

**BEFORE THE MAHARASHTRA  
REAL ESTATE REGULATORY AUTHORITY, MUMBAI**

Physical hearing held at MahaRERA Churchgate Office.

**COMPLAINT NO: CC006000000220888**

RARE TOWNSHIP PRIVATE LIMITED

...COMPLAINANT/S

VS

IIRF INDIA REALTY VIII LTD.

...RESPONDENT/S

**MAHARERA PROJECT REGISTRATION NO. P51800001041 & 16 Ors.**  
*(in the table in para No.1 hereinbelow)*

**Order**

June 30, 2022

*(Date of hearing - 20.06.2022 - matter was reserved for order)*

**Coram: Ajoy Mehta, Chairperson, MahaRERA &  
Dr. Vijay Satbir Singh, Member 1, MahaRERA.**

Advocates Dr. Parimal Shroff a/w

Sana Khan i/by SNG & Partners for the Complainant

Advocates Naushad Engineer a/w Aman Anand,

Kartik Somasundram, Alabh Lala i/by Bharucha & Partners for the Respondent

1. The captioned complaint has been taken up for hearing before the division bench of MahaRERA in view of the complex larger issue of the role of Investors in real estate projects. Further there are complaints pertaining to the below mentioned said Projects pending adjudication before the Chairperson and Member 1 of MahaRERA. The issue being common to all the said Projects mentioned hereinbelow it was imperative to take up its adjudication before the division bench.
2. The Complainant is the Developer / Promoter within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "said Act") of Real Estate Regulatory Authority (hereinafter referred to as the "RERA"). The Complainant is registered as the Promoter of the

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larger Project namely "RISING CITY" which is divided into 17 phases building and floor wise and each of the phase is registered under section 5 of the said Act bearing **MAHARERA Project Registration numbers** as listed below (hereinafter collectively referred to as the "said Projects"):

SR. NOS.	BUILDING / PHASE / FLOORS	MAHARERA PROJECT REGISTRATION NUMBERS
1	RISING CITY - NORTH SEA HEIGHTS - upto 14 floors	P51800001041
2	RISING CITY - NORTH SEA HEIGHTS - 15 to 18 floors	P51800001036
3	RISING CITY - NORTH SEA HEIGHTS -19 to 28 floors	P51800001037
4	RISING CITY - HOUSTON RESIDENCY - upto 14 floors	P51800000937
5	RISING CITY - HOUSTON RESIDENCY - 15 to 18 floors	P51800000934
6	RISING CITY - HOUSTON RESIDENCY -19 to 28 floors	P51800000933
7	RISING CITY - ATLANTA HEIGHTS - upto 14 floors	P51800001079
8	RISING CITY - ATLANTA HEIGHTS - 15 to 18 floors	P51800000756
9	RISING CITY - ATLANTA HEIGHTS - 19 to 28 floors	P51800000923
10	RISING CITY - MANHATTAN RESIDENCY - upto 14 floors	P51800001229
11	RISING CITY - MANHATTAN RESIDENCY - 15 to 18 floors	P51800000733
12	RISING CITY - MANHATTAN RESIDENCY - 19 to 28 floors	P51800001035
13	RISING CITY - DETROIT RESIDENCY - upto 14 floors	P51800001133
14	RISING CITY - DETROIT RESIDENCY - 15 to 18 floors	P51800001063
15	RISING CITY - DETROIT RESIDENCY - 19 to 28 floors	P51800000935
16	RISING CITY - INDIA INTERNATIONAL TOWER - upto 13 floors	P51800001034
17	RISING CITY - INDIA INTERNATIONAL TOWER -14 to 28 floors	P51800001357

On the MahaRERA Project registration webpage the proposed completion date of the said Projects is mentioned as 31.12.2020 and the revised proposed completion date for the said Projects from Sr. Nos.1 to 15 hereinabove is mentioned as **30.12.2024** and for the remaining Sr. Nos. 16 & 17 the revised completion date is mentioned as **30.12.2026**. Further it is pertinent to note that the Complainant Promoter was earlier known as Infrastructure Ventures India Ltd.

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3. The Complainant is seeking the following reliefs:
- To declare the Respondent as a Promoter of the said Projects registered with MahaRERA;
  - To take cognizance of the acts and conduct of the Respondent causing delay in the project completion and accordingly restrain the Respondent from creating any hindrance in the Complainant's efforts to complete the said Projects;
  - To direct the Respondent to complete the said Projects in a time bound manner along with the Complainant and do all such acts, deeds and things that may be required for necessary completion of the said Projects;
  - To declare that the Respondent is responsible for delay in completion of the said Projects.
  - To hold liable the Respondent for delay in handing over possession of the flats to the Allottees and direct the Respondent to pay interest/compensation as may be payable to the Allottees;
  - To pass such other or further orders as this Authority deems fit and proper.
4. The following roznama was passed by this Authority on 08.06.2022 & 20.06.2022 respectively:

Roznama dated 08.06.2022:

*"Both parties present.*

*The Complainant begins by giving an overview of the project. The project is spread over approximately 52 hectares located at Ghatkopar and is a PPP Project.*

*In the initial stages, the project faced impediments due to Civil Aviation height restrictions, a new DCPR 2034 being notified and the onset of the Covid-19 pandemic.*

*In the interim period, 550 tenements came to be sold.*

*The Respondent in the present case came in as equity holders, wherein a shareholders Agreement and a share subscription Agreement came to be executed, which is now referred to as the, SSHA. The SSHA was executed between the Complainant and the Respondent IIRF on the 21.12.2008. The SSHA among various issues also gave certain veto power to the Respondent. Through another supplementary agreement dated 26.09.2012 certain further rights were also granted to the Respondent. The SSHA*

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envisages among other things the compulsory presence of one member of IIRF to conduct the board meeting.

The SSHA also included a 'put option, clause which was invoked by the Respondent leading to initiation of arbitration between the two parties. The SSHA also has certain restrictive conditions wherein the Respondent exercises controlling rights for expenditures exceeding Rs. 25 lakhs, matters relating to sales, etc.

The Complainant approached Government of India to access SWAMIH funds which was sanctioned to them on the 21<sup>st</sup> October, 2020. However, due to a non-responsive Respondent and his denial of consent, there was a deadlock which prevented the complainant from accessing SWAMIH funds.

The Complainant now seeks among other reliefs that the Respondent be declared as a 'promoter'. The Complainant cites MahaRERA Circular No. 12/2017 dated 04.12.2017 to emphasize on the point of 'who exactly is a promoter' when read in conjunction with Section 2 (zk) of the Act.

The Complainant also makes reference to the 2013 amendment of the Companies Act wherein the definition of 'promoter' as in the Companies Act has been further widened to include various parties and also the definition of 'control' as laid out in the Companies Act.

The matter stands adjourned to **20.06.2022 at 03:30 pm for physical hearing at the Churchgate office of MahaRERA.**

The Complainant to submit a copy of the Terms of Reference of the Arbitration proceedings to the Authority for its perusal and a copy of the same be also served on the Respondent."

Roznama dated 20.06.2022:

"Both the Parties are present.

The Complainant begins by bringing to the notice of this Authority, an order of the Hon'ble Arbitrator dated 18.06.2022, wherein the sole Arbitrator has held that the issue of the Promoter would lie within the jurisdiction of RERA.

The Respondent brings out the difference between veto powers and the need for affording a basic protection to the Investor. The veto powers are nothing but reactive in nature only to prevent certain events and occasions that might jeopardize the interest of the Promoter. The SSHA (Share Subscription & Share Holder's Agreement) does not provide any reactive powers.

The SSHA clearly indicates the present Respondent as an Investor and clearly labels the Complainant and others as the Promoters. He also points out to the recital B wherein Promoters hold 100% and recital C wherein day to day business of the Company is controlled by the Promoters. The Respondent also points out to various recitals indicating that various clearances including those from the Planning Authority are the

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responsibility of the Company and not the Respondent. He also points out that it is the Promoter who has agreed to execute activities and promote the interest of the Company. The Respondent Investor says that, even when the Complainant was obligated to provide essential and critical information, the same was not given and hence, he cannot be said to be in control. He also points that as Investor he has only one Director and further that the Director is indemnified and not liable for any failures that may take place. The Managing Director is one of the Promoters who has various rights.

The Complainant points to para No.12.11 – lists out the veto rights. He also points to the various conditions under which he can exit and the timelines for the same. The Respondent points to para No.6.2.2 of the Addendum - conditions for further funding and the letter agreement which gives the Respondent a 'call option'. The Respondent emphasises that, he cannot be held to have caused the construction as started in 2004, and he came in only in 2008. The Investor (Respondent) states that, he put in a 'put option' to exit the project. He further emphasises that reactive rights are not controlling rights and hence a veto rights being exercised by a minority shareholder cannot be taken to mean exercising control. The Respondent elaborates on Schedule 5 wherein conditions under which veto can be exercised are articulated. The Respondent cites a 2010 order of the Hon'ble SAT (Securities Appellate Tribunal) on protecting the interest of an Investor versus what constitutes control. He also further cites an order of the Hon'ble Supreme Court indicating that power to block does not mean control.

The Respondent points out to the fact that the circular of MahaRERA dated 14.12.2017 is not applicable as there was neither area sharing nor was there an arrangement for a share in sale proceeds. The limited aspect is that of creating an instrument for the protection of the Investor. The mere fact of receiving dividend does not make one a Promoter and an individual shareholder cannot be held responsible for the liabilities of the Company. The Respondent elaborates that the Arbitrator in his order has not given relief of providing NOC to the Complainant for the receipt of SWAMIH funds as that is likely to jeopardize the interest of the Investor.

The Complainant avers that the definition of control in the context of IBC (Insolvency & Bankruptcy Code) or the takeover code would have no bearing on the present case. The Complainant also questions why further investment by a third party is being impleaded when there is no non-compliance. He also points to the Gauri Thatte case which specifically deals with an instance of area sharing. The Respondent once again points out that in the event there is a shortfall of funding, the SSHA clearly mandates that this shortfall shall be brought in by the Promoter.

The Parties are at liberty to file written submissions, if any, by the 24.06.2022 subsequent to which, the matter will be reserved for order."

5. The submissions in the captioned complaint and the reply of the Respondent dated 25.05.2022, the rejoinder dated 29.05.2022 and the sur-rejoinder dated 07.06.2022 are all perused and taken on record. Further the written submission filed by both the Parties are also perused and taken on record. This Authority

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refrains from repeating and reproducing the submissions of the Parties mentioned in the aforesaid documents for the sake of brevity.

6. However, certain pertinent points are noted hereinbelow from the documents filed and submissions made by the Parties in the captioned complaint:
  - a. The complaint has been filed by the Complainant on 20.04.2022. The MahaRERA Project registration webpage mentions the revised completion date for the said Projects from Sr. Nos.1 to 15 hereinabove as **30.12.2024** and for the remaining Sr. Nos. 16 & 17 as **30.12.2026** which is yet to arrive.
  - b. The Complainant is a Promoter of all the 17 Project registered as one large Project namely the RISING CITY to be developed building wise as per the respective Project registration and the construction of 6 residential wings with 19 habitable floors which would in all have about 782 units.
  - c. The Respondent is one of the Investor who has agreed to participate in the Company of the Complainant by way of an investment as per the terms agreed between them under the Share Subscription and Share Holder's Agreement dated 24.12.2008 (hereinafter referred to as the "SSHA"), the Deed of Addendum dated 26.09.2012 to the SSHA (hereinafter referred to as the "Addendum"), Letter Agreement dated 26.09.2012 and other incidental documents.
  - d. The crux of the contention of the Complainant is that the Respondent through the instrument of the said SSHA and its Addendum is vested with such powers and rights which enables the Respondent herein to stop and delay the execution of the said Projects through various acts. In view of these powers vesting with the Respondent the Complainant thus avers that the Respondent squarely fits within the definition of a 'Promoter' as defined under section 2(zk) of the said Act. The essence of the dispute is thus whether a financier of the said Projects becomes a Promoter of the said Projects through certain agreements and instruments which enable the Respondent to stall or slow the completion of the said Projects.

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e. In order to answer the above question, it is imperative to peruse the said SSHA and its Addendum. On mere perusal of the clause 12.11 of the said SSHA it is observed that on matters specified in the Schedule 5 of the said SSHA, the consent of the Investor i.e. the Respondent herein is necessary and mandated and that no action on any such matters as listed in Schedule 5 of the said SSHA shall be initiated till the consent of the Respondent is obtained. The Schedule 5 of the said SSHA is reproduced hereinbelow for ease of reference:

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**SCHEDULE 5  
VETO MATTERS**

1. *The Company's Business and Assets:*  
*Business restructuring, reorganization, and diversification, acquisitions, new investments, mergers, divestments, sale or part sale, transfer, or amalgamation, of the company in unrelated areas, issuance, or sale of equity of subsidiaries, sale or part sale of the assets of the company except in the normal course of its business.*
2. *Capital Structure:*  
*any change in the capital structure of the company, such as the reclassification of the equity shares of the company, buy back of shares, or any other equity-linked securities, either as a public offering or private sale or issue of shares but other than by way of a stock option to employees.*
3. *Change in Project Scope:*  
*Establishment of a business plan, any material deviation and/or material change in project scope and/or development or phasing plan, and contract valuations as would be stated in the business plan.*
4. *Appointment/change of internal/external auditors:*  
*Appointment, renewal, and/or change of statutory auditors of the company.*
5. *Additional Debt, Creation of Lines:*  
*Any significant change in the liability structure (excluding working capital-related items) of the company including off-balance sheet items, such as leasing.*
6. *Approval of Annual Accounts of the Company*
7. *New Business Initiatives:*  
*Any new business initiative that the company wishes to undertake which does not fall within the scope of its current areas of operations as defined in the business plan.*
8. *Merger, Amalgamation of Group Companies Involving: the company, creation of subsidiaries of the company.*
9. *Declaration of dividend to shareholders.*
10. *Amendments of the Memorandum and/or Article of Association except in accordance with the terms of the Agreement.*
11. *Winding up of the operations/Company.*
12. *Property operating matters:*
  - (a) *Approval of all major property financing decisions in unrelated areas; and*
  - (b) *Structuring and securing any third-party joint ventures in unrelated areas involving the venture assets.*
13. *Others:*
  - (a) *change in the accounting year, the accounting policy, or the registered office.*

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(b) Change the name of the company.

(c) All decisions with respect to the listing of the company.

(d) Any strategic/financial/other alliance with a third party, which results in investments by the company in, unrelated areas.

(e) Distribution of profits/commission of the directors.

(f) Any related transactions between the company and its promoters, directors or their affiliates, organizations, firms, subsidiaries, or other connected persons, or entities.

14. Project expenses in excess of Rs. 25,00,000/- (Rupees Twenty Five Lacs only)

15. Approval of sales plan relating to the project."

- f. This Authority also takes on record the fact that the Parties herein are pursuing an arbitration proceeding before a sole Arbitrator since the year 2020 wherein the Parties are appearing before the Ld. Arbitrator for adjudication of the put option exercised by the Respondent Investor under the said SSHA.
7. At the outset this Authority makes it clear that it does not have the mandate to adjudicate on the matters relating to the said SSHA and its Addendum. This Authority is therefore not attempting to go into the relative merits of the recitals therein. In the present complaint, this Authority is only using the said SSHA as a torch to shed light on aspects and characteristics of the Respondent that would enable and assist this Authority to conclude whether the Respondent is in the shoes of a Promoter or not.
8. Thus, the issue before this Authority with regard to the said Projects is *whether the Respondent i.e. the Investor in the said Projects is also a Promoter (Investor) as per the definition under the said Act?*
9. It would be necessary to first examine the statement of objects and reasons (preamble) to understand the malady and the cure that a particular piece of legislation intends to address. The preamble of the said Act articulates the aims, objectives and the broad issues that the said Act attempts to address. The preamble of the said Act is reproduced for ready reference hereinbelow:

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

10. On the plain reading of the preamble, it is apparent that one of the main aims of the said Act has been to protect the interest of the consumers (*home buyers*) in the real estate sector. The real estate sector was a difficult terrain for the consumer to negotiate prior to the advent of RERA / the said Act. Whenever there were problems in / with a real estate project in most cases it was the consumers who suffered. The real estate sector by its very nature faced a myriad of problems ranging from clearances by the Planning Authorities to land title issues to the issues relating to environmental & other clearances and others like provision of services such as water supply, sewerage and electricity. Each of these problems created various impediments in the progress of the real estate projects ranging from delays to complete abandonment of the projects. In almost all such cases it was the consumers who suffered and had no / or a very arduous recourse to redressal. The consumers in the real estate project invariably in most cases paid monies i.e. advance on the promise of delivery of the premises. In most cases the pain point was that the money paid was a substantial portion of the consumers life savings. A non-fulfilment of such a promise in such situations left the consumers of the real estate projects financially broken and distraught. Hence a need was felt for long to create a legislation which would put the consumers at the centre and devise a legislative framework to protect the consumers. The said Act thus, was promulgated to cure the defect wherein a consumer always lost every time a real estate project ran into difficulty.
  
11. Further, emanating from the preamble of the Act the legislation very clearly laid out the definition of a Promoter and articulated his liabilities and obligations. The purpose of this was to ensure that an identifiable entity is held responsible to guarantee that the consumers rights are complied with and promises are

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delivered. The said Act thus, clearly defined who would carry the burden of a 'PROMOTER'. It was this Promoter upon whom the responsibility of complying with the rights of the consumers was cast and it was the identified Promoter who would be held responsible to deliver upon the promise. In this context, it would therefore now be important to examine the definition of a Promoter as laid out in section 2 (zk) of the said Act.

*" Section 2(zk) PROMOTER means, –*

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

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any development authority or any other public body in respect of allottees of – (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

*(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

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

*(vi) such other person who constructs any building or apartment for sale to the general public.*

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

12. On the plain reading of the section 2(zk) of the said Act, it is very clear that a Promoter is **not only one who constructs but also one who causes to construct**

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an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments. In the present complaint before this Authority, it is an admitted fact that the Respondent is not a person who is involved with or was having the responsibility to construct the said Projects. The Respondent is an Investor and admittedly was not involved with the construction of the building. Thus, the examination of the other part of the section 2 (zk) becomes crucial and which deals with a Promoter also being a person "who causes to be constructed" an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments. The legislature thus has not stopped at including a person who constructs in the definition of the Promoter but has widened the scope to include a person who causes the construction also as a Promoter. The legislature has thus cast the net wide enough to ensure that any actor who makes a promise in the context of the real estate industry is held to its promise. Towards achieving this end the legislature has consciously gone beyond just the aspect and act of actual construction to include other acts and deeds also.

13. In view thereof, the simple meaning and importance of the word 'CAUSES' needs to be examined. Under the Black Laws dictionary the term 'CAUSES' is defined as "*That which produces an effect; whatever moves, impels, or leads.*" Further under the Merriam webster dictionary the term 'CAUSES' is defined as "*a reason for an action or condition, something that brings about an effect or a result, a person or thing that is the occasion of an action or state, an agent that brings something about.*" It is thus clear that meaning of term 'CAUSES' simply implies an entity who becomes the reason or the instrument to trigger a particular action. The trigger does not necessarily mean an affirmative action but also becomes a cause for an action not being taken. The term 'CAUSES' is thus not limited to just causing something to be done but goes beyond to also include causing something **not to be done** or causing something to be done in a particular manner.

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14. In order to resolve the issue of whether the Respondent Investor in the present complaint is a Promoter or not it would be necessary to examine whether this entity falls within the definition of a person "**who causes to be constructed**". To arrive at a conclusion, it thus becomes imperative to examine the said SSHA which defines the role of each entity in the Company and their inter se relationships. It would be important here to peruse clause No. 12.11 of the SSHA, a plain reading of the said clause would indicate that no resolution can be validly passed, or decision can be taken by the Board or by management in any manner pertaining to the matters specified in Schedule 5 listed hereinabove of the said SSHA unless the consent of the Investor i.e. the Respondent herein is obtained. The said clause No. 12.11 of the said SSHA is reproduced for ready reference hereinbelow:

*"12.11 - Veto Matters: Notwithstanding anything contained in this Agreement, for so long as the Investor is entitled to appoint/ nominate a director on the Board (i.e. for so long as the Investor holds at least the Cut off Percentage) no resolution shall be validly passed or decision be taken by the Board or by circulation or by the management committee or any committee of Directors or executives of the Company or in any other manner on or relating to the matters specified in Schedule 5 hereto ("Veto Matters"), unless the Investor Consent in favour of such resolutions has been obtained. Further, no officer or Director of the Company shall take any action on any such matters, unless the matter has been validly passed with the Investor Consent."*

15. Therefore, it is clear that the Board of the Company that has the responsibility of executing the said Projects will not be able to take any decisions or address any issue without the consent of the Investor i.e. the Respondent herein. It can be therefore concluded that the Respondent Investor through its affirmative vote can cause the construction of the said Projects. Also, in the converse the Respondent by holding back its affirmative vote and / or simply abstaining can prevent the completion of the said Projects.
16. Further on perusal clause No. 14 in the Schedule 5 of the said SSHA it is once again clear that the Project expenses of Rs.25,00,000/- and above needs a positive consent of the Respondent Investor. In a real estate project of this magnitude to say that every expenditure will be below Rs.25,00,000/- would be preposterous.

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Once again re-affirming that an affirmative action on the part of the Investor / Respondent is a necessary ingredient to carry the said Projects forward and to conclusion. The said clause No. 14 in the Schedule 5 of the said SSHA is reproduced for ready reference hereinbelow:

*"14. Project expenses in excess of Rs. 25,00,000/- (Rupees Twenty Five Lacs only)"*

Further, on perusal of clause No. 2 in the Schedule 5 of the said SSHA it is also observed that any further funding or any change in shareholding pattern would also require consent of the Respondent Investor. The said clause No. 2 in the Schedule 5 of the said SSHA is reproduced for ready reference hereinbelow:

*"2. Capital Structure:*

*any change in the capital structure of the company, such as the reclassification of the equity shares of the company, buy back of shares, or any other equity-linked securities, either as a public offering or private sale or issue of shares but other than by way of a stock option to employees."*

This clause once again reaffirms what has been observed above.

17. Having observed the above, this Authority also appreciates here that these clauses are necessary to protect the interest of the Respondent Investor. This Authority also has the responsibility to ensure that Promoters and Investors and their respective interests are protected for larger wellbeing of the real estate sector. This Authority takes on record and appreciates the facts that without these clauses it may be difficult for the Respondent Investor to protect the monies invested in the said Projects. The above is thus necessary to create a safe environment whereby an Investor is confident to bring in money without being involved in the construction and is reassured that he would be able to get his money back together with reasonable returns. Having said this, it is now important to analyse as to who bears the cost of this protection being offered to the Investor. The Parties who are entities in this company have created a legal instrument to protect their individual interest viz a viz the others. One however cannot overlook the fact that in the process of protecting their own interest it is the consumer who finally ends up suffering. The said Act thus specifically by bringing the consumers in the centre stage has pushed the boundaries of protection available to the consumers to create a safe haven for this class. In

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essence the said Act has created a paradigm wherein when the consumers of the real estate projects when they are not in breach, they would stand protected. The consumers (*home buyers*) are thus ring fenced and their space stands protected from the disturbances taking place outside. These disturbances and disruptions that takes place outside the purview of the consumers and over which the consumers have no control should in no manner affect the consumers or put them in a situation of loss.

18. Thus, from the present complaint, it is very clear that there is one Party that is involved in executing the said Projects and there is a second party which is involved in financing and funding the said Projects. Both these Parties through a web of legal structures have ensured protection of their respective interests. This Authority has no reason to adjudicate upon the said SSHA or delve into the merits of the respective recitals. However, this Authority very much needs to draw conclusion about the overall scheme of the said SSHA to identify the actors "who causes to be constructed" the said Projects. In order to do this, this Authority needs to examine the clauses in the said SSHA which conclusively vests some of the various actors with enough powers to either cause the construction or prevent the construction to be caused. It can be reasonably concluded that the Respondent Investor though might not be actually constructing the building but through a legal structure has created a situation wherein through certain actions it is able to prevent the construction of the buildings. This Authority clarifies that it has no jurisdiction to examine the merits as to whether the decisions or actions taken by the Investor i.e. Respondent are warranted or not. This Authority would in fact like to believe that these decisions have been taken with no malafide and in the best interest of protecting the investments of the Respondent Investor. This Authority would once again have no cause / jurisdiction to reverse any of these decisions taken in the interest of the Investors. However, this Authority tasked with the role of protecting the consumers would have to perforce examine the outcome of these decisions and its fall out which affect the rights and interests of the consumers.

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Without getting into the merits of the decisions taken by the Respondent Investor or the Promoter Complainant one thing which is amply clear is that it has led to a situation wherein the said Projects have been stalled and the date promised to the consumers are not going to be met with. This has led to distress amongst the consumers and an uncertain future now stares at them. A plethora of cases of the consumer versus the Promoter Complainant is now awaiting adjudication before this Authority. The consumers after investing their life long savings are now not sure as to when they would get their promised homes and the reasons for the same are beyond their comprehension.

19. Keeping in mind the task entrusted upon this Authority, there is no iota of doubt that the said Projects are being stalled in view of the disputes between the Complainant Promoter that is involved in executing the said Projects and the Respondent Investor who is involved in financing and funding the said Projects. Also, from the plain reading of the certain clauses of the said SSHA mentioned hereinabove more specifically it is apparent that no resolution can be validly passed, or decision can be taken by the Board or by management in any manner pertaining to the matters specified in Schedule 5 of the said SSHA unless the consent of the Investor Respondent herein is obtained. This makes it apparent that the Investor Respondent is the one who causes to construct the said Projects and thus, clearly falls within the definition of a Promoter under section 2 (zk) of the said Act.
20. In order to carry out this exercise of determining if the Respondent is a Promoter or not, this Authority shall restrain itself from carrying out a forensic examination and a search for finger prints of the actor who has caused impediments in the said Projects. This Authority neither has the wherewithal nor the legislative mandate to hunt for evidence, corroborate it and pass a ruling of convicting an actor for effectively delaying the said Projects. Having said the above it would suffice for this Authority to conclusively fasten the responsibility of a Promoter on the Respondent or in the converse acquit the Respondent from the obligations of a Promoter. As observed and discussed above, the said SSHA

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and its Addendum are clearly constructed in a manner to afford the Respondent a conclusive and irrefutable opportunity to take action or refrain from taking action to set the tone and direction of the said Projects. The Respondent clearly can, through well-defined and articulated options available in the said SSHA and its Addendum can stall or slow or take the said Projects to its conclusion (completion). It can be said with conviction that the said SSHA and its Addendum have put the Respondent in a position where he can 'cause to construct' and hence firmly stands in the shoes of the Promoter.

21. With the Investor (Respondent) now being fastened with the responsibility that vests on the shoulders of the Promoter (Complainant) the question that now begs an answer is *do we leave the Investor vulnerable and make a real estate project a game of luck and chance?* The answer to this is an emphatic NO. The Investor has every right to protect his interest. The issue is that while the Investor protects his interests the wealth of the consumers (*home buyers*) cannot be eroded and their interest cannot be jeopardised as well. This Authority does not grudge the shield of protection that the Investor has chosen to cover himself with. The issue is that the time value of the money invested by the consumers also needs to be protected when they are not in breach. The consumers must know the entity from whom the remedy will flow. This Authority has the responsibility to first determine the actors on whom the liability for remedy shall vest in the event of any grievance. Having fixed this, this Authority shall then proceed to determine the reliefs that needs to be given to the consumers of a real estate project in the event of a breach by the Promoter. Having decided what are the reliefs to be given to the consumers it now falls upon all those who carry the burden of the Promoter to share the same. Thus, both the Complainant Promoter and the Respondent Investor (*financiers*) in the present complaint are **Promoters**. All liabilities arising out of a breach shall fall upon both, the Complainant Promoter and the Respondent Investor and how the same is distributed and apportioned between the Complainant Promoter and the Respondent Investor cannot be of any concern to the consumers of the said Projects. So also, this Authority has no

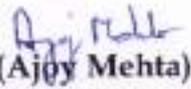
mandate to venture into the aspect of apportioning the liability on the various Promoters of the real estate project. This Authority shall not indulge in adventurism and shall desist from apportioning the liabilities between the Promoter (Developer) and Promoter (Investor). It would not be out of place here to sound a word of caution. This order cannot be and should not be used to force every Investor into the shoes of the Promoter. Each Investor agreement shall have to be examined individually to determine and identify recitals which fastens the definition of the Promoter on him. This order shall surely not be used as a paint brush to paint every Investor in the colour of a Promoter.

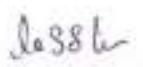
22. The answer to the above issue at para No.8 hereinabove is answered in **affirmative**. Needless to say, that all the obligations of a Promoter shall be applicable to both the Respondent and the Complainant herein as well, as per the provisions of the said Act and all the consumers of the said Projects shall be entitled to seek recourse against any delay in the completion of the said Projects against the Complainant and the Respondent herein jointly.

#### **FINAL ORDER**

In view of the observations hereinabove, the complaint is disposed of with the following directions:

1. The Respondent Investor is the Promoter (Investor) and the Complainant Promoter is the Promoter (Developer) of the said Projects.
2. The Complainant Promoter (Developer) is directed to complete all the documentations with regard to the addition of the name of the Respondent as a Promoter (Investor) on the MahaRERA Project registration webpage for the said Projects within 30 days from the date of this order.
3. No order as to cost.

  
(Ajay Mehta)  
Chairperson, MahaRERA

  
(Dr. Vijay Satbir Singh)  
Member 1, MahaRERA