

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

REJOINDER AFFIDAVIT

(On behalf of the Petitioner in response to the Counter
Affidavit filed by Mr. Ram Pukar Maurya)

IN

CIVIL MISC WRIT PETITION NO. 6049 OF 2020
(Under Article 226 of the Constitution of India)

(DISTRICT : GAUTAM BUDH NAGAR)

M/s JAIPRAKASH ASSOCIATES LTD., being a company incorporated under the provisions of Companies Act, 1956 having its registered office at Sector 128, Noida-201304 Uttar Pradesh through its Authorized Signatory Mr. Manmohan Sibbal.

...PETITIONER

Versus

1. **STATE OF UTTAR PRADESH**, through Principal Secretary, Department of Industrial Development at UP Civil Secretariat

...RESPONDENT NO.1

2. **YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY**, through its Chief Executive Officer, at First Floor, Commercial Complex, P-2, Sector-Omega 1, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201308

...RESPONDENT NO.2

Affidavit of Sri Krishna Kant Sharma,
aged about 49 years, son of Late Sri
Hira Lal Sharma, Occupation: Private
Service, Religion: Hindu, Authorised

Representative, M/s Jai Prakash
Associates Limited, Registered &
Corporate Office at Sector - 128, Noida -
201304, Gautam Budh Nagar. Aadhar
No. 360301058050, Mob. No.
9958757549

(Deponent)

I, the Deponent named above, do hereby solemnly
affirm and state on oath as under:

1. That the deponent has been authorized to present and file this reply affidavit for and on behalf of the Petitioner in the above captioned writ petition, and as such, he is fully acquainted with the facts deposed below.
2. That the instant affidavit is being filed in rejoinder to the Counter Affidavit dated 15.01.2023 (**'Affidavit'**) filed on behalf of the 'home buyers' by one Mr. Ram Pukar Maurya in response to the 5th Supplementary Affidavit dated 10.11.2022 filed by the Petitioner herein.
3. That the petitioner has submitted a Composite Revised Settlement Proposal dated 08.11.2022 ("*composite proposal*") wherein *inter alia* the petitioner has also submitted its proposal for completion of the projects. The respondent authority has placed the said composite proposal before its

board in the meeting held on 02.12.2022 and the decision of the board has been placed on record vide its compliance affidavit dated 13.12.2022. The petitioner has replied to the said compliance affidavit dated 13.12.2022 vide its reply affidavit dated 13.01.2023. The petitioner therefore relies upon the contents of the said composite proposal and its reply affidavit dated 13.01.2023 in rejoinder to the Affidavit dated 15.01.2023 filed on behalf of the Homebuyers.

4. That it is submitted that many homebuyers who have impleaded themselves in the present proceedings have also filed complaints before the consumer forums under the Consumer Protection Act, 1986 and the Uttar Pradesh Real Estate Regulatory Authority. It is very unfair on the part of the impleaded homebuyers to seek refund of their deposited money from the Consumer Courts and/or UP RERA and on the other hand seek completion of the projects and delivery of units before this Hon'ble Court. Therefore, to this extent the homebuyers (as mentioned in the list annexed hereto) ought to withdraw their claims from the other forums and participate in the present proceedings. The following consumer complaints are pending adjudication before / have been disposed of by the consumer forum:

SL	Title	Case No.	Final Order

1.	Mamta Maurya and Ors. vs. Jaiprakash Associates Ltd.	CC No. 405 of 2017 (National Commission)	Yes
2.	Jaypee Kove Buyers' Welfare Association vs Jaiprakash Associates Ltd.	CC No. 1401 of 2017 (National Commission)	Yes
3.	Chakit Singhal and ors. vs. Jaiprakash Associates Ltd.	CC No.2133 of 2016	No
4.	Nitin Vineet Das & Ors. vs. Jaiprakash Associates Ltd.	CC/2258/2016	No
5.	Amitabh Mehra & Ors. vs. Jaiprakash Associates Ltd.	CC/2774/2017	No

A copy of the final order dated 22.03.2022 in CC No. 405 of 2017 is annexed hereto as **Annexure No.1.**

A copy of the final order dated 30.05.2022 in CC No. 1401 of 2017 is annexed hereto as **Annexure No.2.**

A copy of the last order dated 15.12.2022 in CC No. 2133 of 2016 is annexed hereto as **Annexure No.3.**

A copy of the last order dated 13.12.2022 in CC No. 2258 of 2016 is annexed hereto as **Annexure No.4.**

A copy of the last order dated 01.02.2023 in CC No. 2774 of 2017 is annexed hereto as **Annexure No.5.**

A copy of the list of impleaded homebuyers who have approached the Uttar Pradesh Real Estate Regulatory Authority and the Consumer Forums is annexed hereto as **Annexure No.6.**

Paragraph wise Reply:

5. That the contents of paragraph 1 is denied. It is denied that the deponent is a homebuyer of the petitioner. It is denied that the deponent can be authorized by the homebuyers to file the present Affidavit under rejoinder. In view of the Order dated 22.03.2022 in CC No. 405 of 2017, it is submitted that the deponent is no longer a homebuyer of the Petitioner as his allotment stands extinguished pursuant to the Order dated 22.03.2022.
6. That the contents of paragraph 2, 3 and 4 calls for no rejoinder.
7. That the contents of paragraph 5 are admitted to the extent that the respondent authority has executed lease deeds of land admeasuring 965.7390 hectares in favor of the petitioner. Rest of the contents are denied being baseless.

8. That the contents of paragraph 6 are denied. In rejoinder it is submitted that the development work got delayed due to *force majeure* reasons beyond the control of the petitioner including the acts of omission and commission committed by the respondent authority. The petitioner refers to and, relies upon, the contents of the writ petition which may kindly be read as reproduced for sake of brevity.
9. That the contents of paragraph 7 are admitted to the extent they pertain to the record. In rejoinder, the petitioner refers to and relies upon the contents of the writ petition which may kindly be read as reproduced for sake of brevity.
10. That the contents of paragraph 8 calls for no rejoinder, being a matter of record.
11. That the contents of paragraph 9 are denied. The petitioner refers to and relies upon the contents of the writ petition as well as the present rejoinder which may kindly be read as reproduced for sake of brevity.
12. That the contents of paragraph 10 & 11 calls for no rejoinder being a matter of record.
13. That the contents of paragraph 12 are denied being false and incorrect. In rejoinder it is submitted that the petitioner has left no stone unturned in its attempts at amicably

settling the disputes involved in the present matter. Per contra, it is the respondent authority which is delaying the matter by arbitrarily imposing firstly the restoration charges to the tune of 10 % of the present value of the entire allotment in clear violation of the interim orders passed by this Hon'ble Court on 08.02.2021 and corrected vide the interim order dated 01.03.2021 and thereafter imposing the arbitrary condition of upfront payment of no litigation incentive/additional compensation in an arbitrary and discriminatory manner whereas it is collecting the same from other allottees at the time of grant of occupation certificates. However, as far as allotment of land is concerned, it is evident from the compliance affidavit dated 13.12.2022 filed by the respondent authority and the petitioners reply affidavit dated 13.12.2022 that most of the contentious issues have been settled and the settlement process is at its final stage.

14. That the contents of paragraph 13 calls for no rejoinder. It may however be submitted that the Petitioner has deposited an amount of Rs. 100 Crores with the respondent authority for consideration of its proposal including the proposal for homebuyers. Therefore, there is no substance in the allegations and the inferences sought to be drawn in the

Affidavit under rejoinder that the Petitioner is not pursuing settlement of the present case *bona fidely*.

15. That the contents of paragraph 14 are denied. It is denied that the proposal placed on record vide the 3rd Supplementary Affidavit was an eyewash and repetition of the earlier proposal. It is denied that there was no concrete plan with viable financial commitment and upfront infusion of capital in residential projects. In fact, vide the said 3rd Supplementary Affidavit, the Petitioner had committed to initially invest Rs. 100 crores in installments of Rs. 25 crores each, every quarter. The Petitioner had committed to invest more money as per the requirement as the construction progresses. The respondent no.2 has illegally and arbitrarily withheld the approvals in favor of the subject Project as would be evident from the contents of the writ petition which may kindly be read as reproduced for sake of brevity.

16. That the contents of paragraph 15 calls for no rejoinder.

17. That the contents of paragraphs 16 to 23 are denied. It is denied that the composite proposal dated 08.11.2022 contains any incorrect figures of residential projects. The contents of these paragraphs are a result of misreading of clause D) of the composite proposal dated 08.11.2022

whereby the Petitioner has given a proposal for homebuyers i.e. for the sold units and the Petitioner is committed to the timelines stipulated therein for delivery thereof.

Furthermore, a perusal of section 3 of the Real Estate Regulation and Development Act, 2016 (*hereinafter "RERA"*) would show that the said section provides that no promoter shall '*advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building*' in any real estate project or part thereof without registering the same with the authority. In the present case there is no violation of the aforesaid provision and further it is also not the case of the homebuyers herein that any apartment, plot or building has been sold by the Petitioner in breach of section 3 of the RERA.

Reference is next made to section 14 of the RERA which provides that the proposed project shall be "*developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications approved by the competent authority*" i.e. the respondent authority in the present case. It has been the case of the Petitioner herein since the inception of the present controversy that under the terms of the lease deeds executed *qua* the subject land in dispute, the respondent authority was mandated to help the Petitioner in obtaining applicable permits,

sanctions, approvals and clearances for effect enjoyment of the subject land in dispute (*paragraph 19 of writ petition*). However, in breach of the aforesaid covenant of the lease deeds, the respondent authority has showed a very lackadaisical approach and the Petitioner's applications are still pending with it. However, as permitted by the relevant bye laws, the Petitioner has constructed a good portion of the civil structures as per the plans and specifications provided to the respondent authority. This issue is directly involved in another writ petition pending adjudication before this Hon'ble Court bearing Writ Petition No. 47262 of 2017 filed by the Petitioner herein challenging the inaction of the respondent authority in granting the requisite sanctions (*paragraphs 20 to 22 of the writ petition*).

In view of the aforesaid, it is submitted that the contents of the paragraphs under rejoinder are an attempt to mislead this Hon'ble Court by creating a cloud on the Petitioner's *bona fide* attempt at resolving all the issues involved in the present writ petition. The facts and figures submitted by the Petitioner are genuine and the Petitioner remains committed to the provisions of its composite proposal dated 08.11.2022.

18. That the contents of paragraph 24 calls for no rejoinder since it only pertains to the the figures mentioned in

Annexure VII to the composite proposal dated 08.11.2022. However, it is clarified that inference sought to be drawn from the phrase 'hived off towers' with respect to the projected inflow to come from future sales of unsold inventory in such towers is completely misplaced, baseless and a result of a complete misreading of the composite proposal dated 08.11.2022. Contents of preceding paragraphs of the present rejoinder affidavit are reiterated.

19. That the contents of paragraph 25 to 27 are denied. It is submitted that till date the total amount received by the Petitioner from the present allottees is Rs. 460.57 crores out of the total receivable of Rs. 811.25 crores. The total outstanding is therefore Rs. 350.68 crores. The remaining amount of Rs. 195.63 crores is receivable from 438 nos units of unsold inventory. The Petitioner has undertaken to contribute Rs. 162 Crores out of its own funds in a phased manner. Therefore, there is no merit in the submissions contained in the paragraph under reply regarding the proposed cashflow required for the completion of the balance development work. Further, the issue qua liability of delay penalty to be paid both by the Petitioner and the allottees ought to be resolved after the completion of development work. However, the Petitioner is open to sit with the homebuyers and work out the necessary details regarding

the proposed cashflow and manner of completion of the subject Project and even under the supervision and guidance of the sectoral regulator i.e. the UP RERA.

20. That in view of rejoinder to the contents of paragraphs 16 to 23 of the Affidavit, the contents of paragraph 28 to 30 are denied being misconceived. For sake of brevity, the contents of the present rejoinder affidavit as well as the supplementary affidavits and the writ petition may be read as reproduced in rejoinder to paragraphs 28 to 30 of the Affidavit under rejoinder.
21. That the contents of paragraph 31 are denied being baseless and extremely vague. It is denied that the Petitioner has fraudulently offered the possession of the plots. It is denied that such possession has been offered without complete infrastructure facilities. For sake of brevity, the contents of the present rejoinder affidavit as well as the supplementary affidavits and the writ petition may be read as reproduced in rejoinder to paragraph under rejoinder.
22. That the contents of paragraph 32 calls for no rejoinder from the Petitioner since it pertains to the inaction of the respondent authority on the proposal for homebuyers submitted by the Petitioner. It is reiterated that despite the silence of the respondent authority on the said issue, the

Petitioner remains committed to the terms of the composite proposal dated 08.11.2022.

23. That the contents of paragraph 33 are denied to the extent it pertains to the Petitioner. In rejoinder it is submitted that the timelines submitted by the Petitioner are reasonable and the Petitioner is committed towards the same. It may not be out of place to mention herein that the Petitioner has recently successfully completed the balance development works of another project at *Jaypee Greens Wishtown*, Sector 128, Noida namely project Kalypso Court under the supervision and guidance of the UP RERA under the provisions of the RERA. Therefore, the Petitioner is capable of completing the balance development work of its projects and accordingly, the Petitioner has divided the timelines for completion of various projects on the subject land in dispute after taking into notice the present status of construction and the estimated cashflow of each project. The Petitioner is committed towards its resolution, provided by it vide the composite proposal dated 08.11.2022, for the homebuyers. A copy of press release dated 18.11.2022 is annexed hereto as **Annexure No.7**.

24. That the contents of paragraph 34 to 36 are admitted.

25. That the contents of paragraph 37 are denied. It is reiterated that vide the composite proposal dated 08.11.2022, the Petitioner herein has proposed to spend over 160 crores in the manner of Rs. 25 crores every quarter. Thus, the allegation that there is no upfront and sufficient payment proposed by the Petitioner is completely baseless.
26. That the contents of paragraph 38 are denied being false and incorrect. It is reiterated that the Petitioner is committed towards its proposal for homebuyers made vide the composite proposal dated 08.11.2022.
27. That the contents of paragraphs 39 to 41 are denied so as as they pertain to the Petitioner. It is reiterated that the respondent authority has acted in breach of the covenants of the lease deeds and shown a very lackadaisical approach in approving the building plans and drawings of the Petitioner. Despite the same, the Petitioner has carried out development works as per the drawings submitted by it as permitted by the prevalent bye laws. For sake of brevity, the contents of the present rejoinder affidavit as well as the supplementary affidavits and the writ petition may be read as reproduced in rejoinder to paragraph under rejoinder.
28. That the contents of paragraph 42 calls for no rejoinder, however, it is submitted that the present situation has

emerged due to the impugned acts of commission and omission by the respondent authority which is also responsible for creating several hurdles in the resolution of the disputes. For sake of brevity, the contents of the present rejoinder affidavit as well as the supplementary affidavits and the writ petition may be read as reproduced in rejoinder to paragraph under rejoinder.

29. That the contents of paragraph 43 and 44 calls for no rejoinder being an admitted fact.
30. That the contents of paragraph 45 are denied. In view of the submissions made hereto before, it is submitted that the composite proposal dated 08.11.2022 submitted by the Petitioner is just and reasonable and caters to the needs of the homebuyers and the demands of the respondent authority including the farmers compensation in a balanced manner. For sake of brevity, the contents of the present rejoinder affidavit as well as the supplementary affidavits and the writ petition may be read as reproduced in rejoinder to paragraphs under rejoinder.

I, the deponent above named, do hereby solemnly affirm and swear on oath that the contents of paragraph nos. 1, 2, 3, 4(P), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23(P), 24, 25, 26, 27, 28 and 29 of this

affidavit are true to my personal knowledge; those contents of paragraph nos. 4(P) and 23(P) of this affidavit are based on perusal of records; those contents of paragraph no.....of this affidavit are based on information received and those contents of paragraph nos. 30 of this affidavit are based on legal advice; which all I believe to be true that no part of this affidavit is false and nothing material has been concealed herein. So Help Me God.

(DEPONENT)

I, Kamta Prasad Mishra clerk to Sri Rohan Gupta, Advocate High Court Allahabad do hereby declare that the deponent is the same person. I know him from the perusal of documents produced before me in connection of this case.

(K.P. Mishra)

Clerk

Reg. K-10/2012

Solemnly affirmed before me on 07th day of February, 2023 at about. ~~4.30 am~~ ^{PM} / ~~pm~~ by the deponent who has been identified by the aforesaid clerk.

I have satisfied myself by examining the deponent that he understood the contents of this affidavit, has been read over and explained to him by me.

(OATH COMMISSIONER)



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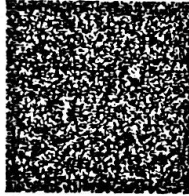
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कृष्ण कान्त शर्मा
Krishna Kant Sharma
214-gangotri
Anand Ashray
Phi-2 Greater Noida
Near Jal Vayu Vihar
Kasana
Gautam Buddha Nagar Uttar Pradesh - 201310
9958757549

Issue Date: 22/02/2018

Signature Not Verified

Signature Not Verified



आपका आधार क्रमांक / Your Aadhaar No. :

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VID : 9134 9113 8232 2361

मेरा आधार, मेरी पहचान



भारत सरकार
Government of India



कृष्ण कान्त शर्मा
Krishna Kant Sharma
जन्म तिथि/DOB: 01/01/1973
पुरुष/ MALE

Download Date: 19/05/2020

Issue Date: 22/02/2018

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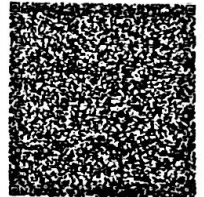
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