



2026:UHC:557-DB

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA  
AND  
HON'BLE SRI JUSTICE ASHISH NAITHANI

**15<sup>TH</sup> JANUARY, 2026**

**WRIT PETITION (M/B) No. 45 OF 2026**

Raj Kumar Saini.

...Petitioner

Versus

District Magistrate, Haridwar and others.

...Respondents

Counsel for the petitioner. : Mr. Pankaj Kumar Sharma, learned counsel.

Counsel for respondent nos. 1 to 3. : Mr. C.S. Rawat, learned Chief Standing Counsel with Mr. Gajendra Tripathi & Mr. Y.C. Tiwari, learned Standing Counsels for the State of Uttarakhand.

Counsel for respondent no. 5. : Ms. Monika Pant, learned counsel.

**JUDGMENT** : (per Sri Manoj Kumar Gupta, C.J.)

1. Heard Shri Pankaj Kumar Sharma, Advocate for the petitioner, learned Chief Standing Counsel for the State/ respondent nos. 1 to 3 & Ms. Monika Pant, Advocate for respondent no. 5.

2. On oral prayer made by learned counsel for the petitioner, he is permitted to implead Raj Kumar Saini and Archana as respondents to the present Writ Petition.

3. The petitioner has prayed for quashing of the attachment and auction proceedings initiated by the respondent-authorities in pursuance of the order dated 28.08.2019 passed by respondent no. 5 - Real Estate



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Regulatory Authority, Uttarakhand, Dehradun (for short, hereinafter referred to as "RERA") in Case No. 188/2018, and also for quashing of the sale proclamation and auction notice dated 16.12.2025, and auction notification dated 03.01.2026 to the extent the same relates to the land and property of the petitioner, and for restraining the respondents from proceeding any further with the auction scheduled on 17.01.2026, and for deciding the petitioner's objection dated 17.11.2025 and 29.12.2025.

4. The facts in brief, necessary for disposal of the instant Writ Petition, are as follows :

The petitioner entered into a development agreement with respondent no. 4 (for short, hereinafter referred to as the "Developer") dated 01.10.2011. By the said agreement, the petitioner transferred absolute rights in favour of the developer to develop a Group Housing having multi-storeyed buildings, apartments, duplexes, etc. over the land measuring 15545.48 Sq. Mtrs. situated at Village Asaf Nagar, Pargana and Tehsil Roorkee, District Haridwar belonging to the petitioner. Some of the covenants of the agreement, relevant to the controversy at hand, are extracted :

- 1. The owner hereby accepts the offer of the Developer to promote and/ or develop the said Land situated at Khasra No.256/2 & Khasra No.256/5 admeasuring 1.5545 Heq. Situated at Village Asaf Nagar, Pargana and Tehsil Roorkee, Distt. Haridwar as*



per the scheme formulated in respect of the premises fully described in the First Schedule hereunder written (hereinafter called "the said premises") and the Developer hereby agrees to promote and develop the same subject to the terms and conditions hereinafter contained.

2. That the owner of the said property has transferred the possession of the Land to the developers after taking the security deposit/ advance of Rs.341.40 Lac and mortgaged the property, besides authorizing the developer to mortgage further. The owner has handed over the possession of the property to the developer.

7. For convenience the following definitions have been incorporated in this agreement:

(b). Owners share shall mean 15% of the net profit after the sale of entire Project.

(d). The Land Cost for all practical purposes is mutually fixed at Rs.380.00 Lacs.

8. Owners obligations:

(a) The owner will execute in favour of the Developer Power of Attorney, if required, granting exclusive right to the Developer to construct the said building in accordance with the plan to be sanctioned without any interference and destruction of the same.

(b) The owner hereby agrees and covenants with the Developers not to cause any interference or hindrance in construction of the said building by the developer.

(c) The owner shall not do any deed or thing, whereby the Developer may be prevented from selling, assigning and/ or disposing of the project to be constructed on the said Land.

9. Owners right and representations: -

(ii) The owner shall execute deed/s of Conveyance in respect of the proportionate undivided share in the said land being the Developer's share either in favour of the Developer or in favour of the nominated persons of the developers without raising any objection thereto.

(iii) The owner shall rectify the land records by recording the name of the owner therein as owner of the said premises/ land and after mutation shall deliver the mutation certificate to the developer.

10. Developers obligations: -



*(c) The developers shall be exclusively entitled to developers share in the said building with right to deal & dispose-off the same to his nominee or nominees as the developer shall think fit and proper and for which the owner shall not in any way interfere or disturb the possession of the Developer's share.*

11. *Developers right:-*

*(iv) The developer shall be entitled to enter into agreement to sale with the intending purchasers/ buyers of the units and to receive earnest money and/ or advance from such purchasers for raising fund for making construction of the said building and the owner shall have no right or claim in the said proceed or advance money.*

15. *Developers indemnity:- The Developer hereby undertakes to keep the owner indemnified from and against all third party's claim and action relating to the construction of the said building and also keep the owner's indemnified from all against all actions, suit, costs proceedings claims and demands that may arise out of the Developer's share with regard to the construction of the said building and/ or for any defect therein.*

20. *It is further agreed that the said Land shall remain charged as per other agreement in favour of the Developer and the owner will deposit all original documents with the developers advocate with intent to create equitable mortgage so long sanctioned plan and the possession are handed over and all moneys are repaid to the developer by the Owner, in case of default on the part of the owner for compliance of any of the terms and conditions of this agreement the other agreement will be operative.*

5. On basis of the aforesaid development agreement, the respondent-developer allotted Flat No. C-301, 3<sup>rd</sup> Floor, measuring 1670 Sq. Ft. in the housing colony being developed by it over the land. It also realized, as per the case of the added respondents (hereinafter referred to as "allottees"), 83% of the total value of the flat.



6. An agreement to sell was executed between the respondent-developer and the allottees on 29.01.2014, however, the developer failed to complete the construction and handover possession to the allottees. Consequently, a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short, hereinafter referred to as the "Act") was filed by the allottees against the respondent-developer before RERA, and in the said proceedings, an order dated 28.08.2019 came to be passed against the developer directing the developer to refund Rs. 19,53,950/- along with SBI HMCLR Rate + 2%, i.e. 10.45% interest per annum within 45 days, and a sum of Rs. 20,000/- was also imposed as penalty against the respondent-developer. The developer failed to pay the amount to the allottees. It compelled the allottees to initiate proceedings for recovery against the developer. In the said proceedings, a sale proclamation was issued on 16.12.2025 for auction of 275 Sq. Mtrs. of Khata No. 00279 Khasra No. 701 (new number of Khasra No. 256/2 and Khasra No. 256/5) at Mauza Asaf Nagar, Tehsil Roorkee.

7. The petitioner is stated to have filed objection, after coming to know of the attachment of the land, and a copy of the same has been annexed along with the Writ Petition. The main objection of the petitioner is that he was not a party to



the complaint before RERA, and also that the title in the property vests with the petitioner and, therefore, the respondent-authorities could not auction the same. It is also contended by learned counsel for the petitioner that under the development agreement, the liability, if any, in respect of the allottees was that of the developer and not the petitioner herein.

8. On the other hand, the learned Chief Standing Counsel submitted that under the development agreement, the petitioner has transferred virtually all the rights in the property in favour of the developer. It is urged that the petitioner has already received almost 90% of the value of land, and as per various clauses and stipulations of the development agreement, the developer has also been given right to transfer the property. It is submitted that the developer succeeded in realizing considerable sum from the allottees on basis of the rights flowing in its favour under the development agreement and, therefore, the petitioner cannot deny his liability.

9. Learned counsel appearing on behalf of the RERA submits that the developer is in collusion with the petitioner, and that large number of other allottees have also filed similar complaints, as the developer, after realizing money from



them, is neither delivering the possession, nor refunding the money.

10. We have considered rival submissions, and perused the record.

11. It is evident from various covenants in the development agreement, as extracted above, that the petitioner has purportedly transferred all his rights in the property in favour of the developer. The possession, admittedly, was transferred after realizing Rs. 341.40 Lakhs from the developer. The total land cost, as per the development agreement, was Rs. 380 Lakhs. Thus, almost 90% of the total land cost was realized by the petitioner. The petitioner, apart from transferring actual physical possession, also mortgaged the land in favour of the developer by creating an equitable mortgage of the same. The developer was even given right to enter into agreements of sale with intending purchasers/ buyers of the units and to receive earnest money and/ or advance from them. The developer, only on basis of the rights flowing in its favour under the development agreement, had succeeded in making allotments of various units in favour of different persons, including the complainants and in realizing huge sums of money from them.



12. Section 2(zk) of the Act defines “promoter” to mean, *inter alia* :-

*“(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.”*

13. The definition of ‘promoter’, as given under the Act, is wide enough to include even the petitioner, who has caused to be constructed a building over his land through the developer.

14. Having regard to the nature of the rights, which came to be transferred in favour of the developer under the development agreement, the liability, as against the allottees, from whom money was realized by the developer solely on the basis of the rights flowing under the development agreement would be joint and several, and the petitioner cannot be permitted to defeat the lawful claim of the allottees on the technical grounds, which have been raised before us.

15. Under Clause 15 of the development agreement, the right of the petitioner to be indemnified by the developer has been preserved, and in case the amount is realized from the petitioner, that shall be without prejudice to the right



conferred in favour of the petitioner vide Clause 15 of the developer agreement.

16. At this stage, learned counsel for the petitioner states that the petitioner is ready and willing to pay the amount in instalments and prays that the auction proceedings be kept in abeyance.

17. Having regard to the afore-said submission, we dispose of the instant Writ Petition as follows :-

(a) The petitioner will deposit 25% of the amount mentioned in the sale proclamation with the Sub-Divisional Magistrate, Roorkee (Respondent No. 2), or with the officer authorised to undertake the recovery on or before the date fixed for auction. Upon such deposit being made, the auction scheduled for 17.01.2026 shall be kept in abeyance.

(b) The petitioner shall deposit the remaining amount in two equal three monthly instalments. The first instalment would fall due within three months from the date of the first deposit, and likewise, the second instalment along with upto date interest, within six months from the date of the first deposit.



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(c) In case the entire amount, as per the time schedule prescribed above, is deposited, the auction proceeding would stand nullified. On the other hand, if there is any default in making deposits, as provided above, the instant order will be of no avail, and it shall be open to the authorities to proceed further with the auction in pursuance of the sale proclamation and the auction notice.

18. Any amount deposited by the petitioner, in pursuance of the instant order, shall, immediately be transferred to the account of respondent no. 5, for being released in favour of the allottees.

19. All pending applications stands disposed of accordingly.

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**MANOJ KUMAR GUPTA, C.J.**

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**ASHISH NAITHANI, J.**

Dt: 15<sup>th</sup> January, 2026

Rahul

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PRAJAPATI