

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 12th JULY 2022

Registration No.	PRM/KA/RERA/1251/310/PR/171102/001895
Applicant / Promoter	S B URBANSCAPES, No. 4, Ground Floor, 9 th Main, 13 th Cross, HSR Layout, 6 th Sector, Bengaluru - 560102.
Project Name:	SKANDA LAKE FRONT, Proposed Residential Development at Sy. No. 44/1A & 44/B, Khata No. 478/44/1A, 44/1B, Y'halli Village, Uttarahalli Hobli, Ward No. 185, Bengaluru South - 560078.

1. Project "Skanda Lake Front", situated at Sy. No. 44/1A & 44/B, Khata No. 478/44/1A, 44/1B, Y'halli Village, Uttarahalli Hobli, Ward No. 185, Bengaluru South - 560078 is a registered project with K-RERA. The registration of this project, as per the registration certificate was valid from 31/08/2017 to 18/02/2020. The promoter had not completed the project within the initial period of registration and therefore an application was submitted for extension of the registration of the project. The Authority granted extension of project registration for a period of one year, as provided u/s 6 of the Act and accordingly the validity of registration was extended upto 18/02/2021. On account of COVID-19, a further extension of 9 months was allowed by the Authority and the project completion period was extended upto 18/11/2021. However, project is not completed till date.
2. The promoter S B Urbanscapes had applied for extension on 09/05/2022 addressing a letter to the Authority seeking extension of project for another Eighteen months. The promoter represented

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before the Authority and submitted that the delay in completion of the project is due to financial obstacle of NGT order passed by Government of Karnataka and post COVID – 19 pandemic situation, non-availability of migrant labour which contribute major portion of construction activity. It is submitted that the project undertaken by the promoter involved the construction of 170 residential units which could not have been completed in less than 4 to 5 years. It is further submitted that as indicated by the certificate of the Chartered Accountant for the quarter ending March 2022, the percentage of completion of the project was 60% and the Authority may extend the validity of Registration upto 18/06/2023, to enable the promoter to achieve completion of the project.

3. The promoter has submitted written requests on 09/05/2022 and 09/06/2022 and the following documents have been furnished.
 - (i) Architect certificate for pending work as on date
 - (ii) Architect certificate for status of work as on date
 - (iii) Engineer certificate for status of work
 - (iv) Engineer certificate for pending work as on date
 - (v) Chartered Accountant certificate on fund utilization
 - (vi) Chartered Accountant certificate on funds required
 - (vii) Income Tax Returns acknowledgement for the year 2018-19, 2019-20 and 2020-21.
 - (viii) Balance sheet and Statement of P&L for the year ended 31/03/2018, 31/03/2019, 31/03/2020 and 31/03/2021.
 - (ix) Copy of agreement of sale notified by the Government of Karnataka
 - (x) Sold and unsold flats details.

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4. The case was posted for hearing before the Authority and was heard on 02/06/2022 and 09/06/2022.
5. As regards the extension sought by the promoter, it is evident that Section 6 of the Real Estate (Regulation and Development) Act, 2016 empowers the Authority for grant of extension which shall in aggregate not exceed a period of one year. Since extension of one year was already granted u/s 6 of the Act, a further extension of the validity of Registration cannot be considered.
6. The Authority has perused the documents submitted by the promoter of the project and status of progress of the project. In the given facts and circumstances of the case, the allottees who have invested in the project have to be satisfied with the present state of progress and express confidence in the promoter in its ability to complete the project during the further extended period of time sought by the promoter. 10 out of 15 allottees have confirmed that they have given consent letters to the project promoter, indicating their willingness to continue with the project promoter, indicating their willingness to continue with the project and extending their cooperation to the promoter in completion of the project.
7. The Authority has examined the case of the promoter in accordance with the provisions of Section 7 and 8 of the Act, since this is a project wherein the registration is lapsed and the project is incomplete. Even though the promoter has not been able to complete the project within the extended period of time allowed under Section 6 of the Act, the allottees have expressed the willingness to continue with the project and enable the promoter to complete the project. Section 7 of the Act provides for revocation of registration on the basis of certain reasons and considerations that are taken cognizance by the Authority, but such grounds have not

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been brought before this Authority for consideration. On the contrary, the consents of the allottees indicating their willingness to continue with the project despite delays, is placed for the consideration of the Authority. Further, since the project registration is already lapsed, there is no requirement of examining the issue of revocation of registration by the Authority. The project progress is stated to have reached 60% by the end of May 2022 and the balance of work to be completed would be about 40%. Even though there is a distinction between the revocation of registration and lapse of registration, in both the cases, there is a requirement of the Authority taking the requisite steps that are necessary for completion of the project and to ensure that the hardship to the allottees is minimised. On a conjoint reading of Section 7 and 8 of the Act, it is intended that the Authority shall take appropriate steps and initiate such actions that are required to protect the interest of allottees by ensuring the completion of the project within a reasonable period of time, even beyond the extended period of time allowed under Section 6 of the Act. In view of this, the intent of the legislature as expressed in Section 7(3) of the Act, in providing wider powers and discretion to the Authority in dealing with the cases of revoked / lapsed registrations has to be taken into consideration, in order to aid the basic object of protecting the interest of the allottees. Further, Authority is vested with the powers to impose such terms and conditions on the promoter, so as to ensure the completion of the project and protect the interest of the allottees. In cases of lapsed registrations of projects, the provisions of Section 8, inter-alia, provide for the Association of Allottees (AOA) to exercise its first right of refusal for carrying out the remaining development works of the project. In the instant

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case, such a proposition is not brought before the Authority by the allottees, instead the majority of allottees have indicated their willingness to extend the cooperation to the present promoter to complete the project. A harmonious reading of the provisions of Section 7 and 8 of the Act and its application to the facts of the case makes it feasible to permit the present promoter to carry out the remaining development works within a reasonable time, subject to such terms and conditions that are imposed by the Authority.

112. *Considering the extent of power conferred on the authority under Section 7, we need to put up a harmonious construction on the provision of Section 6 of RERA. The law confers powers under Section 7 on the competent authority, in the larger public interest to regulate the real estate sector. The authority shall be entitled to take into consideration reasons and circumstances due to which the project could not be completed within the extended aggregate period of one year as prescribed under Section 6. We, therefore, find that a balanced approach keeping in view the object and intent of the enactment and the rights and liabilities of promoter and allottee in larger public interest is to be adopted. The authority would exercise its discretion while dealing with the cases under Sections 6, 7, 8 read with Section 37 of RERA. We do not find that on the plea of the petitioners and for the reasons set out by the petitioners, first proviso to Section 6 needs to be declared as unreasonable, arbitrary, violating constitutional mandate of Articles 14, 19(1)(g) and 300-A of the Constitution of India. A harmonious and balance construction of the provisions shall suffice the purpose.*

Section 7(3) reads as under:

"7(3). The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

113. Section 8 refers to obligation of Authority consequent upon lapse of or on revocation of registration. Under these two

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provisions, the authority concerned is entitled to impose, in the interest of allottees, any such terms and conditions instead of revoking the registration. Even in case of lapse or revocation of registration, under Section 8, the authority would consult the appropriate Government and take necessary steps to carry out remaining development work by adopting suitable measures as determined by the authority concerned. There is rider in the first proviso prescribed under Section 8, which states that no direction, decision or order of the authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of RERA. We are of the view that a proper construction of the provisions would mean that even in case of lapsing of or on revocation of registration, the authority shall not mechanically terminate the registration of the promoter or injunct him to act as a promoter, but in the facts of a case would take necessary steps in the interest of allottees permitting the promoter to carry on the remaining development work. We would observe that in case the promoter fails to complete the project in the prescribed time declared by him or the extended time under Section 6, then it shall not mean that the only outcome would be to oust the promoter from the project.

114. In case the promoter establishes and the authority is convinced that there were compelling circumstances and reasons for the promoter in failing to complete the project during the stipulated time, the authority shall have to examine as to whether there were exceptional circumstances due to which the promoter failed to complete the project. Such an assessment has to be done by the authority on case to case basis and exercise its discretion to advance the purpose and object of RERA by balancing rights of both, the promoter and the allottee. In such exceptional cases, the authority would be entitled to allow the same promoter to continue with the subject project for getting the remaining development work complete as per the directions issued by the authority. It shall not be interpreted to mean that in every case a promoter who fails to complete the project under the extended time under Section 6 would get further extension as of right.

SECTION 7:

119. Section 7 deals with revocation of registration. Sections 7(3) needs to be considered by reading provisions of Sections 8 and 37 together. Under these provisions, the authority would take appropriate steps and issue directions in the given fact situation of the case to carry out the remaining development

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work. While doing so, the authority ought to be conscious of the promoters' bona fides, reasons for delay and the rights and duties of the allottees. RERA aims at striking a balance by placing restriction on the promoter for timely completion of the project and on failure, the remaining development work is controlled by the authority. In that sense, there is no divesting of rights in the property from the promoter to the authority. It is not vesting of rights, neither there is expropriation as alleged on behalf of the petitioners. The property of the promoter is neither confiscated nor acquired in that sense.

120. Under the provisions of Section 7(3), the authority is empowered to continue the registration of the project without revoking it on such further terms and conditions as it thinks fit in the interest of allottees. Section 6 refers to extension of period of registration for an aggregate period of one year only. Provisions of Section 7(4) prescribes steps to be taken by the authority upon revocation of the registration. Even under this provision, the promoter's interests are protected. The authority shall debar the promoter from accessing its website in relation to that project. The remaining development works are to be carried out in accordance with the provisions of Section 8. The authority would then direct the bank to freeze the account of the promoter in relation to the subject project which could be de-frozen at a proper state for facilitating remaining development work in accordance with the provisions of Section 8. Wide powers are conferred on the authority under Section 7(4) to issue such directions as it may deem necessary in larger public interest. Therefore, considering the object and scheme of the RERA, we find that a harmonious construction would advance the purpose of enactment of the RERA and would protect public interest and interest of the promoter and the allottee, both. Needless to mention that authority shall hear the associations of allottees in case the same promoter is to be continued without revoking the registration, in case of promoter failing to complete the project under the extended time under second proviso to Section 6.

8. The facts of the case, the representations made by the promoter, the status of progress of the project, the consent letters submitted by the allottees and the willingness of the allottees to continue with the project indicate that the continuation of the project implementation by the present promoter is an acceptable

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proposition for the completion of the project. In view of this, the Authority issues the following order.

ORDER

The promoter of the project "Skanda Lake Front" is permitted to continue with the project to achieve the completion of the project by 12/07/2023 and further directed to take all the necessary steps to expedite the completion of the project in accordance with the representations submitted before this Authority. Since the project is under implementation, even after lapse of registration, the promoter shall strictly abide by the statutory compliances such as submitting the quarterly updates of the project. The promoter shall not dilute any of its duties and obligations in terms of Section 11 of the Act and shall complete the internal and external development of the project, including amenities, with a reasonable time as represented before the Authority. The promoter shall also ensure that the requisite and timely cash flow are available for meeting the project expenditure for achieving completion of the project at the earliest.

Further, it is directed that the promoter shall file detailed monthly report on the progress of the project, in addition to quarterly updates, together with the certificates from Chartered Accountant, Engineer and Architect and the delays in progress, if any, shall be disclosed and brought to the notice of the Authority.

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The promoter is further directed to take note that in the event of any defaults and violations of provision of the Act and in the event lack of progress in the implementation and completion of the project, the Authority would take further appropriate action as per the provisions of Section 8 of the Act.


(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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