

**IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL,
BENGALURU**

APPEAL (K-REAT) NO. 242/2020
c/w
APPEAL (K-REAT) NO. 258/2020

DATED THIS THE 31st DAY OF MARCH 2022

APPEAL (K-REAT) NO. 242/2020

BETWEEN:

Mr. Raghunath M.S
202, Tulips, Esteem Gardenia,
E-Block, Sahakaranagar,
Bangalore -560 092.

:APPELLANT

AND:

1. Esteem Group
Third Floor, SNS Chambers,
No.239, Sankey Road,
Bangalore-560 080.
- 2(a). Real Estate Regulatory Authority Karnataka
CSI Compound, Mission Road,
Bangalore-560 027.
Represented by its Secretary

...RESPONDENTS

APPEAL (K-REAT) NO. 258/2020

BETWEEN:

Esteem Group
No.32-34, 3rd floor,
SNS Chambers, No.239, Sankey Road,
Sadashivangar,
Bangalore-560 080.
Represented by its Partner Mrs. Anju Ahuja

:APPELLANT

AND:

1. Mr. Raghunath M.S
102, Tulips, Esteem Gardenia,
E-Block, Sahakaranagar,
Bangalore Urban-560 092.
2. Karnataka Real Estate Regulatory Authority
1/14, 2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bangalore-560 027.

...RESPONDENTS**Hon'ble Judges/Coram****PRESENT****HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN****AND****HON'BLE K P DINESH, JUDICIAL MEMBER****AND****HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER****Counsels:**

(Sri Raghunath M.S, party-in-person for appellant in Appeal No. 242/2020 and for 1st Respondent in Appeal No. 258/2020)

(Sri G. Sridhar, Advocate for 1st Respondent in Appeal No. 242/2020 and for Appellant in Appeal No. 258/2020)

(R2, RERA served, but unrepresented in both the appeals)

These Appeals are filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal, to set aside the orders dated 14th November, 2019 in Complaint No. CMP/180620/0000936 passed by the RERA Authority.

These appeals having coming up for pronouncement of Judgment this day, the **Judicial Member**, made the following:

J U D G M E N T

The above appeals arisen out of a common order dated 14.11.2019 passed by the learned Karnataka Real Estate Regulatory Authority, Bengaluru (hereinafter called "the Authority") in complaint No.CMP180620/000936.

2. In order to avoid any confusion with respect to identity of the parties, the appellant in appeal No.242/2020 who is 1st respondent in appeal No.258/2020 shall be referred as an "allottee" of a house in question. Similarly, appellant in appeal No.258/2020 who is respondent in appeal No. 242/2020 shall be referred as "promoter" of the project.

3. The factual matrix in appeal No.242/2020 can be summed up as follows:-

That the allottee had purchased a two bedroom flat bearing No.G-1, Daffodil block in the project "Esteem Gardania", Shankar Nagar, Bengaluru (hereinafter referred to as "the project" for convenience) from the original allottees by name S. Sreeram and Santoshi Sreeram under the sale deed dated 31.10.2011 for a sum of Rs.37,05,600/-. The promoter has completed the above said project in the year 2007 and the allottee has been requesting the

promoter to handover the original documents like sanctioned plan, permission, license etc., relating to the project through e-mails correspondence which did not yield any result consequently, prompted the allottee to file a complaint for issuance of the following directions to the promoter by approaching the RERA by filing a complaint with following prayers:

- (i) To direct the promoter to handover all the documents in respect of the project;
- (ii) To complete the roofing of first floor of the Association Club House;
- (iii) To impose penalty on the promoter under Section-38 (1) of the RERA Act;

4. Thus, the allottee sought for issuance of direction to redress his grievance by exercising the powers by Authority U/S 37 of the Karnataka Real Estate (Development and Regulations) Act, (hereinafter called 'the Act' as promoter has violated the provisions of Section 11(4) (a) of the Act.

5. The complaint was resisted by the promoter by filing statement of objections and by raising preliminary objection that the provisions of the Act are not applicable to the instant project being un-registered project; that the project was not covered within the

definition of "ongoing project " as defined under Rule-4 (1) of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules'); it was pleaded that the authority had no jurisdiction under Section-3(2) (b) of the Act to entertain the complaint, as the project was completed as per the plan on 16.02.2004 and 'occupancy certificate' was obtained on 27.06.2005 much prior to the advent of the Act and Rules; the promoter sold all the apartments in the project and handover physical possession of the same to the owners' association prior to the advent of RERA Act, 2016. The promoter has filed objections to the complaint before RERA raising all the above issue. The promoter had also raised the issue of maintainability of the complaint before the KRERA itself and the jurisdiction of the Authority to entertain the complaint was also questioned. It is specifically contended that owners' association was not a party to the complaint and complainant alone has no *locus standi* to file an individual complaint.

6. After appreciating the contentions of the parties, the materials on record, various clauses of the Act and the Rules, the learned Authority vide impugned order dated 14.11.2019 disposed of the complaint with the following directions:

"The complaint bearing No.CMP/180620/0000936 is hereby allowed under Sec.31 of the Real Estate (Regulation and Development) Act, 2016.

The respondent is hereby directed under Section 11(4) read with Section 17 of the Real Estate (Regulation and Development) Act, 2016, to

- 1) Execute a registered conveyance deed in favour of the association of the allottees with respect to the undivided proportionate title in the common areas including the civic amenities.
- 2) Handover the necessary documents like the title documents, sanctioned plans, permissions, licenses etc., relating to the project to the association of allottees."

7. Aggrieved by the aforesaid findings, the promoter has filed appeal No.K-REAT 258/2020 and sought to set aside the impugned order dated 14.11.2019. The allottee has filed appeal No. 242/2020 not aggrieved by the order of the authority in respect of complaint relief No.2 but non-consideration of the relief Nos. (i) and (iii) by the promoter.

8. The promoter as well as the allottee have taken the same plea in their appeal which they had taken before the authority in the complaint filed by the allottee.

9. We have heard the learned counsel for the parties and meticulously examined the appeal records and the written arguments.

10. In view of the above contentions of the parties, both the appeals on a common order, the following points arise for our determination in both the appeals:

- (i) Whether the frame of the appeal No.242/2020 filed by the allottee is proper?
- (ii) Whether the project in question which is completed and obtained occupancy certificate much prior to advent of the RERA Act and Rules, requires registration under Section-3 (1) of the Act? If not, whether the provisions of the Act and Rules can be made applicable to such project?
- (iii) Whether the impugned order dated 14.11.2019 passed by the learned Authority is erroneous and warrants interference by this Tribunal?
- (iv) What order?

11. Point Nos (i) to (iii): Since point Nos (i) to (iii) involve common question of law and facts are being taken up together for discussion in order to avoid repetition. Initiating the arguments, learned counsel for the promoter contended that admittedly, the project in question is not registered with the Authority nor the same

requires registration as per the provisions of Section-3 of the Act. He contended that the Authority has erred in holding that even if the project is completed and occupancy certificate was obtained before the commencement of the Act, though the project is exempted from registration, nonetheless the promoter is bound by the responsibility assigned to him under the Act. He contended that the first proviso to Section-3 of the Act provides that the project which are "ongoing" on the date of commencement of the Act for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the project within a period of three months from the date of commencement of the Act. He further contended that Section 3 (2) of the Act exempts the projects mentioned in sub-clauses (a) to (c) thereof from registration. Clause (b) of Section-3 (ii) of the Act exempts the project which has received 'completion certificate' prior to the commencement of the Act. Learned counsel further contended that obligation of the promoter would only arise if he carries out the activities mentioned in Section-2(zk) of the Act for the purpose of sale of apartment or flat. Thus, the learned counsel contended that it could not be suggested that the said obligation would de horse of registration of the real estate project. It is contended that the provisions of the Act only become applicable once the project is

registered. Learned counsel further contended that Section-11 of the Act refers to the promoters who have got their real estate project registered. Learned counsel further contended that the projects completed as per the plan dated 16.02.2004 and occupancy certificate obtained 27.06.2005. He further contended that the promoter sold all the apartments in the project and handover physical possession of the entire project to the owners' association prior to advent of RERA Act, 2016. The learned counsel further submitted that the Authority had no jurisdiction to entertain the complaint in a case of present set of facts. Finally, the learned counsel for the promoter contended that the allottee has no locus standi to file individual complaint, as owners' association was not made party.

12. Per Contra, the complainant/allottee party-in-person, referring to the preamble of the Act, contended that he being an aggrieved person is entitled to all the remedies available under the statute notwithstanding the project is registered or otherwise. It is contended by the allottee that the provisions of the Act are applicable whether the project is registered or otherwise, in view of the fact that the Act is a social legislation. It is the contention of the allottee that the promoter has not complied the reliefs granted by the learned Authority in the impugned order. It is further contended

that the promoter has not fully covered the first floor roof of the club house and the execution of the project is perfunctory.

13. Before advertizing to the law on the point, we can refer to some of the provisions of the Act and the Rules with the advantage to appreciate the controversy. Thus, the relevant provisions of the Act to the extent relevant for the case are reproduced hereunder:

Section.3

Prior registration of real estate project with Real Estate Regulatory Authority-

1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

(2) xxxxx

(a) xxxx

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) xxxx

14. The main thrust of the contentions raised by the learned counsel for the promoter is that the project in question was completed much prior to the advent of the KRERA Act and the project was not registerable, as it does not fall within the purview of "ongoing project". First proviso to Section-3 (1) of the Act provides that the projects which were ongoing on the date of commencement of the Act and for which, the completion certificate has not been issued, shall make an application to the learned Authority for registration of said project within a period of three months from the date of commencement of the Act. The position further becomes clear from Section-3 (2) (b) of the Act that registration of a real estate project shall not be required where the promoter had received the 'completion certificate' for the said project prior to the commencement of the Act. Thus, if we read section-3 of the Act, it is evident that only those projects are excluded from the purview of the 'ongoing project' which had received the 'completion certificate' prior to the commencement of the Act and such projects will not require registration.

15. The allottee who is the complainant before the Authority and the appellant in appeal No. 242/2020 has raised the contention in his complaint before the Authority that the promoter has not registered the association and handed over to the residents' association. Further, the promoter has not handed over original documents regarding the project and has not fully covered the first floor roof of club house. The Authority in the impugned order directed the promoter to execute a registered conveyance deed in favour of association of the allottees with respect to the undivided proportionate area in the common area including the civic amenities and to handover necessary documents like title document, sanctioned plan, permission, license etc in relation to the project to the association of allottees. The learned Authority has granted one relief out of the four sought by the allottee. When such is the case how the allottee can maintain appeal against entire order including that part of the order which is in his favour. The remedy available to the allottee in respect of those first relief is to enforce the said order by recourse known to law. Hence, the appeal filed by the allottee is an execution in disguise insofar as first relief granted in his favour and the frame of the appeal is not proper. However, the Authority has not granted the other reliefs regarding partial covering of the first floor roof of the club house, imposing penalty and furnishing all

information. The appeal filed by the allottee can be maintained to the extent of reliefs denied by the Authority, if the provisions of the Act are applicable to the project in question. It may be noted that the Authority in the impugned order at page-2 had observed as follows:

“Hence, even if the project is completed and occupancy certificate is received before the commencement of the Act, though the project is exempted from registration, nonetheless, the promoter is bound by the responsibilities assigned to him under the Act”.

In a way, the Authority has admitted the completion of the project and exemption of the project in question from registration. But still imposed responsibilities on the promoter under the Act. Be that as it may the question whether the promoter is liable under the Act to fulfill the claim of the allottee depends on the registration of the project or otherwise as required under the Act.

16. Admittedly, project was completed and occupancy certificate was obtained on 27.06.2005 as per Annexure-A from the competent authority much prior to the commencement of the KRERA Act and Rules. It is also not in dispute that the allottee has purchased the flat in question from the original allottee as per the sale deed dated 31.10.2011. According to the promoter project was completed in all respect and the apartments were sold to the prospective allottees and also physical possession of the entire project was handed over

to the apartment owners association prior to the commencement of the Act and the Rules. The contention of the promoter is that the KRERA Act came into force in Karnataka from 1st day of May, 2016 and the provisions of the Act applicable only for the new projects and the project which are ongoing as on the date on which it came into force and that the learned Authority ought not to have entertained the complaint filed by the allottee.

17. Section-3 of the Act provides for registration of a real estate project with the Real Estate Regulatory Authority and Section 3 (1) mandates that no promoter shall advertise, market, book sell or offer for sale, or invite persons to purchase in any manner any flat, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the Act. The proviso to Section-3 (1) mandates that the project that are 'ongoing' on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act. The parliament intended to bring within the fold of the statute the 'ongoing real estate project' in its wide amplitude used the term 'converting and existing building or a part

thereof into apartment' including every kind of developmental activities either existing or upcoming in future under Section-3 (1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within the fold of the Act. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the project already completed or to which completion certificate has been granted are not under its fold and, therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing project and future projects registered under Section-3 to prospectively follow the mandate of the Act, 2016. Section-3 (1) which was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the project in respect of which completion certificate is not issued, such promoter is under the obligation to make an application to the Authority for registration of the said project within a period of three months from the date of commencement of the Act. Certain exemptions being granted to such of the projects covered under Section-3 (1) of the Act, as a consequence, on such home buyers agreements which have been executed by the parties interse have to abide by the

legislative mandate in completion of their ongoing projects. The term 'ongoing project' has not been so defined under the Act, by the expression 'real estate project' is defined under Section 2 (zn) of the Act. The expression 'ongoing project' has been defined under explanation to Rule-4 (1) which reads thus:

"4. Additional disclosure by promoters of ongoing projects – (1) Upon the notification for commencement of sub-section (1) of Section 3, promoters of all ongoing projects which have not received completion certificate shall, within the time specified in the said sub-section, make an application to the Regulatory Authority in the form and manner as specified in Rule.3.

(5) For projects that are ongoing and have not received completion certificate on the date of commencement of the Act, the promoter shall, within a period of three months of the application for registration of the project with the Authority, deposit in the separate bank account, seventy percent of the amounts already realized from the allottees, which have not been utilized for construction of the project or the land cost for the project as required under sub-clause (D) of clause (1) of Sub-Section (2) of Section-4, which shall be used for the purposes specified therein".

18. The expression 'completion certificate' has been defined under Section-2 (q) and 'occupancy certificate' under Section-2 (zf) of the Act which reads as under:

"2 (q) 'completion certificate' means the completion certificate or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

2 (zf): 'occupancy certificate' means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;"

19. The above provisions of the statute by necessary implication, *ex facie* and without any ambiguity includes all those projects which were 'ongoing' where 'completion certificate' or 'occupancy certificate' remain pending, legislature intended that those projects have to be registered under the Act. Therefore, the ambit of the Act is to bring all those projects in respect of which either 'completion certificate' or the 'occupancy certificate' as the case may be have not been issued. Section-3 (2) (b) which expressly

excludes projects where completion certificate has been received prior to the commencement of the Act as it has been in the present appeal of the promoter on hand. Such project need not be registered under Section-3 (2) of the Act and, therefore, the intent of the Act hinges on whether or not the project has received a 'completion certificate' on the date of commencement of the Act vide Judgment of the Hon'ble Apex Court in ***M/S Newtech Promoters and Developers Private Limited -vs- State of UP and others(2021 SCC On Line SC-1044)***. The provisions of the Act is retroactive insofar as it relates to 'ongoing projects' but retroactive does not mean retrospective. The relevant passages of the Judgment of the Bombay High Court in ***Neelkamal Realtors Suburban Private Limited*** observed that the Legislators was conscious of the impact that the Act would have on such 'ongoing project'. A collective reading of Section-3 with Section-2(o) and 2 (zn) indicates that the care was taken to specify which of the project would stand exempted. Section-3 (2) (b) of the Act is categorical that no registration of the project would be require where 'if the promoter has received the completion certificate for real estate project prior to the commencement of this Act'. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which

the completion certificate has been granted are not under its fold and, therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the 'ongoing projects' and 'future projects' registered under Section-3 would prospectively follow the mandate of the Act, 2016. As has been discussed, the project in question has been completed and for which 'possession certificate' dated 27.06.2005 has been issued by the competent authority. Under the statute while defining Section-2 (q) and Section-2(zf) it has been clearly stated that 'completion certificate', 'occupancy certificate' or by such other certificate by whatever name called issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws. Hence the 'possession certificate' dated 27.06.2005 for the project is as good as the 'completion certificate' or the 'occupation certificate' as contemplated under Section-2 (q) and 2 (zf) of the Act.

20. To recap the story if the project is not completed and 'completion certificate' has not been issued on the date of commencement of the Act, such projects are 'ongoing project' and promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of

commencement of the Act. On the contrary if the project is completed and 'occupancy certificate' has been issued before the commencement of the Act such projects need not be registered under Section-3 (1) of the Act and once the project is exempted from the registration the provisions cannot be made applicable to such project. In the case on hand, the project was completed as per the plan in the year 2004 and the 'occupancy certificate' was obtained on 27.06.2005 as per Annexure-A. Admittedly, the Act and Rules came into force much later than the completion of the project and issuance of 'occupancy certificate'. Hence, we are of the considered view that the project in question does not fall within the purview of the provisions of the Act and totally exempted from registration under the Act. Accordingly, point No (i), and (ii) are answered in the negative; point No (iii) in the affirmative.

21. Admittedly the allottee has purchased the flat from the original allottee as per sale deed dated 31.10.2011 and which date was prior to the commencement of the Karnataka Real Estate (Development and Regulations) Act, 2016 and Rules. It is not that the allottee is without any remedy. There is well know latin maxim '**Ubi jus, ibi remedium**' meaning where there is a right, there is a remedy. The maxim postulates that where law has established a right, there should be a corresponding remedy for its breach. So to say that the

allottee's remedy if any would be under the law then prevailing when his right was infringed.

22. Before parting with the case we state that as per Section 44(5) of the Act, the appeal shall be disposed of within sixty days from the date of receipt of appeal. The appeals were filed before this Tribunal in 04.02.2020 & 10.03.2020 respectively. Thereafter to secure the appearance of the parties and records sufficient long time was taken. Further there was a lock down due to Covid-19 pandemic and for all forgoing reasons the appeals could not be disposed of within the time prescribed under Section 44(5) of the Act.

23. Point No. (iv): In view of our discussions on point Nos (i) to (iii), we proceed to pass the following:

ORDER

- i) Appeal filed by the appellant-allottee in 242/2020 is dismissed;
- ii) Appeal filed by the appellant-promoter in 258/2020 is allowed;

- iii) Consequently, the impugned order dated 14th November, 2019 passed by the Authority in Complaint Nos. CMP/180620/0000936 is set aside;
- iv) The Registrar shall comply with the provisions of Section- 44(4) of the RERA Act;
- v) The Registry to return the records to RERA;
- vi) The Registrar shall mark a copy of this judgment to the learned Adjudicating Officer and members of the RERA;
- vii) No order as to the costs;

**Sd/-
HON'BLE CHAIRMAN**

**Sd/
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**