IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

Hon'ble Justice Rajasekhar Mantha
And
Hon'ble Justice Anuj Singh

MAT 519 of 2024
With
I.A. No. CAN 2 of 2024
Rosedale Garden Apartment Owners Association
Vs.
The New Town Kolkata Development Authority and Ors.

For the Appellant:	Mr. S. N. Mookherji, Ld. Sr. Adv, Mr. Srijib Chakraborty, Mr. Dhruv Chadha, Mr. Aditya Mondal, Ms. Shomrita Das, Mr. Shomrik Das.
For the NKDA:	Mr. Anirban Ray, Ld. Sr. Adv, Ms. Munmun Ganguly, Mr. SayanGanguly.
For the Respondent Nos.4 & 5:	Mr. Ashok Kr. Banerjee, Ld. Sr. Adv, Mr. Debabrata Banerjee, Mr. Samir Kr. Chakraborty, Mr. Hemanta Kumar Das.
For the Respondent No.6:	Mr. Soumya Majumder, Ld. Sr. Adv, Mr. Aritra Basu, Ms. Madhusmita Senapati, Ms. Swastika Roy.

For the Respondent Nos.7 to 9:	Mr. Jayanta Kumar Mitra, Ld. Sr. Adv. Mr. Rohit Das, Mr. Indradip Das, Ms. Kishwar Rahman, Ms. Divya Tekriwal.
Joint Special Officer:	Mr. Md. Farhaduddin, Adv. Mr. Rajarshi Rai Chowdhury, Adv.
Hearing concluded on:	7th September, 2026
Judgment pronounced on:	14th September, 2026

RAJASEKHAR MANTHA, J:-

A. THE CHALLENGE

1. The Appellant Association has challenged the **Judgment and order dated February 23rd, 2024,** by which the single Bench of this Court has partly allowed and dismissed the writ petition WPA 302 of 2020 titled as ***Rosedale Garden Apartment Owners Association Vs New Town, Kolkata Development Authority & Ors.***
2. The single Bench has set aside an order dated **February 27th, 2019** passed by the New Town Kolkata Development Authority (NKDA), Respondent No. 1 therein. It was held that the sanction plan of 2009 issued by West Bengal Housing and Infrastructure Development Corporation (HIDCO) was the actual sanction plan binding between the parties. It, however, refused to order demolition of the constructions made at the alleged commercial plot.
3. By the **order dated February 27th, 2019,** impugned in the said writ petition, NKDA granted liberty to Rosedale developer Pvt Ltd (RDPL) Respondent no. 6, to incorporate the deviations, recorded in the inspection report of the NKDA dated November 28th, 2018 (filed in WP No. 21146 of 2018, *Vinay Chowdhury. Versus The New Town Kolkata*

Development Authority & Ors.), in consultation with Rosedale Plaza (RP), respondent nos. 7 -9, in a fresh sanction plan to be submitted to the NKDA for final ratification, and obtain the consent of the flat owners, if need be.

4. In the impugned judgement, the single Bench held that the plan dated August 27th, 2009 (HIDCO plan), was valid, declaring the revised plan dated April 26th, 2011 (NKDA revised plan), sanctioned by NKDA invalid, inter-alia recording the following reasons :-

    a) Two writ petitions were filed before this Court regarding the subject bulk plot. The first writ petition was filed by a flat owner, Vinay Chowdhury, seeking demolition of the constructions at the subject bulk plots made in violation of the HIDCO plan. The second writ petition was filed by RP (Respondent No. 7 to 9), praying for the reconsideration of the completion certificate issued to the RDPL by the NKDA without the consent of RP.

    b) The NKDA inspection report dated November 28th, 2018, recording deviations in the constructions made by the RP from the NKDA revised plan, should not be given any credence, given that the HIDCO plan is the valid plan. No party has challenged the HIDCO plan.

    c) RP seeks to complete construction according to the HIDCO plan, constructing the G+1 retail floor, and should be allowed to do so. The NKDA revised plan is invalid because RP did not consent to it.

    d) In a subsequent report dated October 7, 2020, the NKDA stated that no illegal construction exists on the subject bulk plots.

Therefore, an order of demolition against the constructions made by RP should not be passed.

5. The appellant Rosedale Garden Apartment Owners Association (RGAOA) is aggrieved by the impugned order, inter alia, for refusal to order demolition of the constructions made in deviation of the NKDA Sanction plan dated 26th April 2011. They submit that the said NKDA plan modified 26th April, 2011, superseded the original HIDCO plan of 27th August 2009. Hence, the instant appeal.

B. FACTS RELEVANT TO THE APPEAL

6. On February 24, 2006, a development agreement was executed between HIDCO and RDPL, permitting the latter to construct residential apartments including amenities for the residents and Retail shopping area on the 16.32-acre plot (subject bulk plot) in Mouza Patharghata (J.L. No. 36).
7. On July 24th, 2006, HIDCO Building Rules, 2006, and HIDCO Building Regulations, 2006, were framed and promulgated, notifying HIDCO as the 'sanctioning authority' for building permits.
8. In 2007, the **Newtown Kolkata Development Authority Act, 2007** (NKDA Act, 2007) came in force with retrospective effect from **December 28th, 2006**. The schedule to the NKDA Act, 2007, included the plots to which the said Act will apply. **Serial Number 15** of the said Schedule included a ***part*** of **Patharghata, J.L. No. 36**, under which certain plots by their respective plot numbers were set out.
9. On August 27th, 2009, HIDCO sanctioned a plan (HIDCO Plan) to the RDPL for commencing construction of a residential multi-storied residential towers and an ancillary retail area.

10. On April 20th, 2010, the RDPL submitted a plan before the NKDA, which modified the HIDCO plan. On April 26th, 2011, NKDA sanctioned the modified plan in favour of the RDPL. The modified plan was, however, sanctioned by NKDA as per the Planning Area (Building Operations) Rules, 2006, (HIDCO Building Rules, 2006), discussed hereinafter.

11. On March 4th, 2014, the **New Town Kolkata Planning Area Building Rules, 2014** (Rules of 2014) was notified. By necessary implication, the subject bulk plots were included under the said Rules of 2014, discussed hereinafter.

12. On May 19th, 2014, a registered deed of conveyance was executed between HIDCO, RDPL, and RP confirming the sale of 18,218 square feet. In the conveyance, RP was directed to carry out construction as per the HIDCO plan notwithstanding that on the date of the conveyance, the RDPL has obtained the NKDA revised plan, and the HIDCO plan was non-existent.

13. On October 14th, 2015, NKDA issued the final occupancy certificate for the subject bulk plots on an application filed by the RDPL. The **inspection report dated November 28th, 2018** filed in **WP No. 21146 of 2018** titled **Vinay Chowdhury v. New Town Kolkata Development Authority and Others**, preferred by one of the flat owners, recorded deviations in the constructions at the retail area from the serial nos. 34, 35, and 36 of such a final occupancy. Serial nos. 34, 35, and 36 (supra) are set out below:-

Serial no	Construction not found in accordance with the NKDA revised plan upon spot inspection

34.	Ground Floor Plan & East Elevation (Retail Building)
35.	Roof Plan (Retail Building)
36.	Sections, Elevation-North (Retail Building)

14. On September 9th, 2018, WP No. 21146 of 2018 (**Vinay Chowdhury v. New Town Kolkata Development Authority and Others)** was filed by a flat owner, praying for restoring the nature and character of the Rosedale Garden Complex (residential complex) as depicted in the original HIDCO plan of 27th August 2009.

15. On November 2nd, 2018, RP, purchaser of the alleged commercial plot, approached NKDA by a letter in writing for an extension of time to complete the construction at the alleged commercial plot in terms of the NKDA revised plan dated 26th April 2011. RP was informed by NKDA that the final occupancy certificate has already been issued on October 14th, 2015, based on the notice of completion submitted by the RDPL. RP, which functioned under the name and style of 'Ramji Constructions' till then, was thereafter reconstituted to a partnership firm called M/s Rosedale Plaza (RP) with the respondents Nos. 7 & 8 as its partners.

16. RP challenged the final occupancy certificate in a writ petition **WP No. 24454 of 2018 titled as Rosedale Plaza v. New Town Kolkata Development Authority and Others),** seeking recall of the observations of NKDA at serial nos. 34, 35, and 36 of the final occupation completion certificate, which dealt with the constructions at the retail plots.

17. By an order dated November 15th, 2018, passed in **WPA 21146 of 2018 Vinay Chowdhury (supra)**, NKDA was directed to conduct a site inspection and file a report before the Court. An inspection was conducted on November 28th, 2018, by the Chief Architect of the New Town Kolkata Development Authority. The spot inspection revealed several existing commercial constructions which violate the completion drawings submitted by the RDPL to the NKDA. They are as follows: -

A) **Unsanctioned Security Structure:** A security post (gumti) is found which is not reflected in the completion drawings.

B) **Unauthorized Commercial Outlets:** Erection of commercial establishments, "Momo", "Noodle Story", and a large structure named "Hola" on the alleged commercial plot. These were not included in the completion drawings.

C) **Unsanctioned Fencing & Encroachment:** Installation of a boundary fence separating the residential complex from the alleged commercial plot. The said partition was not shown in the completion drawings.

D) **Roadway Contravention:** Construction of a toilet block and gas bank in the northwest corner, directly obstructing and contravening the internal road network.

E) **Illegal Roof Access & Additions:** Construction of a stair block to lay out a roof access from the commercial structures. Ongoing construction of overhead structures on the roof. Construction of a U-shaped additional space alongside the stair headroom. These were not shown in the completion drawings.

F) **Hazardous Utility Placement:** Installation of additional gas banks within the residential area beyond the scope of the sanctioned completion drawings.

G) **Relocation & Boundary Alterations:** Relocation of the tennis and badminton courts to the front of the club-house, accompanied by the installation of high fencing. This was not included in the completion drawings.

18. By Order dated **December 4th, 2018, WP 21146 of 2018** was disposed by a single bench of this Court, with a direction to the NKDA to start demolition proceedings under Section 81 and 82 of the NKDA Act, 2007 based on the report of the Chief Architect dated 28thNovember, 2018.

19. By **Order dated December 6th, 2018, WP No. 24454 of 2018**, preferred by RP was disposed off, granting liberty to RP to demonstrate the incorrectness of Serial Nos. 34, 35, and 36, of the final completion certificate dated October 14th, 2015, in the aforesaid demolition proceedings before the NKDA. The NKDA was also to '***reconsider'*** the issuance of the completion certificate since it was issued without consent of the owner of alleged commercial plot, RP.

20. By Order dated February 27, 2019 passed in the aforesaid demolition proceedings, NKDA directed RDPL to file a fresh plan in consultation with RP including all the changes in the construction and also obtain the no-objection of the other flat owners, if need be.

21. On April 17th, 2019, Manoj Kumar Sharma, a flat owner/constituted attorney of the appellant Apartment Owners' Association filed a Title Suit no. 286 of 2019 before Ld. 1st Civil Judge (Senior division) at

Barasat, titled as Sri Monoj Kumar Sharma & Ors v. Rosedale Plaza and Orspraying for a declaration that RP has no right, title, and interest in the alleged commercial plot and that the construction thereat has transgressed to the common area of the residential towers. The suit appears to have been abandoned.

22. An injunction application filed therein was rejected. The Appeal no. 63 of 2018 before Ld. District Judge, Barasat, was preferred against the order rejecting the injunction. The prayer for ex-parte ad-interim injunction was refused in the said appeal. Subsequently, the said appeal was dismissed for default.

23. On January 6th, 2020, **WPA 302 of 2020** was filed by the appellant Association through its constituent attorney/vice-president, Manoj Kumar Sharma, challenging the order dated **February 27th, 2019**(supra) as stated above.

24. By order dated January 10, 2020, The National Consumer Disputes Redressal Commission in **Consumer Case No. 1270 of 2017** titled as **Sanjay Agarwal v. Rosedale Developer Private Limited** recorded material alterations from the original HIDCO plan in the NKDA revised plan. The NKDA revised plan was held contrary to the provisions of Section 8(1) of the West Bengal Promoters Act. It was however held that the NKDA Act and the Rules of NKDA were also valid and applicable to the project.

25. By judgment dated February 23rd, 2024, WPA No. 302 of 2020 was partly allowed by a single bench of this Court, as already discussed in para no. 4 hereinabove.

26. The instant appeal was thereafter filed challenging the **judgement and order dated 23rd February 2024(Supra).**

27. This Court has heard detailed arguments advanced by Mr. S.N. Mookherji, Sr Adv, for the appellant, Mr. Jayanta Kumar Mitra, Sr Adv for the Respondent RP, Mr Ashok Kumar Bannerjee, Sr Adv for HIDCO, Mr. Soumya Mazumdar, Sr Adv for RDPL and Mr. Anirban Ray Sr Adv for NKDA.

C. ANALYSIS OF THIS COURT

28. A peculiar situation has emerged in this appeal. All sides have as per their convenience approbated and reprobated. The first writ petition **WP No. 21146 of 2018** titled **Vinay Chowdhury v. New Town Kolkata Development Authority and Others** was filed by one of the flat owners, praying for the restoration of the construction according to the HIDCO plan. However, the appellant association of the flat owners now seeks enforcement of the NKDA revised plan dated April 26, 2011.

29. RP filed the second writ petition **WP No. 24454 of 2018 (supra)**, challenging the completion certificate issued by the NKDA to the RDPL. The writ petition was filed after the NKDA refused to grant an extension of the NKDA revised plan to complete the construction at the retail area. RP now seeks to complete construction at the retail area, according to the HIDCO plan.

30. The NKDA in the inspection report dated November 28th, 2018, filed in the writ petitionof **Vinay Chowdhury (supra)** carried out a spot inspection and compared the existing construction thereat with the NKDA revised plan. It found several deviations and illegalities committed by the Respondent No.7-9 However, the NKDA allowed the RDPL and RP to apply

for regularization of deviations to the Re-sanctioned plan dated 26-04-2011. The NKDA thereafter permitted RP to seek regularization of such changes, based on the HIDCO plan.

31. Ld. Sr. Counsel for the NKDA submits that NKDA took over the jurisdiction of the bulk plots from HIDCO. However, NKDA modified HIDCO's August 27, 2009 plan with a revised plan dated April 26, 2011, under the HIDCO Building Rules, 2006. The NKDA Building Rules, 2009 had been in force since August 10, 2010. The NKDA, however, chose the HIDCO 2006 rules over the NKDA Building Rules 2009 while modifying the HIDCO plan on April 26th, 2011.

32. Before the single Bench, RP averred on affidavit that RP's unit was commercial and distinct and separate unit from Rosedale Garden which is the residential part and a separate and independent unit. Ld. Sr. Counsel for the RP before this Court has submitted that the Retail/Commercial part of the plot was a single unit with that of Rosedale Garden.

33. RP submitted an application along with a majority of the residents under Section 2 read with Section 10 of the WB Apartments Ownership Act of 1993 declaring that it was a member of the Appellant Association having an area of 18,218 Square feet.

34. While the Development agreement prescribed that the plots cannot be subdivided, RDPL executed a conveyance in favour of RP transferring exclusively the ownership of the Retail area of the plot.

35. HIDCO sanctioned the plan on August 27, 2009. The NKDA was constituted in 2007. The NKDA Building Rules came into force on August 10, 2009. Thus, NKDA was empowered to sanction plans for the bulk plot

as on August 27, 2009. However, it did not. The reasons therefor are discussed below.

36. There are several other contradictions in the stand of the each of the parties in these proceedings. Hence this Court is compelled to address the following issues to set at rest all controversies between the parties.

A. *What is the object and purpose of the development agreement executed between HIDCO and RDPL?*

B. *What is the legal status of HIDCO plan dated August 27th, 2009?*

C. *What is legal status of the NKDA revised plan dated April 26th, 2011?*

D. *What are the rights of RP, Respondents No. 7 to 9, in the subject bulk plot?*

I) Object and Purpose of the Development Agreement and its Legal Status

37. The **development agreement dated February 24th, 2006,** executed between HIDCO and RDPL, conceived a residential project on the subject bulk plot. Some clauses of the said development agreement are set out below:-

> E. Under the said **Memo No. 4146/HIDCO/Admn-681/2004 dated 22nd, October, 2005**, it was inter alia specified that:-
>
> i) The Developer shall act as a developer of HIDCO with regard to the development of the said plot by construction of the **said Housing Complex** and sale and allotment of the constructed ***dwelling units*** to NRIs and Resident Indians.
>
> In this Agreement, unless there be something contrary or repugnant to the subject or context:
>
> (ii) "HOUSING COMPLEX" shall mean the said plot and the new buildings to be constructed thereon in accordance with the sanction plan thereof **comprising of approximately 900**

(nine hundred) residential units, car parking spaces, internal roads and ***<u>all other constructed areas or spaces needed for use and enjoyment of the Housing Complex</u>*** **and shall include such other common facilities and/or amenities that may be required, installed and/or provided therein or therefor for more better enjoyment of such units/flats, car parking spaces other entertainments, *<u>commercial hubs,</u>* worship place, golf course, swimming pool** as are admissible under relevant building rules and/or other constructed areas or spaces by the owners thereof

(ix) "SANCTION PLAN" shall mean the plan for construction of the new buildings at the said plot, to be prepared by the Architect and caused to be sanctioned by the Developer from the HIDCO and shall include modifications, alterations additions and/or amendments thereof of thereto male or caused by the **Developer with the approval of HIDCO**

(xv) "PROJECT" shall mean and include the project of the, development of the **Housing Complex** and construction of the new buildings at the said plot for allotment of at least **75% of the total units,** car parking spaces and other constructed areas or spaces comprised therein to **Non-Resident Indians (NRIs)** and **the balance to Resident Indians;**

ARTICLES-VII

RIGHTS OF THE PARTIES

7.1 It is clarified that this agreement is not an agreement for sale and/or otherwise transfer of the said plot or any part thereof to the Developer, but is merely an agreement allotting the said plot to the Developer and authorising the Developer to develop the said plot by constructing and completing the said Housing Complex consisting of a number of new buildings and allotment of the several independent and **self-contained flats**, units, car parking spaces, **<u>other entertainment</u>**, **commercial hubs, worship place, golf course, swimming pool** as are admissible under relevant building rules and other constructed areas or spaces therein to the intending buyers thereof.

8.5 The said plot shall be used ***<u>exclusively for residential purposes</u>*** only with such other use ***<u>as is absolutely related for a residential complex</u>*** and as permissible under law.

Emphasis Applied

38. The said development agreement directed RDPL to develop and construct a 'housing complex' on the subject bulk plot. All

construction thereon should therefore be in harmony with a housing residential project.

39. Clause no. 2 thereof defined "Housing Complex" which includes commercial hubs. The phrase commercial hub is preceded by terms "better enjoyment," "other entertainments", and "common facilities". The commercial hubs were therefore conceptualized as common facilities for the residents.

40. Clause 7.1 mandates that residential units must be "self-contained,”. Thus the retail/commercial facilities thereat are in aid of the residential project. They are **not** independent of the residential units.

41. Clause 8.5 thereof explicitly states that the bulk plot must be used exclusively for residential purposes. Any ancillary use should strictly be limited to the benefit of residents.

42. The development agreement conferred the right to develop a residential project on RDPL. The agreement authorized RDPL only to sub-delegate the development work and nothing further.

43. RDPL was authorized to sell the residential units and other non-residential facilities to buyers. The agreement did not confer any right of title and ownership on RDPL. Therefore, RDPL could not have sold any vacant land before developing it.

44. HIDCO continued to own the subject bulk plots. However, HIDCO restricted its right to sell vacant land thereat by appointing RDPL to develop the subject bulk plots and sell only constructed units.

45. In **Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. & Ors., reported in (2007) 8 SCC 705,** it

was held that a Town Planning Act regulates the development of the land as follows:-

> 57. **<u>The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction.</u>** ....**<u>Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones</u>**. (See Balram Kumawat v. Union of India10; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd.11 and Union of India v. West Coast Paper Mills Ltd.12)
>
> Emphasis Applied

46. In **State of Gujarat v. Shantilal Mangaldas & Ors., reported in (1969) 1 SCC 509,** it was held that when a town planning scheme is declared under the Town Planning Act, the right to develop the bulk plots, governed by the town planning scheme, stands restricted. Paragraph no. 55 of **Shantilal decision (supra)** is set out below :-

> 55. ......**Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority**.
>
> Emphasis Applied

47. The development agreement has specified the nature and scope of the project. RDPL, therefore, could not travel beyond the scope of the development agreement. HIDCO is equally bound by the mandate of the development that the subject bulk plot should be developed as a residential project so also RDPL.

48. Any existing partition of the bulk plot for residential and commercial sections is therefore liable to be demolished. The parties are ad idem to the demolition of any such partition.

<u>i) The concept of residential cum retail construction</u>

49. The concept of the residential-cum-retail construction was addressed in **Vasundhara Vyapar Mandal v. U.P. Avas Evam Vikas**

Parishad, reported in (2004) SCC OnLine All 2067. The division Bench, presided over by Justice Markandey Katju, addressed the concept of 'convenient shopping' in a residential project as follows :-

> 46. We have perused the relevant extract of the master plan which is Annexure II to the writ petition. Under the said master plan certain ***convenience shops are permitted in residential areas***. ***The term convenience shops have not been defined, but obviously it means shops where items of daily use e.g. bread, milk, vegetables, fruits, etc. may be available to the residents in the area.***
>
> 47. However, as stated in para 8 of the counter-affidavit, the Vasundhara Scheme has already provided for convenience shops in certain places in the residential scheme. ***Some of the shops have been built by the Parishad, while certain vacant plots have been allotted for raising commercial constructions to permit business activities to satisfy the daily needs of the residents.*** Details have been given in para 8 of the counter-affidavit. It follows that no other commercial activities can be permitted in any other place other than those earmarked in the Vasundhara Scheme. It is not the petitioner's case that its members are carrying on commercial activities at the places earmarked for this purpose in the Vasundhara Scheme.
>
> 48. In fact a perusal of Annexure CA-2, which are the photographs of the various shops and commercial establishments, ***shows that the entire residential Vasundhara Scheme has been disrupted by such shops and commercial establishments which have been set up by the members of the petitioner's Society.*** This is clearly illegal as held in the decisions referred to above. Hence we find no infirmity in the impugned order dated 23-1-2004.
>
> 49. ***We are also of the opinion that there can be no compounding which permits change of the land user. Compounding may be possible (provided it satisfies the relevant prescribed criteria) to regularise the construction of additional residential room or storey in an existing residential house, but not by changing the land use.***

Emphasis Applied

50. A division Bench of the Delhi High Court in **P.V. Kapur v. Union of India, reported in 2020 SCC OnLine Del 3054,** has also explained the concept of residential-cum-commercial construction in a residential project to meet the economic realities of the 21st century as follows:-

> 80. One other scholar **G.B.K. Rao in an article titled "Issues in Controlling Urban Building Activities" in "Control of Urban**

Building Activities" (edited by D.D. Malhotra) JITPA noted, in the context of Indian cities in general as under:

> "…there is **horizontal and vertical mixing of uses primarily between residential, commercial and industrial use, e.g. commerce on ground floor and residence in the rear and on upper floors; and industry, at times in the rear.** Often, traditional industry of the household type flourishes in the older parts of the city and invariably specific industry type is found to be associated with specific caste, ethnic or religious group. In a sense, the mixed pattern or landuses in the older parts of the cities is very much a gradual evolution of the pattern established in the past when the urban settlement was still nourishing its rural moorings. **The mixing of landuses grows with the organic growth of settlements over a period of time, …. In fact, the central areas of older cities bustle with life and vitality, during the day and major part of the night due to such conglomeration of uses which is sadly lacking in more recent developments.**

82. In preparation of the **Perspective Development Plan for Delhi (1981-2001)**, the DDA conducted a study, which revealed certain facts about the extent of mixed use in residential areas as under:

> "(1) **Instances of mixed land uses were correlated with the age of development, i.e. higher percentage of dwelling units used for more than one activities in areas developed before 1962 as compared to those after that year**.
>
> (2) **In case of low-income communities, the instances of mixing of uses was in respect of retail commercial activities within residential premises. But in Case of higher income group communities, non-residential uses that were penetrating into residential areas were mostly professional consultancy offices and other office uses, banks and guest houses.**
>
> (3) More than 90% of instances of mixed uses were confined to ground floors of buildings and upper floor generally used extensively for residential purposes. In case of commercial and residential mix use areas, commercial development spreads linearly along the roads occupying front portions or whole of the ground floors."

89. The legal position in relation to the permissibility of commercial activities in a residential zone was summarised thus:

> "i) **there cannot be a commercial activity in residential zone and thus chemists shops are not permitted.**
>
> ii) the area in question does not fall in the mixed-use.

> iii) the DDA & MCD are required to take action under the respective laws against these violators running chemists shops in the residential zone, viz in a building allowed to be used for the purpose of residence only by the competent authority."
>
> Emphasis applied

51. In **Vasundhara Vyapar Mandal decision (supra)**, it was held that convenient shopping provided within a residential complex cannot be converted for commercial exploitation. It is for exclusively serving the residents of the said project.

52. In **P.V. Kapur decision (supra)**, it was held that commercial exploitation of a residential unit or a residential area is not permissible. The concept of convenient shopping under the bracket residential-cum - retail project is as follows:-

   a) Residents gain immediate walking-distance access to gyms, grocery stores, restaurants, offices, healthcare, childcare, banking, parks, and recreational facilities, simplifying daily life and freeing up time.

   b) Mixed-use occupancy cuts down long commutes and vehicular emissions by encouraging walking and cycling thereby reducing our carbon footprint.

   c) Developments feature everything from cozy cafes and boutique stores to high-end restaurants and supermarkets, attracting a broad customer base.

53. Mr Jayanta Mitra, Ld. Sr. Counsel for Respondents No. 7 to 9, contended that the HIDCO Planning Area 2006 Rules permit mixed occupancy for diverse non-residential purposes, such as IT hubs meant for the general public, not just residents. Both HIDCO and NKDA relied

on these mixed-occupancy provisions to sanction. NKDA subsequently revised the HIDCO plan of 2009 in April 2011. He argues that these provisions entitle RP to allow outsiders to access non-residential facilities within a residential project. He argues that 10 % of the bulk plot can be used for Mercantile (Retail) purposes and all other commercial purposes as defined in Rule no. 3 of the Planning Area (Building Operations) Regulations, 2006. This argument cannot be accepted.

54. While the township planning rules outline various 'land uses', the planning authority holds the final discretion to conceive plans and choose land use. In the **development agreement (supra),** HIDCO permitted ***limited*** non-residential construction over the bulk plots, that too in aid of the Residents.

55. The definition of 'housing complex' in the **development agreement (supra)** has not included IT and other non-residential facilities. It, inter alia, included facilities such as club house, swimming pool, golf course, place of worship, etc. These are, therefore, facilities aimed to serve the residents living thereat. The phrase "better enjoyment and common facilities" in the 'housing complex' definition ensures that every non-residential facility thereat must ultimately serve the residents.

56. Thus, the development agreement did not provide for the access of outside public to the non-residential facilities. This is reaffirmed in Clause no. 8.5 of the development agreement.

II. <u>The Legal Status of the HIDCO Plan dated August 27th, 2009.</u>

57. HIDCO has been constituted under the **West Bengal Town and Country (Planning and Development) Act, 1979** (Act of 1979). It carried the mandate to develop a residential project in the subject bulk plot. Section 13 of the Act of 1979 sets out the power of the 'planning authority' as follows:-

> **Section 13 Powers and functions of Planning Authority and Development Authority.**
> (1) Subject to the provisions of this Act, and the rules made thereunder and any direction which the State Government may give from time to time -
> (i) a Planning Authority shall have the following powers and functions :-
> (a) to prepare Land Use Map;
> (b**) <u>to prepare and enforce [a Land Use and Development Control Plan;]</u>**
>
> (c) **to prepare and enforce a Detailed Development Plan**;]]
>
> (d) **to prescribe use of land within its area;**
>
> (e) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribe
>
> Emphasis Applied

58. HIDCO prepared a development plan namely, the development agreement executed with the RDPL herein. It prescribes the use of land to be developed namely, a residential project herein. Section 46 of the Act of 1979, enables a developer to apply for permission before the planning authority to develop a planning area, namely, the RDPL herein and subject bulk plot. Section 46(1) and (2) of the Act of 1979, are set out below:-

> **Section 46- Permission for development**.
> (1) Any person or body (excluding a department of the Central or the State Government or any local authority) intending to [carrying out

> any development or township project on any land] for carrying ***out any development on any land.] shall make an application in writing to the Planning Authority or Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed.***
>
> (2) On such application having been duly made, and on payment of the development charge as may be assessed under Chapter IX. -
>
> (a) **The Planning Authority or the Development Authority may pass an order**, -
>
> (i) granting permission unconditionally; or
>
> (ii) granting permission subject to such conditions as it may think fit; or
>
> (iii) refusing permission,
>
> Emphasis Applied

59. HIDCO was declared as the 'planning authority' for the ***entire*** Mouza Patharghata, JL Number 36. All subject bulk plot fall within the jurisdiction of Mouza Patharghata, JL Number 36.

60. The Act of 1979 is a non-municipal legislation. Thus, in exercise of powers under the Act, 1979, the 'Planning Area Building Operation Rules, 2006' and 'the Building Regulations of 2006', were notified. Under the said rules of 2006, HIDCO was empowered to sanction building plans, grant occupation certificates, and address unauthorized constructions.

61. The aforesaid executive notifications and the rules referred to hereinabove have never been withdrawn in exercise of powers under Section 10 of the Act of 1979, which is set out below:-

> **10. Power to withdraw Planning Area from the operations of this Act.**
>
> (1)The State Government may, by notification, **withdraw from the application of this Act any *Planning Area* or part thereof.**
>
> (2)When a notification is issued under sub-section (1) in respect of any Planning Area or part thereof
>
> (i)this Act and all notifications, rules, regulations, orders, directions and powers issued, made or

> conferred under this Act ***shall cease to apply to the said area or part thereof;***
>
> Emphasis applied

62. These executive notifications were, in fact, regularized by and under **The New Town Kolkata Planning Area Building Rules, 2014.** It has recognized that in the New Town Area, HIDCO and NKDA will share power of regulating building operations over plots of land. Both NKDA and HIDCO thus continued to have jurisdiction in the new town area, where the bulk plot are situated. The rival parties do not contest the power of NKDA to grant the revised plan dated April 26th, 2011. RP, however, objects to the modifications made in the NKDA revised plan from HIDCO plan dated August 27th, 2009.

63. The development agreement entrusted the RDPL to develop the entire 16.32 acres of land. It did *not* draw up the boundaries within the 16.32 acres. The HIDCO sanction plan specified the quantity of land for constructing 6 residential towers, clubs, commercial hubs and etc. The particulars of the HIDCO sanction plan are set out below:-

Nature of Construction	**Extent of Area allotted**
1. TOTAL AREA OF TOWER 1, 2,3,4, & 6-	1,03,481.30 Square meter
2. TOTAL AREA OF TOWER 5	19,888.88 Square meter
3. TOTAL AREA OF SENIOR RESIDENCE.	- 3891.83 Square meter
4. TOTAL AREA OF SERVANT QUARTER	1020.05 Square meter
5. TOTAL AREA OF CLUB BUILDING	1706.70 Square meter
6. TOTAL AREA OF RETAIL BUILDING	3898.52 Square meter
7. TOTAL AREA OF ESS ROOMS	1,529.50 square meter
8. TOTAL AREA OF CONSTRUCTION SANCTIONED	24,952.68 SQM.

64. The primordial object of the HIDCO therefore was to develop the subject bulk plot into residential units. This is evident from the major part of the land allotted was for constructing 6 residential towers. HIDCO has also sanctioned land for construction of units for senior residents and quarters for servants. The areas allotted for Retail and other constructions, therefore, were essentially in aid of residents living thereat. The WBHIDCO plan is in harmony with the development agreement (supra).

III) The Legal Status of the NKDA revised plan

65. Ld Counsel for the NKDA has submitted that the subject plot is under his client's jurisdiction. By reason of amendment to Section 10 of the NKDA Act in the year 2010, it had the power to consider modifications to existing plans including that of HIDCO.

66. Even if one considers the argument to the contrary advanced by Counsel for RP, this court notices as follows. By **legislative notification No. 1088-L, dated June 27th, 2008, the Newtown Kolkata Development Authority Act, 2007** was gazetted and notified with retrospective effect from **December 28th, 2006.** The NKDA Building Rules, 2009 came in force from **August 10th, 2009.**

67. HIDCO sanctioned the building plan on **August 27th, 2009**, i.e. after the NKDA came to be constituted. The Developer, therefore, could have approached NKDA for a sanction on August 27th, 2009. It, however, chose to apply before the HIDCO. Therefore, HIDCO acted as the sanctioning authority for building operations at the bulk plots, as did the RDPL.

68. The role and presence of New Town Kolkata Development Authority (NKDA) in the day to day life of the residents of the Rosedale project

assumes immense importance. A separate and independent legislation namely, the New Town Kolkata Development Authority Act, 2007 was enacted to grant sanction plans and deal with unauthorized constructions and completion certificates. NKDA has also set up a municipal mechanism for providing essential services such as water supply and other utilities.

69. NKDA employs competent engineers and architects who possess the expertise to understand the structural firmness and architectural value of buildings. NKDA has the expertise to analyse and potentially modify the HIDCO plan or grant sanction for subject plots. It lacked the territorial jurisdiction over the subject plots, which continues to lie with HIDCO. The NKDA authority however did ***not*** lack inherent jurisdiction over the subject matter.

70. While want of inherent jurisdiction renders an order a nullity, an order passed without territorial jurisdiction, however, is merely irregular. In **Hira Lal Patni v. Kali Nath [Hira Lal Patni v. Kali Nath, reported in AIR 1962 SC 199**, it was held as follows:-

> The objection to its [Bombay High Court] territorial jurisdiction is one which **does not go to the competence of the court and can, therefore, be waived**. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under Clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case.
>
> **Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction**. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure."

Emphasis applied

71. In **Hasham Abbas Sayyad v. Usman Abbas Sayyad, reported in (2007) 2 SCC 355,** it was held as follows:-

> "24. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and **a decree passed by a court having no jurisdiction in regard to the subject-matter of the suit.Whereas in the former case, the appellate court may not interfere with the decree *unless prejudice is shown,***ordinarily the second category of the cases would be interfered with."

Emphasis Applied

72. **In M/S Aarsuday Projects & Infrastructure (P) Ltd v. Jogen Chowdhury & Ors., reported in 2026 INSC 93,** it was held lack of territorial jurisdiction of the sanctioning authority is a curable irregularity when the construction is done honestly as follows:-

> 36. Likewise, even if it is assumed that the Gram Panchayat was not the competent authority to accord approval to the building plan and that such authority vested exclusively in the Panchayat Samiti, **the same would constitute, at best, a procedural irregularity.** Such an irregularity, especially where the building plan had been duly vetted by the higher forum, i.e., the ZillaParishad and ***construction was undertaken in a bona fide manner, was clearly curable in nature. In the absence of any tangible evidence of fraud, misrepresentation, or deliberate circumvention of statutory requirements, such a procedural lapse,*** even if assumed to exist, for arguments sake, could not render the construction per se illegal***, nor could it justify the issuance of a direction for demolition, which is an extremely draconian consequence reserved for cases of blatant and substantive illegalities and violation.***

Emphasis Applied

73. The salient features of the NKDA revised plan are set out below

Nature of Construction	**Extent of area (Sanctioned earlier in the WBHICO building plan)**	**Extent of area (proposed for sanction in the NKDA revised plan)**
1. Total area of Tower nos. 1, 2, 3, and 6	82, 785.04 square meter	83, 030. 96 square meter
2. Total area of Tower no.4	20.696.26 square meter	20, 693. 69 square meter

3. Total area of Tower no. 5	19.888.88 square meter	19, 979 square meter
4. Total area of Senior residence	3891.83 square meter	2580.10 square meter
5. Total area of club building	1706.70 square meter	1712.17 square meter
6. Total area of retail building with ESS	3,898.52 square meter	2156.81 square meter
7. Total area of Executive apartment	New Building Proposed	6517.33 square meter

74. NKDA modified the HIDCO plan to include an executive apartment. This is in furtherance of the development agreement's core motto of serving residents without violating the said agreement. The introduction of an executive apartment is just one more facility added to the bucket of facilities for the residents. The NKDA was therefore well within its authority to introduce an executive apartment in the Revised Plan dated 26th April 2011. The HIDCO plan dated 27th August 2009 has been superseded by the NKDA re-sanction dated 26th April 2011.

75. The conduct of the parties also demonstrates that the NKDA revised plan of 26th April 2011 was accepted and acted upon by them:-

a) In the inspection conducted by NKDA on 28th Nov 2018 pursuant to order dated 15thNovember 2018 passed in WP 21146 of 2018, violation of the NKDA Sanction plan of 26th April 2011 was found.

b) RP in its writ petition WP.24454 of 2018 asked for extension of re-sanction of the NKDA plan of 26-04-2011.

c) RP admitted that the NKDA re sanction dated 26-04-2011 was the basis of the conveyance between RDPL and RP dated 19th May 2014.

d) Prayer C of WP 24454 of 2018 was for extension of re-sanction dated 26-11-2011.

e) The said revised sanction of NKDA, removed the first floor from the Retail area. It reduced the Senior Citizens building from Ground plus II to Ground Plus I, and omitted the Servants quarters to accommodate an Executive Tower of Ground plus IX floors.

f) The removal of servants' quarters and reduction in the height of the senior citizens quarters done to facilitate the construction of the executive apartments was within the original FAR under the HIDCO as well as the NKDA plans, for the whole project. There is no alteration in the nature of user of the modified construction in the project i.e. residential. The modified sanction dated 26th April 2011 by NKDA rightly approved and re-sanctioned the same.

g) The conveyance of the year 2014 between RDPL HIDCO and RP only transferred 18,218 Square feet comprising in a Ground Floor, Ramp etc. This was the retail area in the re-sanctioned plan dated 26th April 2011. They have purchased only 18,218 square feet out of entire reduce retail area of 27,000 odd square feet. RP thus cannot maintain a claim to construct the entire G+1 retail floor sanctioned in HIDCO plan for the entire retail area.

h) The reduction of the retail area to increase the residential area is lawful and in harmony with the original development agreement between RDPL and HIDCO of the year 2009, of the project being a Residential one.

i) The clauses in the conveyance dated 19th May 2014 restricting the rights of the parties not to construct on the roof of the ground floor of the Retail area are in furtherance of the revised sanction dated 26th April 2011.

j) RP and the appellants jointly submitted an application under Section 10 of the WB Apartment Ownership Act 1972, referring to the retail area to be restricted to 18,218 Sq Ft in terms of the re-sanctioned building plan dated 26th April 2011.

k) The residential owners would require grocery shops, and etc. and hence the commercial hubs. These commercial/retail hubs must be aligned with the development agreement.

l) A deemed consent thus flows from the conduct of both the residential flat owners and RP to the NKDA Revised Plan dated 26th April 2011.

ii. ***The propriety of NKDA to grant a re-sanction on April 26th, 2011 under the HIDCO building Rules and Regulations, 2006***

76. NKDA sanctioned the revised plan under the HIDCO Building Rules and Regulations, 2006. The reason therefor flows from Rule 4A of the NKDA Building Rules, 2009, which is set out below:-

> **4A. Provision of Re-Sanctioning of existing building plan : (1) Notwithstanding anything contained in these rules —**
>
> (a)********
>
> (b)*********
>
> (2) **where construction has been commenced and the *previous sanction of the building plan has been obtained in violation of the provisions of these rules,* the re-sanction of the building**

plan shall be made under the provision of this rule on the request of the applicant:

> Provided that if the building is already constructed, in part or in full, on the basis of such building plan which has been obtained in violation of the any provisions of these rules, shall be seized to exist unless the contradiction is removed and if the contradiction has not been removed, **the re-sanction may be processed as per the provisions of respective rule under which the** ***original plan*** has been sanctioned unless the applicant opts for sanction of building plan under these rules.

Emphasis Applied

77. Sub-rule 2 of Rule 4A governs the NKDA revised plan dated April 26th, 2011. Sub-rule 2 applies when construction is made according to a Plan, sanctioned under different rules by another authority. In the instant case, the original plan was sanctioned by HIDCO in 2009 under the HIDCO Building Rules and Building Regulations, 2006.

78. Under sub-rule 2, ordinarily, the re-sanction of such constructions at the first instance should be attempted to be done under the NKDA Building Rules, 2009. The proviso to sub-rule 2, however, clarifies that at the time of re-sanction, if NKDA finds that the existing construction contradicts the Rules of 2009, NKDA may either remove such contradiction. If it cannot be removed, NKDA may re-sanction the revised plan as per the rules under which the Original Plan was sanctioned.

79. In the present case, the HIDCO plan was sanctioned under the HIDCO Building Rules, 2006. The proposal to introduce the executive apartment amounted to a change in the said HIDCO plan. This could be in violation of NKDA Building Rules, 2009. NKDA thus re-sanctioned the executive apartment in line with the object of the development

agreement, under the HIDCO Building rules of 2006, in terms of the proviso to sub rule 2 of Rule 4A.

IV) ***<u>The Right of RP on the Subject Bulk Plots</u>***

80. The conveyance dated May 19th, 2014 executed in favour of Rp and/or its predecessor-in interest needs to be examined in light of development agreement. The relevant clauses from the said conveyance are set out below:-

> ii. PREMISES shall mean Commercial building for the time being consisting of entire space of **18643 sqft** (SBA)constructed by the Developer at the said plot to be used as self-contained apartments, shops, show rooms, offices and other constructed spaces in the Building capable of being exclusively held or occupied by a person, morefully and particularly mentioned and described in the SECOND SCHEDULE hereunder.
>
> ix. SUPER BUILT-UP AREA shall where the context refers to the said Unit **(the entire Retail cum Commercial building of 18643 sq.ft S.B.A. little more or less) mean and include (a) the super built up area of the said Unit, (b) proportionate share of the area of the Common Areas and Installations and open areas including top roof of the Premises.**
>
> xi. SAID UNIT shall mean the entire **Retail cum Commercial building of 18643 sq.ft S.B.A. little more or less to be constructed &*<u>finished in parity with the morefully</u>*** and particularly shown in the brochure complex and as mentioned and described in the SECOND SCHEDULE hereunder written TOGETHER WITH the Purchaser's proportionate undivided share in the common areas and Installations attributable to the said Unit TOGETHER ALSO WITH the right to use the open spaces on the top roof of the Premises and wherever the context so permits shall include the right of parking motor car at the car parking space at the said premises if so specifically and as expressly mentioned and described in the within stated SECOND SCHEDULE and wherever the context so intends or permits shall also include the said share in the said premises.
>
> xiii. PURPOSE OF USE **shall mean usage of the space for Retail commercial purpose including *<u>provision for ATM facility. Grocery Stores, Utility shop, Pharmacy, & others.</u>***

SALE OF PROPERTY AND CONSIDERATION: The Developer agrees to sell and transfer ALL THAT the said Unit being the entire Retail cum Commercial building 18218 sqft more or less (15325 sqft Builtup area approx. + 1500 sqft. approx. of passage + 1393 sqft. stair, ramp, platform etc.

THE SECOND SCHEDULE ABOVE REFERRED TO:

ALL THAT of entire 18218 sqft more or less (15325 sqft Built up area approx. + 1500 sqft. approx of passage + 1393 sqft. stair. ramp, platform etc.) of the Retail cum Commercial building to be constructed &**finished in parity with the complex and as shown in the brochure.** The space to be given an bare shell with brick work & plaster with provision for for six to ten toilets at north-west corner as shown in the plan annexed

81. HIDCO's sole mandate was to develop land or have it developed through a designated developer. The original development agreement with the RDPL permitted RDPL to sub-delegate the construction work, but not transfer of land title. The execution of the conveyance date May 19th, 2014 conferring exclusive rights and title of a portion of the bulk plot to RP, thus, violates the development agreement. RP could at best have been sub-developer.

82. The said conveyance between RP, HIDCO, and RDPL initially covered 15,000 square feet, which was later increased to 18,218 square feet handed over as a bare shell. HIDCO's approved sanction plan dated August 27, 2009 allocated a total area of 3,898.52 square meters (equivalent to 41,963.32 square feet) for the retail building.

83. Out of the total 41,963.32 square feet, only 18,218 square feet was transferred to RP, leaving 23,320.32 square feet un-transferred. The non-transfer of the entire retail area in favour of RP, clearly implies that HIDCO and RDPL engaged in a private sale of the 18,218 square feet plot to RP. Any transfer could at best have been for development of the retail area. No undeveloped part or portion of the bulk plot of 16. 32 acres could have been transferred to RP by RDPL and HIDCO.

84. Clause 13 of the conveyance confirms that the commercial structures were meant to serve residents through amenities like ATM facilities, grocery stores, utility shops, and pharmacies. Such facilities could only be exploited by RP to the extent of 18, 218 that too '***ordinarily and primarily'*** for the benefit of the residents. Clause no. 13 should govern the constructions made by RP. This aligns the purported conveyance in favour of RP with the development agreement (supra).

85. Hence the absolute transfer of the 18,218 square feet to RP by RDPL is illegal. In light of the development agreement (supra),RP can at best be accepted as the entity to construct and manage the retail area for the exclusive benefit of the Residents. Any construction made beyond 18, 218 Square feet or beyond the sanction plan dated 26th April 2011 issued by NKDA is illegal and is liable to be demolished and removed.

86. The learned Single Judge erred by holding that RP's right to construct over the entire retail area stems from the HIDCO plan. RP's sale deed explicitly restricted its construction rights to 18,218 odd square feet out of the broader retail pool. RP is bound by the NKDA revised plan dated 26th April 2011 that reduced the area of retail construction to 27,000 odd square feet, of which it has received rights only in respect of 18,218 Sq ft. RP is therefore strictly prohibited from effecting construction under the HIDCO plan of August 2009, which has been superseded by the NKDA revised plan dated April 26th, 2011.

87. Ld. Counsels and Sr. Counsel for the RP have conceded that RP's right over the retail area does not extend beyond 18, 218 square feet, purchased by it from RDPL. This would also imply that RP cannot question the NKDA revised plan. The NKDA revised plan reduced the area of construction for

the retail area to 27,000 odd square feet. RP enjoys a lesser area of 18,218 square feet therefrom.

88. The aforesaid concession of counsel for RP implies, as a logical corollary, that it cannot claim to construct a G+1 structure at the retail area as the revised sanction plan of NKDA has modified the retail structure to mean ground plus roof, stairway and ramp etc. The reason is that RP was transferred 18,218 square feet. The rest of the retail area sanctioned in both plans was not transferred to it.

89. With the reduction of the retail area in the NKDA revised plan, the height and breadth of the structure to be built thereon would equally reduce. The reduction from G+1 to Ground floor and Roof in the NKDA revised plan was thus an obvious consequence of the reduction of the retail area from 41, 000 odd square feet to 27, 000 odd square feet.

90. RP cannot claim a right to construct the entire ground floor plus roof sanctioned in the NKDA revised plan dated April 26th, 2011 since the same was sanctioned for the entire retail area of 27,000-odd square feet, of which only 18,218 square feet was purchased by RP. The right of the RP to make constructions in the retail area, therefore, should be proportionate to the 18,218 square feet.

D. <u>CONCLUSIONS</u>

91. The Rosedale Garden and RP are a part and parcel of a singular residential housing project comprising in about 16.32 acres. The Entire project is under the New Town Kolkata Development Authority. The only valid sanction plan in respect of the retail and residential areas is dated 26th April 2011.

92. The retail part of the housing project comprising in about 18,218 square feet purchased by RP, is meant primarily for the use and benefit of the residents and members of the Appellant.

93. The rights of the respondent RP in respect of the retail part of the project is restricted to making construction and running of the retail area to the extent of 18, 218 Square Feet, strictly in terms of the NKDA sanction Plan dated 26th April 2011.

94. The MOU dated 27th November 2009, agreements dated 7th April 2010 and 30th April 2011 and the Conveyance dated 19th May 2014, cannot be invoked to sub-divide the plot of 16.32 Acres into commercial and residential use. The counsels including the Ld. Sr. Counsel for RP, respondent nos. 7-9 has agreed and admitted to the same.

95. The Conveyance dated 19th May 2014, is a contract of sub-agency permitting RP to construct, run, exploit and manage the retail area in terms of the NKDA plan of 26th April 2011.

96. All gates installed at the subject bulk plots are declared an integral part of and provide access to, the residential-cum-retail area. Such gates shall not be construed as separating the retail area from the residential area. This direction aligns the subject bulk plots with the development agreement under the Town Planning Act, 1979.

97. The order of NKDA dated February 27th, 2019 is set aside. The NKDA RTI reply cum report dated October 7th, 2020, absolving RP of any un-authorized construction is set aside.

E. DIRECTIONS

98. The NKDA shall ensure that existing constructions at RP, including residential towers and retail shops, comply with the development agreement dated 24th February 2006 between HIDCO and RDPL, and the re-sanctioned plan of NKDA dated 26th April 2011.

99. Respondent Nos. 7 to 9, are not entitled to make constructions exceeding 18,218 sq. ft. of the total retail area of 27, 000 odd square feet. The retail area outside the aforesaid 18, 218 square feet shall not be used by RP. The NKDA shall demolish all and any construction made by Respondents Nos.7-9 and/or M/s RP beyond the 18,218 square feet, in the retail area demarcated in the NKDA plan dated 26th April 2011, within two months from date.

100. NKDA shall further demolish the existing partition by fence, separating the residential complex from the commercial complex. For the said purpose the NKDA shall depute appropriate engineers and officers to ascertain the extent of illegal construction made by respondents Nos.7-9 and M/s RP over the subject bulk plot and take steps as directed hereinabove. The costs of demolition shall be recovered from RP.

101. The RP shall be at liberty to cordon off 18,218 square feet of the 16.32 acres of land together with limited access area as per the NKDA Act and Rules framed thereunder to demarcate the length and breadth of its right over the subject plots. This is to ensure the privacy of the residents of bulk plot.

102. MAT 519 of 2024 is disposed of. Consequently all connected applications, if any, are disposed of in terms of this judgement. The impugned judgement is set aside to the extent that it is inconsistent with the above.

103. There shall be no orders as to costs.

(Rajasekhar Mantha, J.)

I Agree

(Anuj Singh, J.)

Later:

After the judgment is pronounced in open Court, the Joint Special Officer appointed by the Coordinate Bench in this appeal, shall stand discharged. The remuneration already paid shall constitute final remuneration to the Special Officer.

(Rajasekhar Mantha, J.)

I Agree

(Anuj Singh, J.)