



REAL ESTATE

Sale as the Sine Qua Non of RERA: Allahabad High Court Holds Leasehold Sub-Lease Projects Fall Outside the Ambit of the Real Estate Regulation Act

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The Real Estate (Regulation and Development) Act, 2016 has been subject to significant judicial scrutiny since its enactment. In *U.P. Real Estate Regulatory Authority v. Maa Bhagwati Commercial Reality N Resorts LLP*, RERA Appeal No. 169 of 2025, decided on 8 May 2026 by the High Court of Allahabad (Mr. Justice Syed Qamar Hasan Rizvi), the Court examined whether a developer operating on leasehold land with only sub-leasing rights could be compelled to seek registration under the Act. The judgment carries profound implications for interpreting “promoter” under Section 2(zk) and “real estate project” under Section 2(zn) of RERA, 2016.

The dispute arose from a public charitable trust, Udasin Sangat Rishi Aashram, Ranopali, Ayodhya, registered under No. 275/2019, absolute owner of agricultural plots Gata Nos. 309 and 328 at Village Ranopali, Ayodhya. By a registered lease deed dated 29 September 2023, the Trust granted the respondent, Maa Bhagwati Commercial Reality N Resorts LLP, a lease for twenty-nine years and eleven months, renewable by mutual consent, at an annual consideration of rupees sixty lakhs with five per cent escalation every five years. The respondent applied to the Uttar Pradesh Real Estate Regulatory Authority on 2 February 2025 for registration of its commercial project “Samrajya” under Section 4 of RERA, 2016. The Authority raised successive objections in communications dated 6 February, 21 February and 3 March 2025, questioning the Trust’s authority to lease and sub-lease the property, and ultimately rejected the application by an order dated 10 March 2025.

Aggrieved, the respondent preferred Appeal No. 135 of 2025 before the Real Estate Appellate Tribunal, Lucknow, under Section 44 of the Act. The Tribunal, by its order dated 25 September 2025, allowed the appeal and directed the Authority to grant registration, including a Login ID and Password, within seven days.

The Authority then filed the present statutory appeal under Section 58 of RERA, 2016, before the High Court, admitted on 20 November 2025. The Court framed three questions: whether the Regulatory Authority was a “person aggrieved” under Section 58; whether a trustee could lease trust property without leave under Section 92 of the Code of Civil Procedure, 1908; and whether a project could be registered on leasehold land for twenty-nine years and eleven months in view of Section 4(2)(l)(A) of RERA, 2016.

The proceedings took a decisive turn when the respondent filed a Short Counter Affidavit relying upon paragraph 26 of the appellant’s own stay affidavit, wherein the Regulatory Authority itself had averred that the respondent was not a “promoter” under Section 2(zk) and the project was not a “real estate project” under Section 2(zn). The respondent urged that this admission absolved it from any obligation to seek registration under Section 4 or obtain registration under Section 5. Significantly, the appellant filed no rejoinder and expressly agreed that the appeal be decided on this proposition. The parties further consented that the first two questions be left open, confining the appeal to the third question alone.

The Court examined the Preamble and Statement of Objects and Reasons, which emphasize ensuring the sale of plots, apartments, or buildings. A conjoint reading of Section 2(zk) and Section 2(zn) revealed that the sine qua non for attracting the Act is the purpose of sale. Both provisions mandate development or construction coupled with the intention to sell units to allottees. Without both elements, the statutory framework does not apply.

The Court scrutinized clauses 4 and 7 of the lease deed, which conferred only the right to construct and sub-lease. The deed nowhere contemplated a right to sell the plots, apartments, or building. It merely created a chain of leasehold interests, enabling sub-leases while underlying ownership remained with the Trust. The element of sale was entirely lacking, and the respondent, as a mere lessee, held only restricted possession without any right to sell the property.

The respondent’s counsel argued that Section 4(2)(l)(A) accommodates applicants who do not hold title by requiring authentication from the owner. The Court rejected this as misconceived, holding that even if procedural title authentication were satisfied, the substantive incapacity to sell rendered the project outside the Act’s ambit. The ability to offer units for sale is foundational for attracting RERA; since the respondent could only assign leasehold rights through sub-leases, it could not be a “promoter” under Section 2(zk).

The Court relied on the principle that clear admissions in pleadings are fully binding. Citing *Ram Nirajan Kajaria v. Sheo Prakash Kajaria*, (2015) 10 SCC 203, the Court held that where admissions of fact and law exist in pleadings, the Court may pass an order without determining other questions. The appellant’s admission thus became decisive. The Court also referred to *District Mining Officer v. Tata Iron & Steel Co.*, (2001) 7 SCC 358, and *Newtech Promoters and Developers v. State of U.P.*, (2021) 18 SCC 1, to emphasize literal statutory interpretation without rewriting the law.

In its final order, the High Court held that the respondent was neither obligated to seek registration under RERA, 2016, nor could it be compelled to obtain such registration. The appellant was directed to withdraw the Form-D communication containing

prohibitory and restrictive clauses against the respondent. The Court clarified that the Authority was under no obligation to provide any registration number, Login ID, or Password. No order as to costs was passed.

This judgment affirms that RERA, 2016 extends only to transactions structured around the sale of immovable property. Developers operating on leasehold arrangements with sub-leasing rights, but without authority to convey absolute ownership, stand beyond the statute's regulatory reach. The decision reinforces the sanctity of judicial admissions and underscores the necessity of adhering to the literal text of statutory definitions, ensuring that legislative intent to regulate sale-centric projects remains undiluted.

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