

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY

Dated 2nd SEPTEMBER 2022

COMPLAINANTS.....

1. CMP/181110/0001620

SRI. AMRIT THOMAS

Rep. by SRI. MATHEW THOMAS,
Row House, #2, Aristos,
Sobha City, Thanisandra Main Road,
Bengaluru – 560064.

2. CMP/UR/190819/0003946

P V BALASUBRAMANIAN,

La Bella Vita, Sobha City,
Club House, Hegde Nagar,
Thanisandra Main Road,
Bengaluru – 560077.

(Rep. by Sri. Chaitanya S.G, Advocate
and In person)

V/S

RESPONDENT.....

SOBHA LIMITED,

Sarjapura – Marathahalli Outer Ring
Road, Bellandur Post,
Devarabisanahalli,
Bengaluru - 560103.

(Rep. by Sri. Ravishankar, Advocate)

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J U D G E M E N T

1. Both the complainants have filed these complaints under section 31 of the RERA Act against the project "Sobha City" developed by "Sobha Developers Ltd.," for the relief of directing the respondent to rectify defects and deficiencies in the project and registration of project under RERA.
2. Both these matters are taken up together for disposal as they are arising from common project and in order to avoid repetition.

Brief facts of the complainant in Cmp. No. 3946:-

3. The complainant M/s Shobha city apartment owners' Association by its secretary P V Balasubramanian has registered a complaint vide CMP/UR/190819/0003946 in a project called Shobha City situated at No.3126, Casa Padiso-2, Sobha city, Thanisandra Main Road, Bengaluru Urban -560077. The complainant has in their prayer, sought for completion of civic amenities and for occupancy certificate and such other reliefs.
4. In their written submissions dated 07/02/2020, the complainant association has prayed for completion of amenities and related reliefs that can be summarized as under.
 - 1) The builder has failed to provide BESCOM power supply as per the sale agreement. The power that was used for construction activities continues to be supplied for the residents for domestic purposes. This power supply is erratic and frequently safety devices, like RCCB trips.
 - 2) BWSSB water and sewage connections have not been provided till date and despite several reminders and representations, no steps have been provided to take action to provide water to the project.

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- 3) Organic waste composting plant does not have requisite capacity to handle waste generated by households and poses a health hazard. The conditions imposed by Karnataka State Pollution Control Board have been violated.
 - 4) Arrangement for rain water harvesting and recharge of ground water at all times as per building bye laws has not been provided for the blocks
 - 5) Completion certificate has not been obtained.
 - 6) Final occupancy certificate (OC, in short) is not obtained. Partial occupancy certificates (POC, in short) are clearly illegal and not provided under the RERA Act, 2016
 - 7) Common assets such as the club house have not been handed over to the buyers and the areas marked as civic amenities have not so far been handed over to the association.
 - 8) The charges paid towards maintenance were assured to be refunded to the Association but the respondent has failed to do so.
 - 9) Maintenance is not continued by the promoter and a significant sum from the maintenance corpus is depleted.
 - 10) Basic amenities like permanent power connection for each individual houses, water and sewerage facilities have not been completed. The respondent is marketing the project without registration under RERA.
5. The Association has sought for registration of the project under RERA; rectification of sale deed; penalty for non-registration under RERA and delay in project completion and suitable compensation for not completing the construction and conveying title as per the sale agreement.
6. The complainant Association has enclosed the documents that include legal notice issued to the promoter dated 30/07/2019; copy of construction

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agreement; modified consent issued by KSPCB dated 06/07/2013 and letters of correspondence between the builder and the association.

7. Learned counsel for complainant has filed memorandum of complaint on 23/09/2019 along with following documents:-

- (i) General power of Attorney dated 11/04/2018 by Amrith Thomas to his father Mr. Mathew Thomas
- (ii) Agreement for sale and construction agreement dated 18/02/2014 between M/s. Sobha Developers Limited and Mr. Amrit Thomas.
- (iii) Copy of Draft sale deed
- (iv) NOC from Bangalore Electricity Supply Company Limited dated 25/05/2011.
- (v) NOC from Bangalore Water Supply and Sewerage Board dated 02/12/2010.
- (vi) E-mail conversation between Mathew Thomas and Sobha City Developers to prevent ingress of insects and dirt into the bedrooms.
- (vii) Sanctioned letter from Karnataka State Pollution Control Board dated 28/12/2010
- (viii) Modified consent of Karnataka State Pollution Control Board dated June 2013.
- (ix) Expansion of "Sobha City" residential with commercial development project by State Level Environment Impact Assessment Authority, Karnataka dated 13/08/2013.
- (x) Partial commencement certificate dated 05/05/2012 for blocks 14 and 15.
- (xi) Partial commencement certificate dated 26/12/2012 for blocks 5 and 6.
- (xii) Partial commencement certificate dated 31/12/2013 for blocks 16, 17, 7 and 8.

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- (xiii) Partial commencement certificate dated 21/02/2014 for blocks 9, 10 and 12.
- (xiv) Occupancy Certificate (Partial) dated 15/04/2016 for block No. 14 & 15.
- (xv) Senior citizen ID Card of Mr. Mathew Thomas.

8. Learned counsel for complainant has filed memorandum of complaint on 07/02/2020 along with following documents:-

- (i) Authorization letter dated 26/07/2019 for signing legal documents on behalf of Sobha City Apartment Owners Association.
- (ii) Legal notice sent to the builder on 30/07/2019 by Chaitanya and Nithyananda Advocates.
- (iii) Construction agreement dated 14/08/2012 entered between M/s. Sobha Developers Ltd., and Mr. P.V. Balasubramanian.
- (iv) KSPCB Sanctioned letter dated 06/07/2013
- (v) Gmail dated 26/09/2019 from the builder to the allottees regarding permanent power supply has been charged by BESCOM for Sobha CP-1.
- (vi) Association's letter dated 08/10/2019, to the builder regarding claim for electricity and consumptions charges by SL in contravention to agreement.
- (vii) Association letter dated 03/12/2019 to builder for seeking refund of amounts to Sobha as maintenance deposit by owners – Casa Paradiso 1.
- (viii) Association letter dated 14/11/2019 regarding summary of pending points for resolution.

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Brief facts of the complainant in Cmp. No. 1620:-

9. The complainant Sri. Amrit Thomas has filed this complaint contending that, he has purchased a row house in the layout. Reliefs sought are similar to the one prayed for in complaint no.3946. That apart, it is stated that the promoter has registered the project under Karnataka Apartment Ownership Act, 1972, but row houses are not apartments and these are not to be registered under KAOA.
10. The complainant has filed a memorandum under sec.31 of the RERA Act, 2016 Act (in short) dated 19/09/2019. The reliefs sought are along the lines as prayed for in 3946. The additional relief is because the complainant has purchased a row house, he does not come under KAOA and there needs to be proper rectification.
11. Subsequently, in response to communication from RERA dated 14/12/2018, the complainant has submitted OC (partial) issued by BBMP dated 21/12/2016 and copy of a sale deed between Sobha limited and T Krishna Kumar and another dated 14/02/2017.

Respondent has filed objections as under:-

12. Respondent has denied each and every allegation made against it by the complainant as false, frivolous and vexatious. It contends that the complainant is seeking to renege from their contractual obligations by misusing the mechanism of courts and tribunals which are meant to benefit cases where purchasers are aggrieved.
13. According to the respondent, the project Sobha City is developed in 36 acres 25 guntas of land in a various phases / block and developed was

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commenced in the year 2012 itself after receipt of and in compliance of the relevant NOC's, permissions and sanctions from various statutory authorities like BSNL, Airport Authority of India, BWSSB, SEEIAA, BESCOM, KSPCB, BDA, BBMP, etc., The Bruhat Bangalore Mahanagara Palike (BBMP) has sanctioned the plan on 24/08/2011 and modified plan on 04/06/2013, which covers 'Sobha City' consisting of phases / buildings namely,

- (i) Sobha Casa Paradiso – 1 (Block 1 & 2)
- (ii) Sobha Casa Paradiso – 2 (Block 3 & 4)
- (iii) Sobha Casa Serenita (Wing 1 to 4)
- (iv) Sobha Santorini (Wing 1 to 6)
- (v) Sobha Mykonos (Wing 1 to 8)
- (vi) Sobha Aristos (Residential buildings / Row Houses)

14. Further, it contends that the project Sobha City Aristos does not fall within the ambit of RERA Act and Rules. Sobha City – Aristos residential building was not an ongoing project when the RERA Act, 2016 came into force in Karnataka on 01/05/2017.

15. It is reiterated that the construction of complainants residential premises bearing No. B-02 in Sobha Aristos project was completed in the year 2015 and occupancy certificate dated 21/12/2016 was also issued by Bruhat Bengaluru Mahanagara Palike with respect to the said Sobha Aristos project. It is crystal clear from the provisions of the RERA Act and Rules that this Hon'ble RERA Authority has no jurisdiction to adjudicate and entertain complaints against the unregistered RERA projects. Therefore, the present complaint is also out of the scope of this Hon'ble RERA Authority.

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16. Further, it contends that the complainant in Cmp. No. 1620 doesn't have locus standi to maintain his prayer since he is only resident of Aristos Block (Block 5, 6, 7 and 8) and he has not filed the complaint in representative capacity.
17. There are in all 17 blocks under various names whereas only Block No. 16 is registered under RERA as the said block was the only ongoing project when the RERA came into force in the year 2014. Ownership Association was created pursuant to DOD registered on 08/09/2016 u/s. 2 of KAOA. The complainant in Cmp. No. 1620 is the purchaser of unit No. B-02 in Sobha City Aristos Block No. 5,6,7 and 8 which was granted OC on 21/12/2016. The complaint was filed only in respect of ARISTOS and the notice dated 03/12/2018 was issued by this Authority was also only in respect of Aristos block. Hence, the complainant is not concerned with the other blocks.
18. Complaint No. 3946 is filed by the Association and said complaint is not maintainable since all blocks of Sobha City were not ongoing projects. Only Block No. 16 was an ongoing and hence it has been registered under RERA. In 3946 complainant is the Association which has entered into a Memorandum of Agreement dated 05/11/2020.
19. The occupancy certificates which have been granted to the various blocks are not partial occupancy certificates. But, they are issued for the complete building. These occupancy certificates shown as occupancy certificate (partial) which means that the same is partial qua the entire sanction plan for more than 36 acres. Therefore, these occupancy certificates have to be considered as a completion certificate.

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20. There is no further requirement in Karnataka after obtaining OC to provide any more documents, much less completion certificate as has been contended by the complainants. In fact, no such completion certificates are being issued by the plan sanctioning Authorities in Karnataka after issuance of occupancy certificates. As per Rule 4 (iv) of RERA Rules for portion which has partial occupancy certificate that portion has to be excluded from the ambit of ongoing project.
21. With regard to BWSSB and BESCOM issue, firstly in the agreements with the apartment purchasers BWSSB connection is not promised. Secondly, no pro-rata charges were collected from the purchasers towards BWSSB water supply which is admitted in Cmp. No. 1620. Thirdly, complainant Association in Cmp. No. 3946 has entered into an Memorandum of agreement dated 05/11/2020 wherein they have admitted these facts and have also undertaken to take a decision either to ask residents to make payments of the pro-rata charges for BWSSB water supply or to permit respondent to forfeit the same from the corpus fund. Only charges towards Greater Bangalore Water and Sewage Project (GBWSP) have been collected by the respondent which has nothing to do with BWSSB pro-rata charges.
22. With regard to BESCOM, the NOC which is produced by the complainants itself establish that the BESCOM had clarified that permanent electricity will be granted only after establishment of Manyata Sub-station which condition was not within the hands of respondent. The BESCOM provided temporary power supply which was made permanent in September 2019. Moreover, provision of electricity is not a criteria to check if a project is ongoing. The definition of OC only includes the provision of the civic

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infrastructure and not the connection. Providing the connection is within the domain of the concerned Authority.

23. As regards the joining STP to BWSSB pipes are concerned the same is contrary to the orders of NGT. Since, treated water cannot be let into the drainage lines. The treated water is being used for gardening, washing cars, flush tank usage and other permissible uses. Further the respondent has referred the case of Macro tech developers Ltd., V/s. State of Maharashtra and Newtech Promoters and Developers Pvt. Ltd., V/s. State of UP and Ors.
24. The complainants are bound by the deed of apartment and bye-laws of apartment and hence they cannot continue to hold the promoter liable for the maintenance of the apartment since maintenance of the apartment is now vested with the owners Association constituted under KAOA. Hence, prayed to dismiss the complaints.
25. Learned counsel for respondent has filed written submissions on 23/09/2019 along with following documents:-
- (i) Minutes of meeting of the Executive committee of the board of directors of the company held on 07/11/2017.
 - (ii) Occupancy certificate (Partial) dated 21/12/2016 for Blocks 2, 3 and 4
 - (iii) Gmail dated 14/12/2018 from the RERA Authority to the builder to provide plan sanction copy and sale deed of any buyer to confirm the name and address of the project.
 - (iv) Plan sanctioned letter dated 24/08/2011 from BBMP for entire Sobha City project.

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- (v) Sale deed dated 14/02/2017 executed between M/s. Sobha Limited and Mr. T. Krishna Kumar and Mrs. Sujatha Krishnakumar.
- (vi) Letter dated 04/09/2015 handing over of possession to Mr. Amrit Thomas, owner in Sobha City Aristos B-02.

26. Learned counsel for respondent has filed Statement of objections on 25/02/2020 along with following documents:-

- (i) Authorization letter / Board Resolution in favour of Mr. N. Keshavamurthy
- (ii) Sanctioned plan bearing No. JDTP (N) LP/150/2010-2011 dated 04/06/2013.
- (iii) Occupancy Certificate (Partial) dated 15/04/2016 for block No. 14 & 15, dated 21/12/2016 for block No. 2, 3 & 4 and dated 29/06/2019 for blocks No.9, 10 & 12.
- (iv) Occupancy Certificate dated 22/01/2020 for entire Sobha City project.
- (v) RERA Registration certificate dated 15/10/2017 of Sobha City – Casa Paradiso Block 4.
- (vi) Agreement for sale of Sobha City – Casa Paradiso – Block – 3 between Sobha Developers Limited and the purchaser.
- (vii) Draft construction agreement of Sobha city Aristos
- (viii) Copy of the reply notice dated 17/09/2019 issued by the respondents.

27. Learned counsel for respondent has filed memo with documents and citations on 30/06/2020 is as under:-

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- (i) Decision rendered in M/s. Sesa Goa Ltd and another V State of Goa and others reported in MANU/GT/0035/2013.
- (ii) Decision rendered in Sobha Hibiscus Condominim Vs Managing Director, M/s. Sobha Developers Ltd., & Another by the Hon'ble Supreme Court in Civil Appeal No.1118 of 2016.
- (iii) Decision rendered in Vinayaka Investments Vs Commissioner, Corporation, City of Bangalore reported in ILR Kant 3742.
- (iv) Decision rendered in Sumit Agarwal V Venus Developers and another by Hon'ble Maha RERA in complaint 535 dated 13/11/2017.
- (v) Decision rendered in Navin Raheja Vs Shilpa Jain and others by the Hon'ble National Company Law Appellate Tribunal, New Delhi, reported in MANU/NL/0024/2020.
- (vi) Decision rendered in Union of India and others Vs Indisind Bank Ltd and others reported in AIR 2016 SC 4374.
- (vii) Certificates of Chartered Accountant dated 20/03/2020.

28. Learned counsel for respondent has filed written submissions on 04/07/2020 along with following documents:-

- (i) Deed of Declaration dated 08/09/2016 by M/s. Sobha Limited.
- (ii) Chartered Accountant Certificate dated 20/03/2020.

29. Learned counsel for respondent has filed the following documents in support of its submissions on 16/04/2021:-

- (i) Copy of the plaint in O.S. No. 4872 of 2020 between Mr. Srinivasa Rao Talla & 12 others allottees of the project on Sobha City Apartment Owners Association and M/s. Sobha Limited.

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- (ii) Copy of the IA No. 2/2020 in O.S. No.4872/2020 as numbered by the plaintiff along with the documents produced.
- (iii) Copy of written statement in the matter filed by the respondent in O.S. No. 4872/2020 before the Hon'ble City Civil and Sessions Judge, Bengaluru.
- (iv) Copy of written statement filed by the Apex Association, complainant herein in O.S. No. 4872/2020 before the Hon'ble City Civil and Sessions Judge, Bengaluru.

30. Learned counsel for respondent has filed an affidavit on 15/07/2021 along with following documents:-

- (i) Memorandum of Agreement dated 05/11/2020 between Sobha Limited and Sobha City Apartment Owners Association.
- (ii) Handing over of Inventory and documents – sewage treatment plant (2000 KLD)
- (iii) Copy of Judgement of the Hon'ble High Court of Karnataka in W.P. Nos. 5445-5455 of 2012 (BDA) dated 05/03/2013 by Hon'ble Mr. Justice Anand Byraredddy between Sobha Developers Limited, Sobha Innercity Technopolis Private Limited v/s. The State of Karnataka and others.
- (iv) MOA between SCAOA and SL dated 05/11/2020.

31. Learned counsel for respondent has filed memo on 07/08/2021 and 18/03/2022 along with following documents:-

- (i) Progress report on MOA dated 05/11/2020 between Sobha City Apartment Owners Association and Sobha Limited as on 28/07/2021 and 15/03/2022.

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- (ii) The said progress report is filed in furtherance of the application filed under Section 151 of the code of civil procedure, 1908 seeking for dismissal of the present complaint as in fructuous.

32. Learned counsel for respondent has filed Additional Statement of Objections to the complainant on 06/08/2021 along with following documents:-

- (i) Verifying affidavit dated 06/08/2021
- (ii) Copies of the mail conversation between complainants and respondent dated 25/02/2020, 26/02/2020 and 01/03/2020.
- (iii) Copy of the mail dated 16/10/2020 along with the attachment which the draft MOA
- (iv) The copy of mail dated 08/10/2020 regarding draft return of corpus amounts.
- (v) The copy of the letter dated 05/11/2020 along with the Lease Deed.
- (vi) Excel Sheet with the details of the bank transfer for the refund of the corpus amounts as per the schedule
- (vii) Copy of statement of objections filed by the complainant in O.S. No. 4872 of 2020
- (viii) Copy of Sale deed dated 19/07/2021 between M/s. Sobha Limited and Mr. Amrit Thomas
- (ix) Copy of the excel sheet showing the approximate expenses of the respondent for carrying out the works as per the MOA dated 05/11/2020.

33. Learned counsel for respondent has filed memo on 22/06/2022 along with following documents and citations:-

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- (i) Order dated 10/06/2022 passed by the Hon'ble Appellate Tribunal in Appeal No. 56/2021
- (ii) Copy of the approval letter dated 24/04/2019 for electrical installation issued by Chief Electrical Inspector to Government and list of meter installed in the Sobha City project including Sobha City Aristos.
- (iii) Sale deed dated 19/07/2021 between M/s. Sobha Ltd and Mr. Amrit Thomas.

CITATIONS:

- (i) Macrotech Developers Ltd., V. State of Maharashtra by Hon'ble High Court of Bombay, dated 29/01/2021 reported in 2021 SCC online Bom 1327.
- (ii) M/s. Newtech Promoters and Developers Pvt. Ltd., V/s. State of UP & Ors dated 11/11/2021. Cited MANU/SC/1056/2021.

34. Learned counsel for respondent has filed memo on 28/07/2022 along with following documents and citations:-

- (i) Copy of order by RERA in complaint No. 7366 dated 25/11/2021 between Subroto Chakraborty and Vijaya Chakraborty V/s. Sobha Limited.
- (ii) Copy of notification from RERA with regards to court fee of association dated 11/08/2020.

CITATIONS:

- (i) Shantharam Prabhu and Ors. V.K. Dayanand Rai and Ors., dated 08/09/2021. Cited MANU/KA/3880/2021

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- (ii) K Uttamlal (Exports) Pvt. Ltd., V/s. Union of India. Cited MANU/MH/0360/1990
- (iii) Bansilal Jesasingh V/s. Union of India and Ors., Cited MANU/MH/0040/1985.

35. Both the complaints bearing complaint No's: 1620 and 3946 heard on various dates and the final arguments were heard on 04/08/2022 and they are on the following points.

- a) BWSSB connection
- b) BESCOM connection
- c) Memorandum of Understanding
- d) STP
- e) Rectification to the effect that it is a row house

36. **On the above averments, the following points would arise for our consideration.**

- 1. On the point of jurisdiction, whether it has been registered under RERA or not?
- 2. Providing BWSSB connection
- 3. Providing BESCOM connection
- 4. Providing amenities
- 5. Maintenance

37. Based upon the arguments on both sides, the following issues may arise:

- 1) Whether the project was completed before RERA or whether it should be registered.
- 2) Whether the Promoter has provided BWSSB, BESCOM connection and other such facilities

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- 3) As regards maintenance, whether both the parties agreed upon in the Sale Deed.
- 4) Whether the complainant in Cmp. No. 1620 can claim for rectification to the effect that it is a row house?
- 5) What order?

REASONS

38. **Our answer to the point No. 1:-** Grievance of the complainants is that the project M/s. Sobha City Ltd., has not been registered under RERA, completion certificate has not been obtained and final occupancy certificate has not been obtained. The partial occupancy certificates obtained by the respondent are not legal one and they are not as per RERA Rules.
39. Same is resisted by the respondent on the ground that in fact, there are 17 blocks in Sobha City project. Construction of blocks No. 1 to 15 and 17 were completed in the year 2016 and in April 2017 itself before RERA Act came into force. Accordingly, they have obtained occupancy certificates dated 18/04/2016 for block No. 14 and 15 and another occupancy certificate was obtained on 21/12/2016 for block No. 2, 3, 4, 5, 6, 7, 8 and 13. During the arguments learned counsel for the respondent has submitted that Block No. 1 was not there in the plan, since it was demarcated for future development. For Block No. 9, 10 and 17 they had applied for OC on 18/04/2017 and subsequently they had obtained the same. During modification of the plan in the year 2013, Block No. 11 was merged with remaining blocks. Block No. 12 is club house. Further, only Block No. 16 was ongoing and hence they got it registered under RERA: PRM/KA/RERA/1251/309/PR/171015/000429 dated 15/10/2017.

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40. Ongoing through the materials placed on record, it is evident that the respondent has obtained occupancy certificates on 18/04/2016 and 21/12/2016 respectively for block No. 14, 15 and 2 to 8 and 13 i.e., before RERA came into force. With regard to block No. 9, 10 and 17 the respondent had applied for occupancy certificate on 18/04/2017 and they have obtained occupancy certificates on 19/06/2019 and 24/01/2020. Rule 4(iv) and (v) of the Real Estate (Regulation and Development) Rules, 2017 reads as under:-

- (iv) *Where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate / occupancy certificate; and*
- (v) *Where partial occupancy certificate is obtained to the extent of the portion for which the partial occupancy certificate is obtained.*

41. In that view of the matter, after completion of the development works the respondent has applied for occupancy certificate. In this regard, Chartered Accountant had given certificate stating that no amounts have been spent towards development works after applying for occupancy certificate.

42. At this juncture our attention is drawn towards the decision of Hon'ble High Court of Bombay in Writ Petition (ST) NO. 1118 OF 2021, Macrotech Developers Ltd., v/s. State of Maharashtra and others in which reads as under:-

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55. Thus, from the plain language of Section 3(1) it is clear that registration must be in respect of any Real Estate Project or part of it. The window of three months in the first proviso of Section (3) (1) makes it clear that in so far as ongoing projects are concerned, the promoter has been given the said window of three months within which he can apply for registration of the said ongoing project. The ongoing project would be a Real Estate Project and / or a phase of the project which would require registration during the three months window after the commencement of Section 3 of the Act i.e. 1st May 2017. Section 3(2) (b) would apply only to completed projects that have received the completion certificate before the commencement of the Act and thus entitled to exemption from registration. Thus there is a clear distinction made between the projects 'that are ongoing projects' and 'projects which have received completion certificate before commencement of the Act'. The Real Estate Project or part of it which receives a part occupancy certificate during the three month window denotes its completion and upon completion would not require to be registered. There is no substance in the submission of the learned Counsel for the Respondents / Complainants that the part occupancy certificate issued in the present case did not denote completion of that phase of the project and was only a conditional part occupancy certificate. We accept the submission of the learned Senior Counsel for the Petitioners that the scope of the proviso to Section 3 (1) and Section 3 (2) (b) can never be the same or overlapping and that would amount to or attributing surplusage to legislature which could never have been the intention.

56. Under Rule 4 (1), the promoter of the ongoing Real Estate Project, where all building as per sanction plan have not received

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occupancy certificate or completion certificate, as the case may be, prior to the commencement of the Act as provided by sub-Section 2 (b) of Section 3 is required to submit an application for registration for each such phase of the project within a period of three months from the date of commencement certificate of Section 3. Thus, the words 'each such phase of the project' would include a building or part WPST-1118-21.doc thereof i.e. number of floors in a multi-storey building / wing. This cannot be given a restricted meaning as 'entire building' as sought to be contended by the learned Counsel for the Respondents / Complainants.

43. The above judgment about the validity of Occupancy Certificate (Partial) will hold good if the project is complete in all respects. However, the complainants' stand is that the Project was incomplete and that the partial OC that has been obtained is not in accordance with established procedures and illegal.
44. The question of requirement of registration of real estate project where it is not completed has been dealt with in the Hon'ble High Court of Judicature at Madras in CMSA No:22 of 2019 before a Division Bench. It is held in this Judgment that the Project should be completed in all respects for the OC to be in order. Our attention is also drawn to the Judgment of the Karnataka High Court in Writ Petition No:11522/2012. Para 9 and 10 of the Judgment is reproduced as below:

9. The construction of buildings is governed by the Bangalore Mahanagara Palike Building Bye-Laws 2003. Bye-law 5.6 is with reference to grant of an Occupancy Certificate, which reads as follows:

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"5.6. Occupancy Certificate - 5.6.1 (a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Schedule VIII certified by a Registered Architect / Engineer / Supervisor and shall apply for permission to occupy the building.

The Authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per Section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for

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such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75 per cent of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise buildings, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be issued only after obtaining a clearance certificate from the Director of Fire Services."

10. If the building is partly constructed, then an Occupancy Certificate in terms of Bye-Law 5.6 cannot be granted. However, a POC can be granted to a part of the building, in terms of Bye-Law-5.7, which reads as follows.

"5.7 Occupancy or letting of the new buildings.- No person shall occupy or allow any other person to occupy any new building or part of a new building for any purpose whatsoever until occupancy certificate to such buildings or part thereof has been granted by an officer authorized to give such certificate, if in his opinion in every respect the building is completed according to the sanctioned plans and fit for the use for which it is erected. The Authority may in exceptional cases (after recording reasons) allow partial occupancy for different floors of a building."

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45. In the Judgment cited above, the OC was quashed as not having followed the procedure laid down in the above bye-laws. It is relevant at this point of time that clearance for Fire Service department in the case of high rise buildings is an essential requirement for OC to be valid.
46. The contention of the complainant is that the fire clearance obtained is invalid. They have produced a letter issued by Karnataka State Fire and Emergency Services in response to RTI application. In letter dated 06/02/2021, the Deputy Director of Fire Services had issued an endorsement stating that the fire clearances dated 16/06/2016, 21/06/2016 and 01/10/2018 have not been issued by the Fire Services Department.
47. It is the defense of the Respondent that it was their belief that the modified NOC and Clearances by the Fire and Emergency Services are issued on the basis of application file by the Respondent for the same. On that basis, they had applied for OC and obtained the same. They have contended that application for Fire NOC was given in the year 2011 itself along with necessary payments. Subsequently, applications were also filed for modification to Fire NOC. It is also claimed that inspections of the Blocks were held as per the Provisions of National Building Code.
48. It is not necessary for this Authority to consider and to arrive at a conclusion whether the Fire Clearances obtained before RERA came into effect were genuine or not. It is pertinent to note that the Respondents have themselves admitted that they had acted on the bonafide belief that the certificates were genuine and on these basis applications for OCs were made. However, it is evident from the letter of Fire Services Department that

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no such certificates were issued, the Authority cannot accept that OCs obtained without fire clearance can be considered to be valid. The Authority has no hesitation to conclude that there were no valid OCs as on the date when RERA came into effect and as such project should have been registered with the Authority.

49. **Our answer to the point No. 2:-** Another claim of the complainants is that respondent has not provided BWSSB, BESCOM connection and other such facilities. According to them the builder has failed to provide BESCOM power supply as per sale agreement and the power which was used for construction activities continued to be supplied for the residents for domestic purpose. Even the respondent has not provided BWSSB water and sewage connections till now.
50. Further they contend that the respondent has not provided them other facilities such as STP, fire fitting, DG back up, rain harvesting pits, BESCOM power supply etc.,
51. During proceedings, it is brought to the notice of the Authority vide order sheet dated 04/08/2022 that the respondent has provided other amenities / facilities such as STP, fire fitting, DG back up, rain harvesting pits, BESCOM power supply etc.,
52. Now coming to the one more contention of complainants is that respondent be directed to refund BESCOM charges for temporary power supply to their Association. On going through the materials placed before the Authority by the respondent with regard to Memorandum of Agreement dated 05/11/2020, at serial No. 4 in respect of compensation towards power charges reads as under:-

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A series of discussions were held between the representatives of SL and SCAOA on this subject and a consensus has been arrived at between SL and SCAOA. The details of this compensation payment are to be made by Blocks Sub Committees to SL and are part of this agreement.

SL has agreed to directly settle the claim for compensation of power charges with Mykonos Sub Committee separately as they are not party to this discussion.

SL has agreed to completely waive off Diesel Charges up to 26th September 2019 for all Blocks, Club House and STP. Hence, servicing of DG sets has to be taken up by the respective Block Sub Committees & SCAOA individually.

SL has agreed to collect the claim for compensation of power charges from individual flat owners directly for the power supplied to individual flats in Sobha City from the date of their occupancy till 26th September 2019. The rates payable per month and other terms of payment by individual flats are also listed.

53. On the contrary, the complainant Association has not placed any material on record to show that they have paid the BESCOM charges pertaining to temporary power supply. Furthermore, looking to the NOC issued by BESCOM it clearly goes to show that there is a condition put forth by the BESCOM itself that only after the Manyata Tech Park sub-station is created, permanent power supply will be provided. Clause No. 10.1 and 10.6 of construction agreement reads as under:-

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Clause 10.1:- The second party is aware that the responsibility of providing water supply, sewage connection and electricity is that of BWSSB and BESCOM / other government authorities. In case the water supply from the BWSSB is not available or if available and is inadequate, in that event the Association has to make alternative arrangements for the water through water tankers. Similarly, the first party shall endeavor to get the required quantum of power supply as per the specifications, however, if BESCOM is unable to supply the required quantity of power, the first party shall get the power supply as sanctioned by the authorities and shall accept such reduced load in power.

Clause 10.6:- The First party is not responsible for "Electric Meter Transfer" to the Second Party and the same shall undertaken by second party.

54. During the course of arguments it was brought to the notice of the Authority that the power being supplied to the apartment owners was the one that was procured from BESCOM for purposes of construction of the project. But the Authority is also aware of the fact that power for residential purposes was not being provided by BESCOM till the erection of sub-station at Manyata Tech Park. BESCOM while issuing NOC for the project, in their letter 25/5/2011 have clearly stated that power supply is feasible only after commission of 220kv Manyata sub-station. It is also revealed that the BESCOM authorities permitted drawal of power to the apartments from the connection obtained by the Promoter for purposes of construction. The permanent connection has been obtained from 2019 and subsequently

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thereafter individual meters are being provided to the apartment owners. The Respondent has filed copy of letter of the Office of Chief Electrical Inspector to Government, Bangalore dated 24/04/2019 for having got the project inspected except block no: 1. Further they have also provided complete list of 1976 individual meters for which date of service was on 23.6.2019. It is also not disputed that the power for common areas were being provided at the cost of the Promoter without burdening the allottees.

55. As already noted above, the BESCOM had only provided temporary power supply to the apartments and there was a condition that only after setting up of Manyata Tech Park Substation, BESCOM will provide permanent power supply. Records do reveal that said substation is set up and the BESCOM has provided permanent power supply with effect from 27/09/2019 itself. In view of this position, the contentions of the complainant do not survive for further consideration of this Authority.

56. Clause 10 of Construction agreement reads as under:-

Clause 10.1:- The second party is aware that the responsibility of providing water supply, sewage connection and electricity is that of BWSSB and BESCOM / other government authorities. In case the water supply from the BWSSB is not available or if available and is inadequate, in that event the Association has to make alternative arrangements for the water through water tankers. Similarly, the first party shall endeavour to get the required quantum of power supply as per the specifications, however, if BESCOM is unable to supply the required

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quantity of power, the first party shall get the power supply as sanctioned by the authorities and shall accept such reduced load in power.

Clause No.10.2:- The First Party shall make provisions for supply of water through Borewells dug in the Schedule 'A' property, provided there is no restriction from the Government. In case sufficient water is not available from the bore well then the Association shall make arrangements to get the water supply through alternative sources such as water tankers etc., and the Second party undertakes to pay for the same.

57. Furthermore, as per memorandum of agreement dated 05/11/2020 between Respondent and Sobha City Apartment Owners Association at Serial No. 8 reads as under:

Application for the BWSSB Water and Sewerage connections:

SL confirms that they had not collected the Pro rata charges for BWSSB Water supply from the owners. SL has agreed to submit application to BWSSB for SCAOA/Block (6 Blocks – 1958 Apartments) against the confirmation from SCAOA/Sub Committees that the Pro rata charges, deposits and service charges shall be paid by SL from Corpus amount.

Process involved:

- a. SCAOA confirm that they have received approval in their AGM for applying for BWSSB connection by using the corpus amount. However, since the Corpus Fund is maintained at

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Block level, individual Blocks may also convey their approval for applying for BWSSB connection by using the corpus amount to SCAOA and SL.

- b. Upon receipt of approval from all blocks, SL may go ahead and file the application with BWSSB.*
- c. Tentative Pro rata charges worked out is Rs.40/sft for apartments, Rs.60/sft for Club House and facilities and service charges Rs.8000/- per apartment.*
- d. Actual demand/deposit will be issued by BWSSB based on the application filed and measurement taken by BWSSB.*
- e. On receipt of the sanction and demand from BWSSB, the payment towards pro rata charges, deposit will be paid by SL to BWSSB from the Corpus amount.*
- f. Estimated time for completing the application to BWSSB is by 31 Jan 2021'.*

58. As per this the respondent had confirmed that they had not collected the pro-rata charges for BWSSB water supply from the allottees.

59. Thus, from the above terms of memorandum of agreement entered into between respondent and SCAOA, it is clear that once the SCAOA came into existence, it is the responsibility of the said Association to look after the water supply charges payable to BWSSB and in the event of shortage of water to make alternative arrangement in the form of borewell or water tank and to collect the necessary expenses from the occupants of the apartments. Nowhere, respondent has been held liable for these expenses / charges. That being the case, respondent cannot be held liable to bear these charges. In addition, being unrecognized Association; complainant

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Association has no locus standi to claim such charges from the respondent at any stretch of imagination.

- (i) However, the respondent promoter is directed to submit an application to BWSSB for providing water supply for the entire Sobha City. As regard the cost involved in obtaining water supply from BWSSB, the same shall be incurred out of the corpus fund or any other manner as decided by the Association of allottees which is presently maintaining the amenities and common areas.

60. STP is connected through the pipe line to drain and ultimately leaded of to the lake adjacent the said project and foul smell is observed within the premises of Sobha City.

61. **Our answer to the point No. 3:-** Para 8.2 of sub-para 8.2.4 of the sale deed executed on 14/02/2017 between promoter and purchaser, reads as under:-

"The purchaser shall become and remain a member of the Owners Association formed for the purpose of attending the matters of common interest, including repairs, maintenance, white washing, painting etc., in respect of the building and to maintain the common areas of the building and residential complex and the common amenities and facilities of the building and the residential complex of Sobha City".

62. It is pertinent to note that this Authority has noted that respondent has already handed over the entire project in favor of main Association namely

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Sobha City Apartment Owners Association in the year 2019 itself. Maintenance charges are required to be paid by the allottees on taking possession of the apartments, initially to the promoter as per section 11(4)(d) and thereafter to the Association of allottees as per section 11(4)(e) of the Act. Therefore, claim of complainants seeking refund of maintenance charges from the respondent cannot be entertained by this Authority.

63. **Our answer to the point No. 4:-** One more claim of the complainant in Cmp. No. 1620 is for rectification to the row house from horizontal apartment.
64. During final arguments, the counsel appearing for the complainant retired from the case and submitted NOC in Cmp. No. 1620. Hence, the complainant has appeared in person and has submitted that he has purchased row house which is treated as horizontal apartment. According to him this is done in order to avoid stamp duty.
65. In the sanctioned plan for the project, the BBMP has issued approval for row houses of Ground + 1 upper floor. Even in the KSPCB order dated 06/07/2013 the modified consent for establishment of the project Sobha City is shown as row houses. These being the facts, it is not known why the developer has to change the nomenclature of row houses to that of the horizontal apartment. The concern of complainant is that by doing so, he has not been able to pay the full stamp duty for execution of sale deed in respect of his house and fear that at a subsequent point in time it could lead to penalty proceedings against the complainant for non-payment of stamp duty. Hence, it is necessary to direct the promoter to make

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rectification in the sale deed from 'Horizontal Apartment to that of row house'.

66. **Our answer to the point No. 5:-** Further, this Authority has passed an order on 19/08/2022 in Cmp. No. 4376 filed by Sobha City Bengaluru Buyers Association against the respondent herein for the relief of seeking direction to the promoter to maintain the property at its own costs till conveyance is done in favour of the allottees. After hearing both sides, said complaint came to be allowed partly by directing the respondent promoter to take steps to get registered the entire Sobha City project under section 4 of the RERA Act except Block 4 for which registration has already been done. The respondent promoter is further directed to submit an application to BWSSB for providing water supply for the entire project by incurring the cost out of corpus fund or any other manner as decided by the Association of allottees which is presently maintaining the project.
67. In view of the above discussion, complaints deserves to be partly allowed. Hence, the following order is passed.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing No's. CMP/181110/0001620 and CMP/UR/190819/0003946 are hereby partly allowed.

2. The respondent promoter is hereby directed to immediately take steps to get registered all the blocks of Sobha City under Section 4 of the Real Estate (Regulation and Development) Act,

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2016, excepting Block-4 for which registration has already been done.

3. The respondent promoter is directed to submit an application to BWSSB for providing water supply for the entire Sobha City. As regard the cost involved in obtaining water supply from BWSSB, the same shall be incurred out of the corpus fund or any other manner as decided by the Association of allottees which is presently maintaining the amenities and common areas.
4. In complaint No. 1620, The Respondent / promoter that he shall carry out rectification in the sale deed from 'Horizontal apartment to that of row house' within 60 days from the date of this order.

(Neelamani N Raju)

Member-2
K-RERA

(D. Vishnuvardhana Reddy)

Member-1
K-RERA

(H.C. Kishore Chandra)

Chairman
K-RERA

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