, lobbies, corridors, passage, stair cases, basement, roof/terrace etc. will not be allowed to the Flat Owner or the Maintenance Agency/Association.

10. The VENDEE and all persons having or lawfully or equitably claiming any estate, right, title or interest whatsoever, in or upon the said Flat shall from time to time and at all times hereafter keep the said Flat, the walls of the said Flat and partition walls, sewers, drains,

pipes and other appurtenances belonging to the said Flat in good tenantable repair and condition in which they have been delivered to the VENDEE and in particular so as to support, shelter and protect other parts of the Complex other than his/her/their premises. The VENDEE further agrees not to do or suffer any thing to be done in or about the said Flat in his/her/their possession which may tend to cause damage to any flooring or ceiling or any portion of the Complex Building over or below or adjacent to his/her/their flat or in any manner interfere with the use thereof or of any open space, stair case, lift, passages etc. or facilities or amenities intended for common use."

222. The sale deed has been executed on 07.09.2012 after the sanction of first compounding on 15.11.2011, but the sale deed refers to sanction of group housing layout plan dated 29.05.2006. The Promoter (vendor) in the sale deed has not disclosed about the first compounding dated 15.11.2011.

223. Though the sale deed recites that construction of first phase of the said Group Housing Complex has been completed upto June, 2010 but the said assertion in the sale deed is contrary to the layout plan submitted by the Promoter inasmuch as neither the layout plan nor the original record discloses that project of Group Housing was divided into phases.

224. The condition no.3 of the sale deed in unequivocal terms states that vendor grants vendee i.e. apartment owner proportionate undivided, indivisible or impartiable ownership rights in the freehold plot of land underneath the said complex and also in common areas and common facilities to hold the same jointly and in common with the purchaser/owners of other flats.

225. If the aforesaid clauses are read in the light of duties entrusted upon the Promoter under Section 4 of the Act, 2010, it is evident that in view of Section 4 (1) (c) and (d) of the Act, 2010, the Promoter has to make a full and true disclosure in writing, the details envisaged in Clauses (c) & (d) referred above.

226. The intended purchaser i.e. vendee purchases the apartment after knowing the details of plans and specifications of the building of which such apartment forms a part and the details of common areas and facilities as per approved layout plan or building plan.

227. This implies that the vendee purchases the apartment on the representation by the vendor i.e. Promoter about the common area and also the common facilities as detailed in plan and specification of building which has been disclosed to the vendee by the Promoter before the purchase of apartment.

228. The terms and conditions of the sale deed binds the vendor (Promoter) as well as vendee (purchaser), therefore, there cannot be any curtailment in the specifications, common areas and facilities which are as per the sanctioned layout plan shown to the vendee at the time of purchase of flats.

229. If after execution of the sale deed, the Promoter (vendor) changes the layout plan and specifications of the building which had been shown to the vendee at the time of purchase, and such change results in reducing the ground coverage area, common areas and other facilities, that would amount to curtailment or reduction in percentage of undivided interest of each apartment owner in ground coverage area, common areas and facilities, which have a permanent character as per Section 5 (3) (a) of the Act, 2010 and cannot be altered without written consent of all the apartment owners. Further, if such change results in reducing the undivided ownership right in the freehold plot of land underneath the said complex which right has been vested in the vendee (apartment owner) by virtue of condition no.3 of the sale deed, such change cannot be permitted as Promoter is bound by condition no.3 of the sale deed.

230. Therefore, inescapable conclusion from the aforesaid discussion is that the vendor i.e. Promoter cannot make any alteration in the specification and plan thereby reducing the common areas and facilities as per the approved plan which has been disclosed to the apartment

owners (vendee) under Section 4 (1) (c) & (d) of the Act, 2010 at the time of purchase of flats.

231. In this respect, it would be apt to reproduce paragraph no.146 of the judgment of Apex Court in the case of ***Supertech Ltd. (supra)*** which reads as under:-

> *"146. 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 layout 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 authorised and verified by authorised 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."*

232. It is also pertinent to note that the Promoter (vendor) cannot be allowed to change the plan and specification of the entire building of which the apartment forms part of nor can be permitted to curtail the common areas and facilities as per the sanctioned layout plan or building plan to his advantage and to the detriment of vendee. If that is allowed to

happen, that would render the provisions of Section 4 (1) (c) & (d) of the Apartment Act, 2010 redundant. In the instant case, it is evident from the record that Promoter has deviated and used the FAR by extending balconies of many apartments in several towers which establishes that the Promoter has made these deviations only with an object to sell these apartments on higher price to achieve maximum financial gain from sale of such apartment.

233. The aforesaid fact discloses that vendor deliberately deviated from his original layout plan by consuming extra FAR in the basement, *mumty,* ground floor and balcony for his advantage only with a purpose to sell the flats for higher price in which he has consumed extra FAR.

234. Therefore, we are of the view that before making any change in plan and specification approved by the local authority of the entire building of which the apartment forms part of and the details of common areas and facilities as per approved layout plan or building plan, the Promoter has to obtain written consent of apartment owners as provided in Section 5 (3)(a) of the Act 2010.

235. Therefore, we reject the contention of learned counsel for the respondents that so far as the alteration and specification in the plan is within the permissible limit of FAR, the consent of apartment owners is not required.

236. Now coming to the submission advanced by Shri Sanjeev Singh, learned Senior Counsel appearing in Writ-C No.68187 of 2015 that common area had also been sold is concerned, we find from the record that said contention of Shri Sanjeev Singh, learned Senior Counsel has substance which is evident from the noting in the original file of Development Authority which is being reproduced herein below:-

"गाजियाबाद विकास प्राधिकरण, गाजियाबाद।
*(*टिप्पणियां एवं आदेश*)*

<u>सहायक अभियन्ता/प्रभारी प्रवर्तन जोन-*7*</u>

कृपया दांयी ओर संलग्न न्यायालय आयुक्त मेरठ मण्डल मेरठ अपील सं०-*1104/2017* ब्रजभूषण चौधरी आदि बनाम जी०डी०ए० आदि के अन्तर्गत धारा-*27(2),* उ०प्र० शहरी योजना और विकास

अधिनियम-*1973* के अंतर्गत पारित आदेश तिथि *06.06.2018* में वाद सं०-*439/*अ०नि० */*जोन-*7/2016* दिनांक-*03.06.2016* के विरुद्ध योजित किया गया है। उक्त आदेश के माध्यम से गुलमोहर ग्रीन्स, *95*, कटोरी मिल, मोहननगर, गाजियाबाद में ग्रुप हाउसिंग के भूतल के भवनों के सामने कॉमन स्पेस में स्वीकृत मानचित्र के विपरीत अधिकांश भवनों में बनायी गयी बाउण्ड्रीवाल, आर०सी०सी० पिलर, कमरे इत्यादि को ध्वस्त किये जाने के आदेश पारित किये गये हैं। उक्त आदेश में फ्लैट के मालिक को कॉमन स्पेस में अवैध रूप से किये गये बाउण्ड्रीवाल के निर्माण के विरुद्ध नोटिस नहीं दिया गया। उक्त फ्लैट बिल्डर से क्रय किया गया है। बिल्डर को नोटिस जारी किया गया है। जिसमें मा० आयुक्त महोदय के न्यायालय में अपील सं०-*1104/2017* में ब्रजभूषण चौधरी आदि में पारित आदेश के क्रम में दिनांक-*06.06.2018* के अनुपालन में फ्लैट मालिक एवं जो भवन अभी बिल्डर के पास है उसको नोटिस प्रेषित किये जाने के आदेश पारित किये गये हैं। प्रश्नगत प्रकरण में प्राधिकरण द्वारा मात्र बिल्डर को नोटिस दिया गया था। इसलिए प्राधिकरण द्वारा पारित अपेक्षित आदेश निरस्त किये जाने के साथ-साथ अपील आंशिक रूप से निरस्त किये जाने के आदेश पारित किये गये हैं। उक्त प्रकरण में उपाध्यक्ष, गाजियाबाद विकास प्राधिकरण, गाजियाबाद को इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि प्रश्नगत प्रकरण में फ्लैट मालिक व जो भवन अभी बिल्डर के पास है। दोनों के विरुद्ध नोटिस जारी किये जाने का आदेश पारित किया गया है। उक्त आदेश के अनुपालन में स्थल का निरीक्षण किया गया। स्थल पर भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण किया गया है। जिसकी अनुमानित अवधि लगभग-*4* से *6* वर्ष के अन्तर्गत है। जिसके विरुद्ध उ०प्र० नगर योजना एवं विकास अधिनियम-*1973* की धारा-*26* एवं *27* के अन्तर्गत नियमानुसार अनाधिकृत निर्माणों पर वाद दायर करने व गिराने की कार्यवाही हेतु फ्लैट स्वामियों व बिल्डर को भेजे जाने वाले नोटिस दांयी ओर संलग्न है, जो निम्नवत् हैः-

क्रम सं०	अवैध निर्माणकर्ता का नाम व पता	अवैध निर्माण का प्रकार
1	डा० डी०के० गुप्ता पुत्र श्री डी०आर० गुप्ता टावर सं०-*2*, फ्लैट सं०-जी-*2*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
2	श्री नरेन्द्र कोहली पुत्र श्री रामनाथ कोहली टावर सं०-*2*, फ्लैट सं०-जी-*2*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
3	श्री शंकर मित्तल पुत्र श्री कृष्ण कुमार टावर सं०-*2*, फ्लैट सं०-जी-*2*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
4	श्रीमती अमृता श्रीवास्तव पत्नी श्री ए०के० श्रीवास्तव टावर सं०-*3*, फ्लैट सं०-जी-*3*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
5	श्री अनिरुद्ध अग्रवाल पुत्र श्री एस०के० अग्रवाल टावर सं०-*3*, फ्लैट सं०-जी-*3*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
6	श्रीमती रीता शर्मा पत्नी एस०एम० शर्मा टावर सं०-*3*, फ्लैट सं०-जी-*3*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।

क्रम सं०	अवैध निर्माणकर्ता का नाम व पता	अवैध निर्माण का प्रकार
7	श्री नकूल शर्मा टावर सं०-*3*, फ्लैट सं०-जी-*3*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
8	श्री सुरेश चन्द्र सिंघल टावर सं०-*4*, फ्लैट सं०-जी-*4*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
9	श्री विनोद कुमार सिंह टावर सं०-*4*, फ्लैट सं०-जी-*4*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
10	डा० मंजु शर्मा टावर सं०-*4*, फ्लैट सं०-जी-*4*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
11	श्री अरविन्द मुदगल टावर सं०-*4*, फ्लैट सं०-जी-*4*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
12	श्रीमती मनोरमा जैन टावर सं०-*5*, फ्लैट सं०-जी-*5*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
13	श्रीमती पल्लवी शर्मा टावर सं०-*5*, फ्लैट सं०-जी-*5*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
14	श्रीमती नम्रता मिश्रा टावर सं०-*5*, फ्लैट सं०-जी-*5*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
15	श्रीमती रेनू गुप्ता टावर सं०-*5*, फ्लैट सं०-जी-*5*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
16	श्री वशिष्ट मुनी शुक्ला टावर सं०-*6*, फ्लैट सं०-जी-*6*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
17	श्री ललित शर्मा टावर सं०-*6*, फ्लैट सं०-जी-*6*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
18	श्री रवि शंकर टावर सं०-*6*, फ्लैट सं०-जी-*6*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
19	श्री संजीव गुप्ता टावर सं०-*6*, फ्लैट सं०-जी-*6*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
20	श्री प्रदीप कुमार गोयल टावर सं०-*7*, फ्लैट सं०-जी-*7*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
21	श्रीमती ऊषा भण्डारी टावर सं०-*7*, फ्लैट सं०-जी-*7*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
22	श्रीमती ऐसवरीया सिंघल टावर सं०-*7*, फ्लैट सं०-जी-*7*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
23	श्री उमेश शर्मा टावर सं०-*7*, फ्लैट सं०-जी-*7*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
24	श्री प्रमोद बंसल टावर सं०-*8*, फ्लैट सं०-जी-*8*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
25	श्री अश्वनी दीक्षित टावर सं०-*8*, फ्लैट सं०-जी-*8*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
26	श्री विजय जिन्दल टावर सं०-*8*, फ्लैट सं०-जी-*8*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
27	श्री जे०के० बाली टावर सं०-*8*, फ्लैट सं०-जी-*8*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।

क्रम सं०	अवैध निर्माणकर्ता का नाम व पता	अवैध निर्माण का प्रकार
28	श्री अनुरागदीप टावर सं०-*9*, फ्लैट सं०-जी-*9*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
29	श्री विजय जिन्दल, डायरेक्टर गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, टावर सं०-*9*, फ्लैट सं०-जी-*9*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
30	श्रीमती मीनू गम्भीर टावर सं०-*9*, फ्लैट सं०-जी-*9*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
31	श्री कामेश मेतो टावर सं०-*9*, फ्लैट सं०-जी-*9*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
32	श्री नीरज सिंह टावर सं०-*10*, फ्लैट सं०-जी-*10*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
33	श्री सम्राट यादव टावर सं०-*10*, फ्लैट सं०-जी-*10*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
34	श्री अभय कृष्ण वर्मा टावर सं०-*10*, फ्लैट सं०-जी-*10*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
35	श्री तुषार श्रीवास्तव टावर सं०-*10*, फ्लैट सं०-जी-*10*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
36	श्रीमती शैली शर्मा टावर सं०-*11*, फ्लैट सं०-जी-*11*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
37	श्री राजेश कुमार गुप्ता टावर सं०-*11*, फ्लैट सं०-जी-*11*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
38	श्रीमती सुधा गोयल टावर सं०-*11*, फ्लैट सं०-जी-*11*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
39	श्री जितेन्द्र राजपूत टावर सं०-*11*, फ्लैट सं०-जी-*11*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
40	श्री लक्ष्मी नारायण टावर सं०-*12*, फ्लैट सं०-जी-*12*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
41	श्री पुलकित बंसल टावर सं०-*12*, फ्लैट सं०-जी-*12*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
42	श्री विजय जिन्दल, डायरेक्टर गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, टावर सं०-*12*, फ्लैट सं०-जी-*12*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद।	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
43	श्री बृजभूषण चौधरी टावर सं०-*12*, फ्लैट सं०-जी-*12*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद।	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
44	श्री श्याम नारायण दत्त टावर सं०-*13*, फ्लैट सं०-जी-*13*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद।	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
45	श्री गरिमा दीक्षित टावर सं०-*13*, फ्लैट सं०-जी-*13*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
46	श्री कपिल चौधरी टावर सं०-*13*, फ्लैट सं०-जी-*13*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
47	श्री सुभाष कौशिक टावर सं०-*13*, फ्लैट सं०-जी-*13*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।

क्रम सं०	अवैध निर्माणकर्ता का नाम व पता	अवैध निर्माण का प्रकार
48	श्रीमती बीना सक्सैना टावर सं०-*14*, फ्लैट सं०-जी-*14*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
49	श्री मोहन लाल वर्मा टावर सं०-*14*, फ्लैट सं०-जी-*14*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
50	श्री गणेश कोहली टावर सं०-*14*, फ्लैट सं०-जी-*14*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
51	श्री गोगना टावर सं०-*14*, फ्लैट सं०-जी-*14*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
52	श्रीमती रूकमणी अग्रवाल टावर सं०-*15*, फ्लैट सं०-जी-*15*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
53	श्रीमती अनीता रानी टावर सं०-*15*, फ्लैट सं०-जी-*15*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
54	श्री पवन कुमार टावर सं०-*15*, फ्लैट सं०-जी-*15*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
55	श्रीमती रीतू टावर सं०-*15*, फ्लैट सं०-जी-*15*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
56	श्री संजीव गुप्ता टावर सं०-*24*, फ्लैट सं०-जी-*24*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
57	श्री अंकुर दूबे टावर सं०-*24*, फ्लैट सं०-जी-*24*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
58	श्री अंकुर शर्मा टावर सं०-*25*, फ्लैट सं०-जी-*25*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
59	श्री असगर अली टावर सं०-*25*, फ्लैट सं०-जी-*25*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
60	श्री एस०के० मित्तल टावर सं०-*26*, फ्लैट सं०-जी-*26*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
61	श्री पीयूष शर्मा टावर सं०-*26*, फ्लैट सं०-जी-*26*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
62	श्री हर्ष गुप्ता टावर सं०-*33*, फ्लैट सं०-जी-*33*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
63	श्री अश्वनी कुमार मिश्रा टावर सं०-*33*, फ्लैट सं०-जी-*33*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
64	श्री मनोज शुक्ला टावर सं०-*33*, फ्लैट सं०-जी-*33*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
65	श्री नवीन जैन टावर सं०-*33*, फ्लैट सं०-जी-*33*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
66	श्री राजीव अरोरा टावर सं०-*34*, फ्लैट सं०-जी-*34*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
67	श्री अतीन अग्रवाल टावर सं०-*34*, फ्लैट सं०-जी-*34*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
68	श्री भरत अग्रवाल टावर सं०-*34*, फ्लैट सं०-जी-*34*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।

क्रम सं०	अवैध निर्माणकर्ता का नाम व पता	अवैध निर्माण का प्रकार
69	श्री विजय जिन्दल, डायरेक्टर गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, टावर सं०-*34*, फ्लैट सं०-जी-*34*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद।	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
70	श्री मुकुल सिंघल टावर सं०-*35*, फ्लैट सं०-जी-*35*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
71	श्री मोहन गुप्ता टावर सं०-*35*, फ्लैट सं०-जी-*35*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
72	श्रीमती विभा शर्मा टावर सं०-*35*, फ्लैट सं०-जी-*35*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
73	श्री अनिल सबरवाल टावर सं०-*35*, फ्लैट सं०-जी-*35*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
74	श्रीमती सुष्मिता सिंघल टावर सं०-*30*, फ्लैट सं०-जी-*30*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
75	श्री रामेन्द्र सिंह टावर सं०-*30*, फ्लैट सं०-जी-*30*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
76	श्री अमन जैन टावर सं०-*30*, फ्लैट सं०-जी-*30*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
77	श्री राकेश कुमार सुयाल टावर सं०-*30*, फ्लैट सं०-जी-*30*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
78	श्री सतीश मोहन टावर सं०-*31*, फ्लैट सं०-जी-*31*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
79	श्रीमती निशिता अरोरा टावर सं०-*31*, फ्लैट सं०-जी-*31*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
80	श्री अजय कुमार बंसल टावर सं०-*31*, फ्लैट सं०-जी-*31*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
81	श्री शिव कुमार जेटली टावर सं०-*31*, फ्लैट सं०-जी-*31*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
82	श्री अवधेश कुमार प्रसाद टावर सं०-*32*, फ्लैट सं०-जी-*32*ए, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
83	श्रीमती शालनी कौशिक टावर सं०-*32*, फ्लैट सं०-जी-*32*बी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
84	श्रीमती नीना बजाज टावर सं०-*32*, फ्लैट सं०-जी-*32*सी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।
85	श्री नवनीत कुमार सुयाल टावर सं०-*32*, फ्लैट सं०-जी-*32*डी, गुलमोहर ग्रीन्स ग्रुप हाउसिंग, मोहननगर, गाजियाबाद	भूतल पर कॉमन एरिया में बाउण्ड्रीवाल का निर्माण कार्य पूर्ण।

उपरोक्तानुसार गुलमोहर ग्रीन्स ग्रुप हाउसिंग के फ्लैट स्वामियों एवं बिल्डर विजय जिन्दल, डायरेक्टर, गुलमोहर ग्रीन्स, ग्रुप हाउसिंग, मोहननगर, गाजियाबाद को उ०प्र० नगर योजना एवं विकास अधिनियम-*1973* की धारा *26, 27* के अन्तर्गत भेजे जाने वाले नोटिस का प्रारूप तैयार कर दांयी ओर संलग्न कर दिया गया है। कृपया अवलोकनोपरान्त हस्ताक्षर करने का कष्ट करें।"

237. The allegation of selling common areas is also substantiated by the letter of V.K. Sonkar, Prabhari Pravartan, Zone-7 dated 03.06.2016, which is being reproduced herein below:-

> "श्री एस०एस० यादव, अवर अभियंता द्वारा दि०-*13.04.2016* को यह प्रथम सूचना रिपोर्ट प्रस्तुत की गई कि "भवन/भूखण्ड- गुलमोहर ग्रीन, *95* कटोरी मिल मोहननगर, गाजियाबाद में ग्रुप हाउसिंग के भूतल के भवनों के सामने कॉमन स्पेस में स्वीकृत मानचित्र के विपरीत अधिकांश भवनों में बाउण्ड्रीवाल लगभग-*3* वर्ष पूर्व निर्मित है एवं कुछ में उक्त कॉमन स्पेस में कमरे भी बनाये गये है। वर्तमान में भी कुछ भवनों के कॉमन स्पेस में आर०सी०सी० पिलर के साथ बाउण्ड्रीवाल व कमरे बनाये जा रहे है व दीवार पर नियम विरुद्ध टाइल्स आदि लगायी जा रही है। बेसमेन्ट में अनाधिकृत रूप से कमरे बने हुए है।" उनका यह कार्य उ०प्र० नगर योजना एवं विकास अधिनियम, *1973* की धारा-*14* के प्रावधान के विपरीत है।
>
> अवैध निर्माणकर्ता को कारण बताओ नोटिस जारी किया गया कि वह कारण बताये कि क्यों न उनके उक्त अनाधिकृत निर्माण को प्राधिकरण द्वारा गिरा दिया जाएं एवं उनके विरुद्ध वाद समक्ष न्यायालय में क्यों न दायर कर दिया जाए। नोटिस की तामील विपक्ष को विधिवत कराई गई व सुनवाई हेतु पूर्ण अवसर दिया गया उक्त अनुसार कोई सन्तोषजनक उत्तर दाखिल करने अथवा निर्माण को शमन कराने में असमर्थ रहें। अत: किया गया निर्माण पूर्ण अनाधिकृत एवं गिराने योग्य है। अतः अवर अभियंता की प्रथम सूचना रिपोर्ट से सहमत होकर मैं उत्तर प्रदेश नगर योजना एवं विकास अधिनियम-*1973* की धारा-*27* के अन्तर्गत स्थल पर किये गये अनाधिकृत निर्माण को गिराने के आदेश पारित करता हूँ। अनाधिकृत निर्माण को गिराने की कार्यवाही नोटिस प्राप्त होने के *15* दिन के अन्दर विपक्षी स्वयं पूरा करेंगे। यदि वह ऐसा नही करते है, तो प्राधिकरण द्वारा उक्त अनाधिकृत निर्माण को गिरा दिया जाएगा। जिसके हर्जे-खर्चे की वसूली विपक्ष से राजस्व के बकाया भी भाँति की जायेगी। उत्तर प्रदेश नगर योजना एवं विकास अधिनियम-*1973* की धारा-*49* के अन्तर्गत यह आदेश भी पारित किये जाते है कि विपक्ष के विरुद्ध उक्त एक्ट की धारा-*26* के अन्तर्गत सक्षम न्यायालय में वाद भी दायर कर दिया जाए।"

238. Section 5(4) the Act, 2010 prohibits the sale of common areas and facilities and as such sale of common areas and facilities is an offence under Section 25 of the Act, 2010 and calls for an action under Section 25 of the Act 2010.

239. In the instant case, the letter dated 10.04.2018 of the Junior Engineer (Enforcement) Zone-7 to Station House Officer, Sahibabad,

Ghaziabad for registering F.I.R. against the Promoter (Developer) establishes that the Promoter has sold the common areas. Thereafter, an FIR was registered under Sections 420, 467, 468, 471 I.P.C. on 11.04.2018 bearing Case Crime No. 0749 of 2018. The contents of FIR is reproduced herein below:-

> "महोदय,
>
> कृपया मै0 फ्रैंड लैण्ड डेवलपर्स, 95, कटोरी मिल, मोहननगर, गाजियाबाद द्वारा गुलमोहर ग्रीन्स ग्रुप हाउसिंग का स्थल पर निर्माण कराया गया है । उक्त ग्रुप हाउसिंग का प्राधिकरण द्वारा दिनांक 13.01.2015 को उपाध्यक्ष महोदय द्वारा मानचित्र स्वीकृत प्रदान की गयी थी । जिसमें विकासकर्ता द्वारा सम्पूर्ति प्रमाण पत्र प्राप्त किये बिना कब्जा दिये जाने व स्वीकृत मानचित्र में प्रत्येक टावर के ग्राउण्ड फ्लोर पर निर्मित फ्लैटों के सामने कॉमन भूमि छोड़ते हुए स्वीकृत प्रदान किया गया है । उक्त कॉमन भूमि का ग्रीनरी के रूप में उपयोग फ्लैट स्वामियों द्वारा किया जाना है। जिसका भूस्वामित्व विकासकर्ता के पास निहित रहेगा परन्तु विकासकर्ता द्वारा उक्त टावर के ग्राउण्ड फ्लोर की ग्रीनरी हेतु कॉमन भूमि को अनाधिकृत रूप से रजिस्ट्री कर दी गयी है जोकि नियम विरुद्ध है । उक्त कॉमन भूमि की रजिस्ट्री अनाधिकृत रूप से किये जाने पर श्री विजय जिन्दल, डायरेक्टर मै0 फ्रैंड लैण्ड डेवलपर्स दोषी पाये गये । उक्त के विरुद्ध प्राथमिकी दर्ज कर आवश्यक कार्यवाही करने का कष्ट करें । उक्त जमीन की रजिस्ट्री डायरेक्टर श्री विजय जिन्दल द्वारा बेईमानी से व आर्थिक लाभ कमाने के लिए बेची गई है ।"

240. We are shocked to see that the Final Report is submitted without enquiring into the allegations in the FIR. The final report has been submitted on the ground that the dispute is of civil nature. The Final Report is being reproduced herein below:-

> "श्रीमान जी मुकदमा उपरोक्त में अब तक की विवेचना से यह तथ्य प्रकाश मे आये है कि वादीमुकदमा श्री सत्यप्रकाश यादव गाजियाबाद विकास प्राधिकरण मे कार्यरत है जिनके द्वारा यह अभियोग पंजीकृत कराया गया है । जिसमे विवेचना से यह सिद्ध होता है कि मा० उच्च न्यायालय मे रिट सं०68187/15 विचाराधिन है एवं उपरोक्त समनीय प्रकरण है एवं सिविल प्रवृति का है । जिसमे वाद दायर किया जाना न्यायोचित था लेकिन विकास प्राधिकरण द्वारा उक्त अभियोग पंजीकृत करा दिया गया एवं विकास प्राधिकरण द्वारा भी यह बात स्वीकार की गयी है कि उपरक प्रकरण समनीय व सिविल प्रवृति का है अतः इस परिस्थिति मे विवेचना का किया जाना न्यायोचित प्रतीत नही होता है। अतः मुकदमा उपरोक्त की विवेचना जरिये अन्तिम रिपोर्ट समाप्त की जाती है । महोदय से अनुरोध है कि अन्तिम रिपोर्ट स्वीकृत करने की कृपा करे ।"

241. It is a case where record establishes that the police authorities have colluded with the Promoter in submitting final report inasmuch as the allegations in the FIR was that the Promoter has delivered the possession of the apartment without obtaining completion certificate and has sold the common area which was to be left for the purposes of greenery in the Group Housing Scheme. Considering the fact that it is a case which establishes on record the allegations made in the FIR, the final report has been submitted without enquiry and investigation by the Police Authority.

242. The fact that police has not conducted the investigation properly is also evident from the affidavit of Surender Singh who was also the investigating officer in the aforesaid case crime number. The affidavit reveals that he did not make any effort to inquire about the correctness of the allegations inasmuch as he did not make any spot inspection to find out as to whether any common area had been sold by the Promoter nor he made any effort to visit the office of the promoter and record statement of the Promoter against whom serious allegations of violation of selling common area has been made.

243. He has done only paper work by recording the statement of one Sanjeev Sharma who was the general manager of the Gulmohar Green Society, and had no concern whatsoever with the offence which is evident from the averments made in paragraph nos.13 to 22 of the affidavit of Surendera Singh, Investigating Officer dated 11.09.2026. The aforesaid paragraphs are being reproduced below:-

> *"13. That the deponent perused the case diary and the details of earlier investigation carried out by the earlier investigating officers were duly entered by the deponent in the case diary vide CD No.8 prepared on 24.11.2021.*
>
> *14. That on 03.01.2022, the deponent served notice upon the informant under section 160 of the Code of Criminal Procedure, 1973 requiring him to give statement within 3 days.*

15. That the informant came to the police station on 25.02.2022 and had given his statement under section 161 Cr.P.C., the statement of the informant Shri Satya Prakash Yadav, Assistant Engineer, Ghaziabad Development Authority (posted in the East Zone of the Development Authority at the time of recording of statement) was duly entered vide CD No.10 prepared on 25.02.2022. The informant has stated that he had lodged the first information report in pursuance of the direction issued by his superior authorities. He further stated that defying the sanctioned map issued by the Ghaziabad Development Authority, the accused Vijay Jindal sold the green area in favour of the flat owners by way of registered sale deeds and the flat owners have taken illegal possession over the same. The informant further stated that the said act was done by the accused to gain wrongfully.

16. That during interrogation, the informant was asked by the deponent with regard to the ownership of the land and the informant had stated that the ownership of the land was with the accused Vijay Jindal. However, the sale deeds got registered by him, were not in accordance with the sanctioned map. When the deponent put a query to the informant, as to how there had been a cheating if the accused was the owner of the land. The informant stated that it was correct that the land was owned by accused, but, the requisite amount to be deposited with the Ghaziabad Development Authority with regard to the land, had not been deposited by the accused and sale deeds were executed. There would have been no case lodged if the accused had deposited the fine.

17. That thereafter, the deponent served notice under section 91 of Cr.P.C., to the accused and asked him to get his statement recorded within 3 days.

18. That thereafter, on 15.05.2022, the General Manager of the Gulmohar Green Society, Shri Sanjeev Sharma appeared on behalf of the accused and got recorded his statement. In his statement Shri Sanjeev Sharma stated that he had been discharging the duties of General Manager in the Society and he was having full knowledge of the matter. He further informed that Writ Petition No.68187 of 2015 was pending in the Hon'ble High Court and the development authority had also admitted the facts of the writ petition and had further determined

the compounding fee after enquiry to the tune of Rs.9,66,96,929.00. It was further informed by Shri Sanjiv Sharma that the development authority had admitted that in lieu of the registered sale deeds executed the compounding fee was require to be deposited with the development authority. It was further stated by him that the Ghaziabad Development Authority had issued order regarding imposition of fine. Shri Sanjiv Sharma further stated that no forged document had been prepared by Gulmohar Society, nor any one had been cheated. He further provided the copy of the order passed in the aforesaid writ petition. The statement had been entered in CD No.12 prepared on 15.05.2022.

19. That after recording the statement of Shri Sanjiv Sharma, it appeared to the deponent that the matter was not concerned with the offence of cheating, and moreover, as per the allegations and the investigation, the elements of criminality were not found. The aforesaid facts was mentioned by the deponent in CD No.12 dated 15.05.2022.

20. That however, in order to find out the correct position, the deponent recorded the supplementary statement (Majid Bayan) of the informant Shri Satya Prakash Yadav on 13.06.2022 and entered the same vide CD No.13 prepared on 13.06.2022. In his supplementary statement the informant stated that it was true that the owner of the land was Shri Vijay Jindal, the Director of Gulmohar Society and he had sold the land without getting the sanctioned map. The informant further stated that the development authority suffered loss of revenue on account of the execution of sale deeds. He further stated that the matter was compoundable and a case was to be filed before the Hon'ble Court but in compliance of the directions issued by his superiors, he had lodged the first information report.

21. That the deponent on the basis of the evidence collected during investigation had found that the matter was compoundable and of civil nature, therefore, the deponent had concluded the investigation. The aforesaid facts is mentioned in CD No.13 prepared on 13.06.2022.

22. That thereafter, the final report was submitted by the deponent on 21.06.2022 before the then Circle Officer, Shri Abijith R. Shankar (IPS) for approval."

244. Therefore, in such view of the fact, we find that it is a fit case where a direction be issued to the Commissioner of Police, Ghaziabad to depute an Officer not below the rank of Assistant Commissioner of Police to make a fresh investigation in respect of allegations made in the FIR.

245. In compliance of the order of this Court dated 10.09.2026, Abijith R Shankar (the then Circle Officer, Ghaziabad), presently posted as Superintendent of Police, District Deoria has filed an affidavit in which he has stated that he was the Circle Officer, Sahibabad, District Ghaziabad from 04.01.2022 to 29.07.2022, and the Final Report was submitted before the competent Court on 24.08.2022. The averment in the affidavit reflects that an attempt has been made not to disclose the name of approving officer of the Final Report. Paragraph nos. 8 to 13 of the affidavit of Abijith R Shankar are being reproduced below:-

> *"8. That it is most respectfully submitted that the deponent had been posted as Circle Officer Sahibabad, District Ghaziabad from 04.01.2022 to 29.07.2022, whereas the Final Report in the aforesaid case was filed before the Competent Court on 24.08.2022. Therefore, it is not clear to the deponent whether the aforesaid Final Report was forwarded by him. Further, in the letter dated 11.09.2026 sent by the Assistant Commissioner of Police, Sahibabad, Commissionerate Ghaziabad, to the Commissioner of Police Headquarters, Commissionerate Ghaziabad, it has been stated that clarification is required as to from which supervisory officer the approval was obtained and the Final Report was forwarded to the Court.*
>
> *9. That it is further submitted that, Letter No. Ba-01/2026/writ dated 11.09.2026, has been forwarded by the Additional Commissioner of Police, Headquarters, Commissionerate Ghaziabad, to the Deputy Commissioner of Police, Trans-Hindon, Commissionerate Ghaziabad, wherein it has been stated that the case diary and the Final Report relating to the aforesaid case are being traced, so that, on the basis of the endorsement of the competent officer recorded on the case diary, the name and present posting of the officer who approved the Final Report may be ascertained.*

10. That it is further stated that, through the office letter dated 12.09.2026, correspondence was made with the Commissioner of Police, Commissionerate Ghaziabad, seeking information regarding the Final Report of the aforesaid case which has been filed before the Court, and a request has been made that a certified copy thereof be made available, so that information regarding the then Circle Officer, Sahibabad, District Ghaziabad, who had forwarded the Final Report which was subsequently filed before the Court, may be ascertained.

11. In addition to the above facts, it is respectfully informed that the deponent was relieved from duty on the afternoon of 14.05.2022 and was on medical leave for 33 days from 15.05.2022. The final report of the above case was prepared on 21.06.2026 and was filed in the Court on 24.08.2026, after the deponent was transferred from the Circle Officer, Sahibabad, District Ghaziabad, on 29.07.2022. It is not clear from the above facts that the deponent himself forwarded the above final report for filing in the Court.

12. That it is most respectfully stated that as of the present date, it has not been possible to ascertain whether the Final Report relating to the aforesaid case was forwarded by the deponent himself. In order to ascertain the aforesaid fact it is necessary to examine the signatures appearing on the Final Report submitted before the Court. Accordingly, request has been made to the Commissioner of Police, Commissionerate Ghaziabad for providing certified copy of the Final Report.

13. That the deponent may kindly be granted 3 days further time to obtain the copy of the Final Report for the verification of the facts stated in preceding paragraphs. The deponent further undertakes to file a separate personal affidavit before this Hon'ble Court in compliance with the order dated 10.09.2026."

246. In the instant case, it is not disputed that till date no completion certificate has been obtained by the Promoter, and the Promoter with impunity has violated the provisions of Section 15A of the Act, 1973 and Section 4 (5) of the Act, 2010.

247. The object of issuance of completion certificate is to ensure that construction strictly follows the sanctioned building plan, local zoning

laws and floor space limit. In other words, it confirms that a building is constructed as per the approved building plan, local rules and standards.

248. The further object of issuance of completion certificate is that it ensures structural safety. The completion certificate confirms the building meets required engineering, fire safety and structural integrity standards. In other words, the completion certificate ensures that building is compliant with guidelines or structural integrity, fire safety, electrical fittings, plumbing and other vital systems.

249. Though, the Promoter in his compliance affidavit has stated that he had already applied for completion certificate, but had neither received the completion certificate within the time contemplated under the provision nor any intimation with regard to refusal of completion certificate had been intimated, therefore, it is deemed that he has obtained completion certificate. However, the said fact has been denied by the Development Authority, and the Vice Chairman in his affidavit dated 14.09.2026 has stated the steps taken by Development Authority to ensure that Promoter may obtain the completion certificate. Paragraph no.17 of the affidavit of Vice Chairman is being reproduced herein below.:-

"17. That at this stage, it would be relevant to point out the Authority, at various stage, had taken a serious action in order to ensure that the completion certificate may be obtained. However, despite the actions taken against the private respondent the completion certificate was not obtained. The details of the actions taken by the Authority are follows:-

a. On 02.08.2016, the challan was issued against the private respondent for granting possession without obtaining the completion certificate.

b. After issuance of challan, a case was registered and show cause notice was issued to the private respondent, on 02.08.2016 to show cause as to why the appropriate action may not be taken for delivering possession without obtaining the completion certificate.

c. Thereafter reminders were also sent on 09.08.2016 and 10.08.2016.

d. The private respondent vide its letter dated 10.08.2016 addressed to In-charge Enforcement Zone-7, apprised that various NOC's has been obtained however, due to non issuance of few NOC's such as Fire etc., the partial completion certificate could not be obtained.

e. The Ghaziabad Development Authority, again on 23.08.2016 communicated the private respondent that the objection raised in regard to completion certificate has not been cured, the information of which was already given on 24.09.2015. No application was given, despite informing private respondent on 04.04.2016 and 30.05.2016. Accordingly, 3 days' time was granted to the private respondent to apply for completion certificate along-with all the records.

f. Accordingly, on 27.10.2017 an application for obtaining partial completion certificate was applied wherein certain objections were raised on 30.11.2017 which was duly served upon private respondent on 02.12.2017, receiving of which is available on the said communication itself.

g. Thereafter, the Apartment Owner Association communicated various difficulties being faced by the residents, in compliance thereof, the Ghaziabad Development Authority issued a notice on 19.03.2018 to the private respondent to immediately obtain a completion certificate.

h. On 11.04.2018, the answering respondent has also lodged an FIR against the private respondent for transferring possession without obtaining the completion certificate.

i. Thereafter, on 28.06.2019 a letter was also sent to the private respondent to complete all ongoing work and immediately obtain completion certificate. It was also directed by the answering respondent that after obtaining the completion certificate, the affairs may be transferred to the Apartment Association."

250. From the contents of affidavit of Vice Chairman, it is evident that the statement of Promoter that he has applied for completion certificate with all necessary documents is incorrect and false. Therefore, the stand

taken by the Promoter that since he had applied for completion certificate and he did not receive the completion certificate or get any intimation with regard to rejection of completion certificate within the time enumerated in the relevant provision, therefore, the completion certificate is deemed to have been granted to the Promoter is incorrect and against the record.

251. In the present case, it is admitted on record that the sale deed in respect of apartment have been executed by the Promoter, and the apartment owners have been given possession and they are residing in all the flats except flats which are compounded under the third compounding. The completion certificate ought to have been obtained by the Promoter before selling even a single apartment, but the Promoter did not choose to obtain the completion certificate and has violated the provisions of Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010 with impunity thereby, putting the life of thousands of residents in the aforesaid society in danger, and in this misdeed of the Promoter, the Officers of the Ghaziabad Development Authority are equally involved inasmuch as despite there being ample evidence on record that Promoter has not obtained completion certificate, yet Officers of the Development Authority allowed the apartment owners to stay in the said apartments. The Officers of the Ghaziabad Development Authority did not take any concrete steps to ensure strict compliance of Section 15A of the Act, 1973 and Section 4(5) of the Act 2010, rather they in collusion with the Promoter allowed the second and third compounding of map despite knowing fully well the fact that Promoter has violated the provisions of Section 15A of the Act, 1973 and Section 4(5) of the Act 2010 and transferred the flats and possession to the apartment owners without obtaining the completion certificate which is an offence under Sections 25 & 26 of the Act, 2010.

252. It will also not be out of place to mention that while sanctioning the third compounding, it has been mentioned in the noting which we have reproduced in paragraph no.**97**, and the fact that Promoter has sold the common area to 85 persons which is evident from the noting and

details of persons to whom common areas have been sold which we have reproduced in paragraph no.236 of the judgment, yet the respondent no.2 sanctioned the third compounding.

253. This reflects that the Officers of the Ghaziabad Development Authority colluded with the Promoter in perpetuating the illegality committed by the Promoter by violating the provisions of Section 15A of the Act, 1973 and Section 4(5) of the Act 2010 which is a criminal offence thereby, putting the life of thousands of residents in the aforesaid Society in danger.

254. The aforesaid fact would show that no serious and sincere effort has been made by the Development Authority for taking any action against the Promoter for violating the provisions of Section 15A of the Act, 1973 and Section 4 (5) of the Act, 2010 inasmuch as from the averments contained in para 17, extracted above, of the affidavit of Vice-Chairman dated 14.09.2026, it is evident that after 28.06.2019, no step has been taken by the Development Authority in respect of failure of the Promoter to obtain completion certificate.

255. It is only when this Court took serious note of the matter and sought personal appearance of Vice Chairman, some committee has been constituted by the Vice Chairman with a direction to submit its report within one month.

256. The original record reveals that the ‘NOC’ from various departments namely, Fire, etc. have not been obtained by the Promoter for obtaining the completion certificate.

257. In such view of the fact, it is established on record that Promoter has violated the mandate of Section 4(5) of the Act, 2010 and Section 15A of the Act, 1973 with impunity in transferring the flats to the purchasers without obtaining completion certificate with an ulterior motive to fetch maximum money from the sale of apartments by compromising life and safety of thousands of persons living in the Society.

258. We find the conduct of the Promoter in transferring and delivering the possession of the apartments without completion certificate is reprehensible and calls for strict action against him for violating the provisions of Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010.

259. The facts delineated above also establishes that the Development Authority has been in collusion with the respondent no.3-Promoter in committing the aforesaid illegalities with impunity by the Promoter inasmuch as despite the fact that Development Authority did know about the violation committed by the Promoter, allowed him to transfer the apartments and deliver the possession to the apartment owners.

260. The illegalities did not stop here. The Development Authority knowing fully well, the fact that the Promoter has violated the provisions of Section 15A of the Act, 1973 and provisions of Section 4(5) of the Act, 2010 proceeded to grant third compounding and allowed him to construct two additional towers i.e. Tower no. 27 and Tower no.28 and add two floors in Tower nos.16, 17, 18 and 19, despite the fact that apartments had already been constructed up to eight floors in the aforesaid four towers, which are occupied by the families of purchasers of such apartments.

261. The collusion between the Development Authority and the Promoter is also manifest from the fact that the Promoter sold the flats in the aforesaid four towers i.e. Tower nos.16, 17, 18 & 19 without obtaining completion certificate and delivered the possession thereof which he could not do, as the Promoter did not submit any application for issuance of completion certificate in respect to aforesaid towers, thereby compromising with the security and safety of the residents of said towers. The Development Authority permitted the Promoter to construct additional two floors in Tower nos.16, 17, 18 & 19 which could not have been compounded, if the Development Authority had enforced the statutory provisions as detailed above and had taken action against the Promoter for violating Section 15A of the Act, 1973 and

Section 4(5) of the Act, 2010, harassment of the apartment owners by the Promoter could have been avoided.

262. A contention has also been advanced that apartment owners are also equally responsible for violation of Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010.

263. It is needless to say that the Promoter holds a dominant financial position, whereas apartment owners have purchased their unit after securing their own financing. To manage the funds, many a times the finance is obtained from the Finance Company or Financial Institutions or Banks which lends them money on interest which is to be returned by them in Equal Monthly Installments (EMI).

264. In the instant case, the project had started in the year 2005 and more than 20 years have passed since, but the project has not been completed. The Promoter has chosen not to obtain the completion certificate despite the fact that under Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010, the responsibility to obtain completion certificate is of Promoter.

265. In such a pitiable situation, we cannot expect the apartment owners who have invested their hard earned money and on many occasions have managed the funds from Finance Company, Financial Institutions or Banks with a liability to pay EMIs on getting the loan sanctioned which begins immediately after loan amount is paid to the Promoter. In such situation, the apartment owner cannot afford to wait till the time the Promoter obtains the completion certificate. Because of this compulsion and constraints, the apartment owners have no option but to occupy the apartments to ease out their financial burden. The hardship faced by the apartment owners does not give a licence to the Promoter to exploit their financial incapacity and helplessness to his advantage and violate the mandatory requirement of obtaining a completion certificate, as required under Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010. Therefore, we do not find substance in the argument of learned counsel for the respondents that apartment

owners are also responsible for violation of Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010.

266. So far as the first and second compounding are concerned, though we have recorded a finding that there was illegality in approving the first and second compounding for the reason that in the absence of any original sanction map, there cannot be any compounding inasmuch as compounding of offence is contemplated where permissible deviation has been made from the sanctioned map. However, since the third party interest have been created and petitioners have not assailed the first and second compounding map, therefore, in the peculiar facts of this case, we do not propose to pass any adverse order in respect of apartments constructed during the first and second compounding.

267. So far as third compounding is concerned, it has come on record that apartments constructed under third compounding have not yet been sold nor any third party interests has been created, which fact is also evident from the Commission's Report dated 25.09.2026, appointed by this Court vide its order dated 16.09.2026.

268. We have also held that despite the fact that eight Khasras i.e. Khasra nos. 1034, 1035, 1051, 1054, 1058, 1060, 1061 & 1063 are owned by Indian Air Force, but the area comprised in the aforesaid Kharas which is 4560 Square Meter had been included for the purpose of calculating FAR was patently illegal and erroneous as the Promoter did not have the title over the aforesaid eight Khasras. Therefore, the calculation of FAR by including the area of 4560 Square Meter which is the area of aforesaid eight Khasras is wrong. Therefore, for this reason also, the order of third compounding map has been passed illegally.

269. We have already on the basis of many grounds urged before us held the third compounding dated 18.12.2024 illegal. Therefore, we hold the third compounding dated 18.12.2024 cannot be sustained and is, accordingly, **set aside.** Consequently, we direct the respondent no.2 to demolish the 9th and 10th floor of Tower nos. 16, 17, 18 & 19 and also entire Tower nos.27 & 28 within a period of two months from the date of

the judgement. We also permit the respondent no.2 to recover the expenses incurred in demolition from the Promoter as arrears of land revenue. We further direct the District Administration as well as Police Authorities to provide adequate assistance and security to the Officers of the Development Authority at the time of carrying out demolition in compliance of this order.

270. In the instant case, we have held that the concerned Inspector Surendera Singh has not conducted the investigation properly and fairly, and thus, has failed to discharge his duty properly. In such view of the fact, we suspend the Inspector Surendera Singh and direct the competent authority to hold an inquiry against him for dereliction of duty.

271. We have already extracted the contents of affidavit of Superintendent of Police. It reflects from the affidavit of Superintendent of Police that he evaded disclosing the name of the Officer who has approved the Final Report. We are surprised to see such an affidavit. However, we direct the Commissioner of Police, Ghaziabad to find out the concerned Officer who has approved the Final Report in Case Crime No. 0749 of 2018, and further direct the State Government to institute an inquiry against such Officer for dereliction of duty.

272. In the instant case, for the reasons given above, we have held that the third compounding could not have been done, and further despite the fact that authority knew that the Promoter has violated with impunity the provisions of Section 15A of the Act, 1973 and Section 4(5) of the Act, 2010 and despite having knowledge about said fact, the Vice Chairman has sanctioned the third compounding by order dated 18.12.2024. Therefore, we are of the view that this is also a case of dereliction of duty by the Vice Chairman of Ghaziabad Development Authority who has sanctioned the third compounding order dated 18.12.2024. Accordingly, we direct the State Government to institute a disciplinary inquiry against the Vice Chairman of Ghaziabad Development Authority who has issued/approved third compounding map dated 18.12.2024 within a period of one month from the date of this judgement and order.

273. For the reasons delineated above, we find that it is a case where poor apartment owners have been harassed by the Promoter in connivance with the Development Authority. Therefore, it is a fit case for imposition of cost. Accordingly, we quantify the cost of Rs.25 lacs upon the respondent no.3, which shall be deposited by him in the accounts of Society namely, Gulmohar Greens Residents Welfare Association (GGRWA) within a period of one month from the date of this judgement and order.

274. We have recorded that Promoter has sold the common areas to various persons, and respondent no.2 has identified 85 such persons as is evident from the noting of respondent no.2 which we have reproduced in paragraph no.238, therefore, we further direct the respondent no.2-Vice Chairman, Ghaziabad Development Authority to constitute a three Members Committee Headed by him, which shall after giving due notice and opportunity of hearing to the aforesaid 85 persons identify the common areas which have been sold to them, and if, any construction has been raised by them, they shall demolish the same, and thereafter, hand over such common area to the society.

275. We further direct the respondent no.3 i.e. Promoter to return the sale price of the common areas sold by him to the aforesaid 85 persons and alongwith the cost of construction to be determined and quantified by the three Members Committee alongwith 10% interest from the date the apartment owners have paid the price for such area to the Promoter. The Committee constituted in paragraph no.274 of the judgement shall complete the aforesaid exercise within a period of six months from the date of this judgement.

276. It is a clear case where the Promoter has misrepresented the correct facts and played fraud upon the apartment owners by selling common areas, and thus, has committed an offence. Accordingly, we direct the concerned Police Station to register FIR against the Promoter for committing the offence of fraud, misrepresentation and violating the provisions of the Act, 2010 with impunity within two weeks from the

date of the judgement. The investigation in the aforesaid offences shall be done by an Officer not below the rank of Additional Commissioner of Police, Ghaziabad.

277. We have held above that in the instant case, the Officers of the Ghaziabad Development Authority are also in collusion with the Promoter, and because of their slipshod approach, the petitioners and residents of the Society had to suffer a lot and had to enter into the litigation by incurring substantial expenses, therefore, in such view of the fact, we are of the view that respondent no.2 be directed to pay a cost of Rs.50,000/- to each petitioner in Writ-C No.21821 of 2025 within a period of two months from the date of pronouncement of this judgement.

278. For the reasons delineated above, both the writ petitions are, hereby, ***allowed.***

279. The Office is directed to return the original record of Ghaziabad Development Authority to Sri Tejasvi Misra, Advocate forthwith after obtaining receiving from him.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

October 27, 2026
Sattyarth/NS

Digitally signed by :-
NITIN KUMAR
High Court of Judicature at Allahabad