

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

**DATED THIS THE 13<sup>th</sup> DAY OF APRIL, 2023**

**PRESENT**

**HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

**HON'BLE SRI K P DINESH, JUDICIAL MEMBER**

**AND**

**HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL (K-REAT) NO.02/2021**

**c/w**

**APPEAL (K-REAT) Nos. 03 to 09/2021**

**APPEAL (K-REAT) NO.02/2021**

**BETWEEN:**

Platinum City  
No.73/1, Sheriff Centre,  
5<sup>th</sup> Floor, St. Mark's Road,  
Bengaluru – 560 005  
A Partnership Firm  
Represented by Managing Partner  
Mr.Ziaulla Sheriff.

**: APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for  
M/s Shetty & Hegde Associates, Advocates)

**AND**

1. Mr. Pankaj Kumar Jaiswal  
Son of Sri Prem Kumar Jaiswal  
Aged about 50 year
2. Mrs. Purna Jaiswal  
Wife of Mr. Pankaj Kumar Jaiswal  
Aged about 40 years

Both are residing at Flat No.G/08/03  
Platinum City, No.2  
HMT Main Road, Yeshwanthapur  
Bengaluru- 560 022

Also at;  
Flat No. B/03/02  
Platinum City No.2  
HMT Main Road, Yeshwanthapur  
Bengaluru - 560 022.

3. The Real Estate Regulatory Authority  
2<sup>nd</sup> floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027

By its Secretary/Adjudicating Officer. : **RESPONDENTS**

(Sri L.M.Chidanandayya, Advocate for R-1 & R-2)  
(R-3 RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190622/0003362 passed by RERA, Authority-respondent No.3.

**APPEAL (K-REAT) NO.03/2021**

**BETWEEN:**

Platinum City  
No.73/1, Sheriff Centre,  
5<sup>th</sup> Floor, St. Mark's Road,  
Bengaluru - 560 005  
A Partnership Firm  
Represented by Managing Partner  
Mr.Ziaulla Sheriff.

: **APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for M/s Shetty & Hegde Associates, Advocates)

**AND:**

1. Mr. Asimkumar Jhunjunwala  
Son of Kedarnath Jhunjunwala  
Aged about 55 years

Flat No. E/10/12,  
Platinum City, No.2  
HMT Main Road, Yeshwanthapur  
Bengaluru – 560 022

2. The Real Estate Regulatory Authority  
2<sup>nd</sup> floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027

By its Secretary/Adjudicating Officer. : **RESPONDENTS**

(R1-party-in-person)  
(R2-RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190719/0003639 passed by RERA, Authority-respondent No.2.

**APPEAL (K-REAT) NO.04/2021**

**BETWEEN:**

Platinum City  
No.73/1, Sheriff Centre,  
5<sup>th</sup> Floor, St. Mark's Road,  
Bengaluru – 560 005  
A Partnership Firm  
Represented by Managing Partner  
Mr.Ziaulla Sheriff.

: **APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for M/s Shetty & Hegde Associates, Advocates)

**AND**

1. Mr. Manoj Kumar Modi  
Son of Late N.L. Modi  
Aged about 55 years  
Flat No. E/08/11  
Platinum City, No.2  
HMT Main Road, Yeshwanthapur  
Bengaluru – 560 022

2. The Real Estate Regulatory Authority  
2<sup>nd</sup> floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027  
By its Secretary/Adjudicating Officer.

**: RESPONDENTS**

(R1-party-in-person)  
(R2-RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190719/0003646 passed by RERA, Authority-respondent No.2.

**APPEAL (K-REAT) NO.05/2021**

**BETWEEN:**

Platinum City  
No.73/1, Sheriff Centre,  
5<sup>th</sup> Floor, St. Mark's Road,  
Bengaluru – 560 005  
A Partnership Firm  
Represented by Managing Partner  
Mr.Ziaulla Sheriff.

**: APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for M/s Shetty & Hegde Associates, Advocates)

**AND**

1. Mr. Subhranshu Rath  
Son of Lingaraj Rath  
Aged about 49 years  
Flat No. E/08/05  
Platinum City, No.2  
HMT Main Road, Yeshwanthapur  
Bengaluru – 560 022
2. The Real Estate Regulatory Authority  
2<sup>nd</sup> floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027  
By its Secretary/Adjudicating Officer.

**: RESPONDENTS**

(R1-party-in-person)  
(R2-RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190730/0003770 passed by RERA, Authority-respondent No.2.

**APPEAL (K-REAT) NO.06/2021**

**BETWEEN:**

Platinum City  
No.73/1, Sheriff Centre,  
5<sup>th</sup> Floor, St. Mark's Road,  
Bengaluru – 560 005  
A Partnership Firm  
Represented by Managing Partner  
Mr.Ziaulla Sheriff.

**: APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for M/s Shetty & Hegde Associates, Advocates)

**AND**

1. Mr. Ajay Kumar Bhotika  
Son of H.P Bhotika  
Aged about 59 years  
Flat No. E/13/03  
Platinum City, No.2  
HMT Main Road, Yeshwanthapur  
Bengaluru – 560 022
2. The Real Estate Regulatory Authority  
2<sup>nd</sup> floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027  
By its Secretary/Adjudicating Officer.

**: RESPONDENTS**

(R1 & R2 Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190804/0003812 passed by RERA, Authority-respondent No.2.

**APPEAL (K-REAT) NO.07/2021****BETWEEN:**

Platinum City  
 No.73/1, Sheriff Centre,  
 5<sup>th</sup> Floor, St. Mark's Road,  
 Bengaluru – 560 005  
 A Partnership Firm  
 Represented by Managing Partner  
 Mr.Ziaulla Sheriff.

**: APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for  
 M/s Shetty & Hegde Associates, Advocates)

**AND**

1. Mr. Ganesh Shastri  
 Son of Nataraja Shastri  
 Aged about 64 years  
 Flat No. E/13/06  
 Platinum City, No.2  
 HMT Main Road, Yeshwanthapur  
 Bengaluru – 560 022
2. The Real Estate Regulatory Authority  
 2<sup>nd</sup> floor, Silver Jubilee Block,  
 Unity Building, CSI Compound,  
 3<sup>rd</sup> Cross, Mission Road,  
 Bengaluru-560 027  
 By its Secretary/Adjudicating Officer.

**: RESPONDENTS**

(R1-served, unrepresented)  
 (R2-RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190826/0003872 passed by RERA, Authority-respondent No.2.

**APPEAL (K-REAT) NO.08/2021****BETWEEN:**

Platinum City  
 No.73/1, Sheriff Centre,  
 5<sup>th</sup> Floor, St. Mark's Road,  
 Bengaluru – 560 005  
 A Partnership Firm  
 Represented by Managing Partner  
 Mr.Ziaulla Sheriff.

**: APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for  
 M/s Shetty & Hegde Associates, Advocates)

**AND**

1. Mr. Ragavan Srinivasa  
 Son of Dr. Sundararajan  
 Aged about 52 years  
 Flat No. E/03/12  
 Platinum City, No.2  
 HMT Main Road, Yeshwanthapur  
 Bengaluru – 560 022
2. The Real Estate Regulatory Authority  
 2<sup>nd</sup> floor, Silver Jubilee Block,  
 Unity Building, CSI Compound,  
 3<sup>rd</sup> Cross, Mission Road,  
 Bengaluru-560 027  
 By its Secretary/Adjudicating Officer.

**: RESPONDENTS**

(R1-party-in-person)  
 (R2-RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190724/0003681 passed by RERA, Authority-respondent No.2.

**APPEAL (K-REAT) NO.09/2021****BETWEEN:**

Platinum City  
 No.73/1, Sheriff Centre,  
 5<sup>th</sup> Floor, St. Mark's Road,  
 Bengaluru – 560 005  
 A Partnership Firm  
 Represented by Managing Partner  
 Mr.Ziaulla Sheriff.

**: APPELLANT**

(Sri Shashikiran Shetty, Senior Advocate for Sri Samarth Shreedhar for  
 M/s Shetty & Hegde Associates, Advocates)

**AND:**

1. Mr. V. Hari Hara Subramanyam  
 Son of Late N. Viswanathan  
 Aged about 42 years  
 Flat No. E/10/09  
 Platinum City, No.2  
 HMT Main Road, Yeshwanthapur  
 Bengaluru – 560 022
2. The Real Estate Regulatory Authority  
 2<sup>nd</sup> floor, Silver Jubilee Block,  
 Unity Building, CSI Compound,  
 3<sup>rd</sup> Cross, Mission Road,  
 Bengaluru-560 027  
 By its Secretary/Adjudicating Officer.

**: RESPONDENTS**

(R1- Served, unrepresented  
 R2-RERA Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 06.11.2020 in CMP/UR/190801/0003788 passed by RERA, Authority-respondent No.2.

These appeals having been heard and reserved, coming on for pronouncement of Judgment this day, Hon'ble Chairman, delivered the following:

## **JUDGMENT**

As the above appeals arise out of a common order of the Authority in respect of the same project, the learned counsel for the appellant-promoter as well as the learned counsel for the respondents-1 & 2 -allottees in Appeal No.2/2021 and allottees in other appeals who appear as parties-in-person, pray the Tribunal to club all the appeals together and dispose off them. Accordingly, all the appeals are clubbed together, heard and disposed off by this common Judgment.

For the sake of convenience, hereinafter, the appellant is referred to as the 'promoter', respondents in the appeals are referred to as the 'allottees' and K-RERA is referred to as the 'Authority' and further the REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 AND KARNATAKA REAL ESTATE (REGULATION AND DEVELOPMENT) RULES, 2017 are hereinafter referred to as Act and Rules, respectively.

### **Facts of the case:**

2. These appeals are filed by the promoter of a real estate project known as "PLATINUM CITY", situated on the land bearing Municipal Corporation No.2, HMT Layout, Bangalore (earlier Sy. Nos. 47 and 48 of Peenya Village, Yeshwanthpur Hobli, Bangalore measuring 34 acres 28 guntas) being aggrieved by the impugned common order dated 6<sup>th</sup> November, 2020, passed by the Karnataka Real Estate Regulatory

Authority, Bengaluru in complaint No.CMP/UR/190622/0003362 and connected matters.

3. As could be seen from the Memorandum of Appeal, the allottees of a few flats in the said project filed complaints under Section 31 against M/s Sheriff Constructions, Platinum City, Mr. Ziaulla Sheriff and Mr. Yunus Zia, alleging as under:

- That the project is not registered under the provisions of the Real Estate (Regulation and Development) Act, 2016;
- That occupancy certificate has not been obtained which is mandatory and a statutory duty of the promoter;
- that after completion of the building, the promoter was duty bound to obtain a permanent BESCO connection, however the homebuyers till now are depending upon the temporary connections provided by the promoter and cost of power consumed is higher as compared to that of a permanent connection;
- that there is no transformer and electrical installations as approved by the Chief Electrical Inspectorate;
- That no official connection has been taken from BWSSB and Water is being supplied to the premises from bore wells through tankers;
- That illegal sewerage connection has been taken and may be disconnected at any time by the BWSSB Authorities;
- That the promoter was required to provide EPABX connection and intercom facility as promised, which has not been done;

- That the Apartment Owners Association is neither formed nor registered and a few individuals, with an ulterior motive and with the support of the promoter, have formed a society;
- That it is the duty of the Promoter to form a registered association and handover the maintenance corpus to it, but the promoter is demanding maintenance charges;
- That the common areas has not been handed over to the Association;
- That filing of complaints under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is independent of the arbitration clause available in the sale agreement.

**That on the above and other grounds, the allottees had sought for the following reliefs:**

- Direction to the promoter to complete the project 'Platinum City' in all respects, as per the agreement, and obtain Completion Certificate as per law;
- Direction to the Promoter to obtain Occupancy Certificate from BBMP or such other authorities as prescribed.
- Direction to the respondent to get regular BESCO Electricity Connection to the Apartment;
- Direction to the Promoter to reimburse the electricity charges paid by the complainants till Occupancy Certificate is obtained;
- Direction to the respondent to provide regular Water Supply and Sewerage connections from the BWSSB;

- Direction to the Promoter to form an Association of the allottees as per the provisions of Karnataka Apartment Ownership Act, 1972 and permit them to maintain the building as per the bye laws of the Association;
- Direction to the Promoter to transfer Rs.29 crores collected from the complainants towards maintenance along with interest;
- Direction to the Promoter to refund the money collected by third parties in the name of the Promoter for maintenance and initiate action against the Promoter for permitting third parties;
- Direction to the Promoter to provide free membership to the complainants to various amenities viz., Club House, Swimming Pool, gym and other facilities;
- Direction to the Promoter for the removal of encroachments on the terrace areas of the building, since such encroachments are legally not permissible;
- Direction to the Promoter for providing EPABX and intercom facility as per the terms of the agreements of sale;
- Direction to earmark car parking space to facilitate the allottees to identify the car parking space for the exclusive use of each apartment.
- Direction to the Promoter to pay appropriate compensation as damages;
- Direction to the Promoter for any other relief/s as this Hon'ble Authority deems fit to grant;

4. The promoter appeared before the Authority through their counsel and filed statement of objections primarily contending that the complaints filed under Section 31 of the Act are not maintainable and further denied the averments made in the complaints *inter-alia* contending:

- that the project cannot be brought within the purview of RERA Act as it was completed before the Act coming into force, as such the project does not require registration as per Section 3 of the Act and by no stretch of imagination it can be said to be an ongoing project;
- that the work was completed long back and the apartments were sold 10 years prior to the Act coming into force;
- that the reliefs sought by the complainants are contrary to the terms of the sale deed;
- that the promoter has been maintaining the project/building at his cost as the amount contributed by the complainants towards maintenance got exhausted long ago;
- that upon formation of a Registered 'Association of Platinum City Residents' wherein 90% of the allottees are members of the said association, complainants ought to have become members of the said Association and accordingly pay the maintenance charges to the association;
- that the allottees without exhausting Arbitration Clause in the agreement to sell have approached the Authority;
- that the provisions of the Act have no application to the project.

With the above and other grounds the promoter has prayed for dismissal of the complaints as not maintainable.

5. The Authority based on the averments and grounds urged in the complaints of the allottees and in the statement of objections of the promoter, raised the following issues for its consideration:

- 1) Whether the complaints filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 are maintainable?
- 2) Whether the project was "ongoing" as on the date on which Section 3 of the Real Estate (Regulation and Development) Act, 2016 came into force. If so, whether the project requires registration under the provisions of the Act?
- 3) Whether association of allottees as required under Real Estate (Regulation and Development) Act, 2016 has been formed?
- 4) Whether basic amenities as promised have been provided by the promoter?

6. The Authority after hearing the learned counsel appearing for the parties, perusing the averments made in the complaints, documents produced by the complainants and the statement of objections filed by the Promoter by answering the Issue Nos. 1 to 3 in the affirmative and Issue No.4 in the negative, allowed the complaints and passed the impugned order as under:

**ORDER**

"All the complaints filed against the project "Platinum City" are hereby held to be maintainable and allowed under

Section 31 of the Real Estate (Regulation and Development) Act, 2016

In Exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016.

(a) The respondent promoter is hereby directed to register the project with the Authority within sixty days, in accordance with the provisions of Sections 3 and 4 of the Act, since the project was not completed in all respects as on the date of the commencement of the Act;

(b) Since the application for registration was not filed in time by the respondent, penalty proceedings under Section 59(1) of the Act are hereby initiated and promoter of the project is hereby directed to offer an explanation within sixty days from the date of receipt of this order;

In case of failure on the part of the respondent promoter to register the project and offer explanation for non registration, further proceedings under Section 59(1) of the Act would be continued and finalized as per the provisions of the Act;

(c) A direction is issued to the promoter to provide the basic facilities like regular BWSSB and BESCOM connections, which are required for the project to be self reliant;

- (d) To obtain "A-Khatha" for the property and also to obtain occupancy certificate and provide copies of the same to all the homebuyers;
- (e) To immediately take necessary action to form an Association of homebuyers and get it registered under the provisions of the relevant Act, and to execute a deed of conveyance in favour of the Association for the common areas and further to transfer the maintenance funds available. The promoter is further directed to handover the project documents and sanctioned plan etc., as required under the Real Estate (Regulation and Development) Act, 2016, to the association of homebuyers;
- (f) The promoter respondent is hereby directed to remove the encroachments on the terrace areas of the building, which are a part of the common areas/common terraces. This direction is given in accordance with the definition of common areas as per Section 2(n) of the Act;
- (g) The promoter respondent is hereby directed to provide EPABX and intercom as per the terms of the sale agreement;
- (h) The promoter respondent is directed to earmark car parking space to facilitate the allottees to identify the car parking space for the exclusive use of each apartment;
- (i) The respondent promoter is hereby directed to comply with the directions contained in (c) to (i)

above within a period of three months from the date of receipt of this order. In case of failure to comply with the directions, the Authority would initiate penalty proceedings under Section 63 of the Act.”

7. We have heard Sri Shashikiran Shetty, learned senior counsel for the Appellant-promoter and Sri L.M Chidanandayya, learned Counsel appearing for the allottees in Appeal No.2/2021 and allottees in other appeals, who appeared as parties-in-person on IA Nos. I and II and on main appeals. RERA though served, remained absent. We have also perused the grounds of appeal, documents produced by the parties and the common impugned order passed by the Authority.

8. Sri Shashikiran Shetty, learned senior counsel appearing for the promoter while reiterating the grounds urged in the memorandum of appeal, at the outset, submits that since the project was completed much prior to the Act coming into force and apartments have been sold and sale deeds in respect of the said apartments have been executed and registered from the year 2011 and further the purchasers of the apartments have been residing in their respective flats ever since the date of their purchase and thus, the provisions of the Act are not applicable to the project. As such, the project does not require registration under section 3 of the Act and therefore, the complaints filed by allottees of a few flats in the project under Section 31 of the Act are not maintainable.

9. Learned Senior counsel submits that though the allottees were aware of the arbitration clause provided in para 9 of the Agreement of Sale and in para 24 of the Construction Agreement for redressal of any grievance which may arise between the parties to the agreement, have deliberately invoked the jurisdiction of RERA instead of invoking the provisions of Arbitration and Conciliation Act, 1996. The Authority without considering this aspect of the matter has committed an error in holding that the complaints filed by the allottees under section 31 of the Act are maintainable.

10. Learned senior counsel further submits that in view of completion of the project and issuance of completion certificate on 12.09.2011 by the competent Agency i.e., Registered Architect in the prescribed Form provided under Schedule VIII -Bye Law 5.6.1 of the Building Bye Laws 2003 of BBMP, the project was not an ongoing project as on the date of commencement of the Act and therefore, the project is exempted from registration under proviso to Section 3 of the Act.

11. The learned Senior counsel submits that even considering the submission made by learned counsel for the allottees in Appeal No.02/2021 that the completion certificate issued by the Registered Architect cannot be construed as one issued by the competent authority as defined under Section 2(q) of the Act and therefore the project is ongoing as on the date of commencement of the Act and is required to be registered under Section

3 of the Act, nevertheless the project is exempted from registration under Explanations (iii) and (iv) of Rule 4 of the Rules, since all development works have been completed as per the Act and certified by the competent agency and sale deeds of 60% of the apartments have been registered and executed and pursuant to the completion certificate issued by the Registered Architect, an application has been filed on 4.10.2012 before the Competent authority for issue of occupancy certificate much prior to the notification of the Rules, which was on 10.07.2017.

12. Learned senior counsel submits that since the Sanctioned plan, Building license, agreements of sale, construction agreements, even execution and registration of sale deeds in favour of allottees, sanction of power connection by the KEB to the project as well as apartments, arrangement of water supply to the projects and to the apartments from Bore Well, Sewage connection to the BWSSB drain, construction of STP with No Objection from KSPCB, NOC from Fire and Emergency Services and NOC from various Authorities are all much prior to the coming into force of the Act and the Rules, further submits that the allottees among themselves have formed an Association and got it registered under the Karnataka Societies Registration Act and more than 90% of the allottees have become members of the said Association and the Association is collecting maintenance charges from the members in respect of apartments in the occupation of allottees and as the amount contributed by the allottees towards maintenance of common area got exhausted long back the

promoter is bearing the maintenance charges relating to the common area and therefore, provisions of the Act are not applicable to the case.

13. Learned senior counsel submits that as per the plan, there are 17 blocks in the project viz., A to Q of which 8 blocks A to G and O were completed much prior to the Act coming into force and even partial Occupancy Certificate was also issued and later it was withdrawn on the ground that the promoter has applied for modification of the plan which is pending consideration before the BDA. The promoter aggrieved by the inaction on the part of the BDA in not approving the modified plan on account of which issuance of Occupancy Certificate is pending, has approached the Hon'ble High court of Karnataka by preferring a writ petition and the same is pending for consideration. Learned counsel further submits that even the issue relating to conversion of HT (residential) into LT is also pending for consideration in an appeal before the Appellate Authority and in writ petitions filed before the Hon'ble High court of Karnataka.

14. Learned senior counsel fairly submits that as the promoter was under the impression that the Authority would first consider the issue regarding maintainability of the complaints and thereafter would grant time to the promoter to file detailed statement of objections along with documents, they could not file detailed statement of objections with documents, but the Authority within three hearings, without providing

sufficient opportunity to the promoter, decided the main complaints by issuing directions as stated supra.

15. Learned senior counsel submits that the promoter has filed two applications I.A.I and I.A.II to produce a number of documents by way of additional evidence and prays this Tribunal to consider these documents and exempt the project from registration either under Explanation (iii) or (iv) of Rule 4 of the Rules by exercising it's original jurisdiction.

16. Learned senior counsel submits that if the promoter had been given an opportunity to produce these documents before the Authority, the decision of the Authority would have been different than the one taken in the impugned Order.

17. In support of the above submissions learned senior counsel relied upon the decisions of the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. **reported in 2021 SCC ONLINE SC 1044** and a decision of the High court of Judicature at Bombay in the case of MACROTECH DEVELOPERS LIMITED Vs. STATE OF MAHARASHTRA AND OTHERS- **WRIT PETITION (ST) NO. 1118 OF 2021 DD 1<sup>st</sup> March, 2021.**

With the above and other grounds urged in the appeals, the learned Senior counsel prays for allowing the appeals and setting aside the impugned order.

18. Whereas, Sri L.M.Chidanandayya, learned counsel for respondents 1 & 2 – allottees in Appeal No. 2/2021 submits that the allottees being home buyers in the project, are aggrieved by the illegal and arbitrary acts of the promoter in not completing the project in all respects and therefore, the complaints filed by them under Section 31 of the Act are maintainable, as rightly held by the Authority. Learned counsel submits that the arbitration clause provided in the agreements for an aggrieved party to redress his dispute that may arise, would not take away his right to seek remedy available to him under the provisions of the Act.

19. Learned counsel submits that even though obtaining of sanctioned plan by the promoter, agreements of sale and construction agreements entered between the parties and execution and registration of sale deeds are all prior to the commencement of the Act, since the promoter has failed to complete the project in all respects, the project is deemed to be an ongoing project as on the date of commencement of the Act and provisions of the Act squarely apply to the project.

20. Learned counsel submits that in spite of the Authority granting sufficient opportunity, the promoter has failed to produce even a single document before the Authority and establish their contentions that all the works of the project have been completed and the Completion Certificate as defined under Section 2(q) of the Act has been issued by the Competent authority prior to the Act coming into force. Therefore, he submits that the

Authority was justified in holding that the project is ongoing as on the date of commencement of the Act and issuing consequential directions against the promoter.

21. Learned counsel submits that the promoter has not obtained permanent power connection to the project and the power connection provided to each unit is temporary one, as a result of which the allottees are made to pay higher price for the power consumed by them. Learned counsel further submits that if the promoter had paid the back billing charges demanded by the electricity department, the department would have considered the request of the promoter for conversion of HT(residential) into LT connection and in such case it would vastly benefit the allottees as they need not have to pay higher price for the power consumption.

22. Learned counsel submits that the promoter has failed to obtain water and sewerage connection to the project from BWSSB and water supply has been arranged from Bore wells through water tankers and sewerage drain has been illegally connected to BWSSB drain which may be disconnected at any point of time.

23. Learned counsel contends that the appellant except contending before this Tribunal for the first time that all developmental works have been completed as per the Act and certified by the competent agency and an application for issue of Occupancy Certificate has been filed before the competent authority prior to the notification of the Rules, has neither

pleaded nor established the same before the Authority by producing relevant documents.

24. Learned counsel submits that the completion certificate issued by a Registered Architect cannot be construed as one issued by the competent authority as defined under Section 2 (q) of the Act. He further contends that in the instant case, there is no completion certificate issued by the competent authority and therefore the project of the promoter is liable to be registered under Section 3 of the Act.

25. Learned counsel submits that the documents now sought to be produced by the promoter were very much available with the promoter even at the time of filing of the complaints and there is no plausible explanation put forth by the promoter for the delay in producing them and therefore, the promoter is not entitled to rely upon these documents produced belatedly before this Tribunal by filing I.A.I and II and prays that this Tribunal may not rely upon these documents and grant relief to the promoter.

26. Learned counsel submits that most of the documents now sought to be produced by the appellant by way of additional evidence through IA.I & II were within the knowledge and possession of the promoter and nothing prevented the promoter to produce them before the Authority. That in spite of the Authority granting sufficient opportunity to the promoter, the promoter having failed to produce the same before the Authority, are

estopped from producing the same before this Tribunal and that too after completion of arguments of both the parties and prays the Tribunal to reject the said I.As.

27. Learned counsel further submits that it is not enough that if project is completed, but it should be with all amenities as promised by the promoter in the agreements of sale. In support of his contention, he relies upon the Judgments of the Hon'ble Supreme court of India in **FAQIR CHAND GULATI Vs. UPPAL AGENCIES PVT. LTD., AND OTHERS** reported in **{(2008) 10 SCC 345}** and the High court of Madras in **SARE SHELTERS PROJECT PVT. LTD., Vs. SARE SQUIRES AND OTHERS-** reported in **MANU/TN/1013/2021.**

28. The allottees in other appeals who appeared as parties in person, while reiterating the contentions urged before the Authority, have adopted the arguments advanced by the learned counsel for Respondents 1 & 2 in Appeal No: 2/2021 and pray for dismissal of the appeals.

29. After hearing the parties on both sides and perusing the documents and records, the points that arise for our consideration are:

- (I) Whether the finding of the Authority on Issue No.1 that the complaints filed by the allottees under Section 31 of the Act are maintainable, is sustainable in law?

- (II) Whether the finding of the Authority on Issue No.2 in holding that the project was ongoing as on the date of enforcement of the Act and requires registration is sustainable in law?
- (III) Whether the findings of the Authority on Issue Nos.3 and 4 in holding that the promoter has not formed an Association as required under the relevant law and the project is not completed in all respects are sustainable in law?
- (IV) Whether the documents now sought to be produced along with I.A.I and I.A.II filed under Order 41 Rule 27 r/w Section 151 CPC by way of additional evidence are required to be allowed?
- (V) Whether IA.I & I.A.II filed by the appellant under Order 41 Rule 27 r/w Section 151 CPC for production of documents produced along with said IAs by way of additional evidence are required to be allowed?
- (VI) What order?

**POINT NO.(I):-**

30. The promoter in the statement of objections filed before the Authority mainly contended that the complaints filed by the allottees under Section 31 of the Act are not maintainable for the following three grounds:

- a) That in view of arbitration clause provided in the agreements of sale and construction agreements, enabling

the aggrieved party to seek redressal of his grievance that may arise between them by invoking the provisions of Arbitration and Conciliation Act, 1996, the complaints filed under Section 31 of the RERA Act are not maintainable.

b) That the work of the project was completed long back and the apartments have been sold admittedly at least 10 years prior to the RERA Act coming into force and the project was not ongoing as on the date of commencement of the Act and therefore is not liable to be registered under Section 3 of the Act.

c) That the promoter has not violated any of the provisions of the RERA Act, Rules and Regulations for the complainants to invoke the jurisdiction of K-RERA.

Before discussing the points framed for consideration on merit, it is useful to extract the relevant provisions of the RERA Act.

**Section 2. Definitions.**—In this Act, unless the context otherwise requires,—

(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;

**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: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section

(1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

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

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately

**Section 31.** (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.

**Section 88.** Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

**Section 89.** Act to have overriding effect.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**It is also necessary to extract Rule 4 of the Karnataka Real Estate (Regulation & Development) Rules, 2017.**

#### **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.

**Explanation:** For the purpose of this rule "Ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules, namely:-

(i) in respect of layouts where the streets and civic amenities sites and other services have been handed over to the Local Authority and Planning Authority for maintenance;

(ii) in respect of apartments where common areas and facilities have been handed over to the registered Association consisting of majority of allottees;

(iii) where all development works have been completed as per the Act and certified by the competent agency and sale lease deeds of sixty percent of the apartments/houses/plots have been registered and executed;

(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 /occupation certificate; and

(v) where Partial occupancy certificate is obtained to the extent of the portion for which the partial Occupancy Certificate is obtained.

That after coming into force of the RERA Act "No promoter can do Real Estate Business without getting the project registered with the Real Estate Regulatory Authority under Section 3 of the Act.

Whereas under first proviso to section 3(1) of the Act, the projects that are Ongoing on the date of commencement of this Act 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, that means to say the projects for which the completion certificate has been issued prior to the commencement of the Act, are not required to be registered.

Further, the projects which do come under proviso to sub-Section 2 of Section 3 are also not required to be registered.

Again, the projects which fulfill any of the criteria mentioned under Explanation (i) to (v) of the Rules on the date of notification of the Rules are also not required to be registered.

Therefore, whenever the Authority receives a complaint under Section 31 of the Act against any Real Estate Project shall first verify from its records, whether the said project is already registered with it or not.

If the Authority finds that the project is already registered with it, then it could proceed to adjudicate such complaint in the manner as provided in the Act and Rules thereto.

If the Authority finds that the project involved in the complaint is not already registered with it, then in the first instance itself shall determine as to whether the said project is required to be registered under Section 3(1) of the Act or exempted from registration either under any of the proviso to section 3 or any of the Explanation under Rule 4 (1) of the Rules, because of the reason that in the event of Authority after holding enquiry coming into a conclusion that the project is not required to be registered it cannot proceed with the complaint as it lacks jurisdiction to do so in view of the the law laid down by the Hon'ble Supreme Court of India in the case of NEWTECH and in the judgment of a division bench of the Hon'ble High Court of judicature at Bombay in the case of MACROTECH that "No registration No application of the Act".

Now it is required to be considered whether the arbitration clause provided in para 24 of the agreement of sale and in para 9 of the construction agreement would operate as a bar for the complainants to invoke the provisions of the RERA Act.

Para 24 of the Agreement of sale and para 9 of the Construction Agreement read as under:-

"That in the event of any dispute, question or doubt were to arise between the parties regarding the construction, interpretation of this Agreement or regarding the matters

specified herein above, then every such dispute, question or interpretation or doubt shall be referred to a sole-Arbitrator appointed under mutual consent of the parties and the proceedings shall be conducted as per the provisions of Indian Arbitration and Conciliation Act, 1996 amended and rules framed thereunder and as amended upto date.”

31. The arbitration clause provided in the agreement entered into between parties for redressal of any dispute that may arise between them neither act as a bar for the parties to the agreements to seek redressal of their grievance by invoking the provisions of the RERA Act nor an obligation for the Authority to direct the parties to invoke the arbitration clause.

That apart Section 88 stipulates that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Further, as per Section 89 of the Act, the provisions of this Act shall have over riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

However, the issue relating to additional remedies available to the parties under other laws is no longer *res integra* in view of the judgment of the Hon'ble Supreme court in the case of IMPERIA STRUCTURES Vs. ANIL PATNI AND OTHERS reported in (2020) 10 SCC 783.

Therefore, in a case like this and in cases where complaints are filed against the Projects which are not registered with the Authority under Section 3 of the Act, the Authority first shall have to decide the issue as to

whether the project involved in the complaint is required to be registered or it is exempted from registration either under any of the proviso to Section 3 or under any of the Explanation of Rule 4 of the Rules. This exercise is necessary since, it goes to the very root of the case.”

32. In view of above discussion, the finding of the Authority on issue No.1 in holding that the arbitration clause provided in the agreement of sale and construction agreement does not prevent the parties in approaching the RERA Authority by invoking the provisions of the RERA Act is hereby confirmed. The rest of the findings on Issue No.1 including the maintainability of the complaints under Section 31 of the Act are hereby set aside.

**Point No.(I) is answered accordingly.**

**POINT Nos.(II) & (III):-**

33. In view of our discussion on Point No. I and answer to findings of the Authority on Issue No.1, the finding of the Authority on Issue Nos. 2 & 3 are not sustainable in law and they are liable to be set aside.

**Point No. II & III are answered accordingly.**

**POINT No.(IV):-**

34. It is the case of the complainants that as per the Agreements of sale entered into between the promoter and the allottees, there is contractual obligation on the part of the promoter to do the following acts:

“A. To complete the building and execute the sale deed and hand over the possession of the Schedule Property to the

Complainants along with the Occupancy Certificate for which all the consideration amount has been paid in all respect by the Complainants;

B. To Provide the permanent Electrical BESCO connection as per terms of the agreement and compensate the difference/excess amount paid by the residents due to absence of individual BESCO connection / meter to residents/ flat owners for which consideration amount has been paid by the Complainants;

C. To Provide the BWSSB water supply connection as per terms of the agreement for which consideration amount has been paid by the Complainants;

D. To Provide the Intercom/ EPBX system connection as per terms of the agreement for which consideration amount has been paid by the Complainants;

E. To provide and demarked the car parking space for which consideration Amount has been paid by the Complainants;

F. To maintain the building till the formation of the Association and register the same under the Karnataka Apartment Ownership Act;

G. To transfer the maintenance deposit to the Fixed Deposit to the said Association so that the interest earned by way of such fixed deposit the same can be used for the purpose of maintaining the building without making the residence to make payment of maintenance charges;

H. Thereafter hand over the management and administration of the building to such Society for the purpose of maintaining the Schedule Property”.

35. Whereas, it is the case of the promoter that the work of the project is completed and completion certificate has been issued much prior to the commencement of the Act, as such, the project is not an ongoing one on the date of commencement of the Act as contemplated under first proviso to Section 3(1) of the Act and therefore, the project is not required to be registered under Section 3 of the Act.

36. Whereas the promoter alternatively contends that even in the event of the Authority holding that though the work of the project is completed prior to the Act coming into force, since the completion certificate was not issued by the competent authority as defined under Section 2(q) of the Act as contended by the allottees and therefore, it is ongoing on the date of the commencement of the Act and is required to be registered. Nevertheless the project in question is excluded from the definition of “Ongoing” since it fulfils the criteria of Explanation (iii) and also (iv) of Rule 4(1) of the Rules.

37. The promoter has also contended in their statement of objections filed before the Authority that necessary permissions from various departments for construction of the project have been obtained and the issues relating to conversion of HT (residential) into LT, issuance of

Occupancy Certificate by competent authority and formation of Association as per the provisions of Karnataka Apartment Ownership Act, 1972 are awaiting for the outcome of the result in the writ petitions pending before the Hon'ble High court of Karnataka. However, the promoter in support of the said contentions has not produced any document before the Authority either at the time of filing statement of objections or at the time of hearing. It is for the first time before this Tribunal, the promoter has filed I.A.I and II under Order 41 Rule 27 r/w Section 151 CPC praying the Tribunal to permit them to produce the documents annexed to the I.As by way of additional evidence. Further, along with a Memo, the promoter also has produced Xerox copies of a number of registered sale deeds in order to show that sale deeds of more than 60% of the apartments have been executed and registered in the said project.

38. It is relevant to state here that the promoter in the statement of objections filed before the Authority has not specifically contended that the project is exempted from registration under Explanations (iii) and (iv) of Rule 4 of the Rules. However, The Authority, has gone into this issue and negatived the same solely on the ground that the promoter has not produced any evidence.

39. In the above circumstances, it has become necessary for us to consider whether the documents now sought to be produced by the promoter by way of additional evidence are relevant and necessary for the

purpose of effective and complete adjudication of the issue relating to exemption of the project from registration.

40. A perusal of very nature and description of the documents produced along with IA.s would show that all these documents are pertaining to the project in question and existed prior to filing of the complaints, especially the certificate issued by the competent agency (Registered Architect) certifying that all development works have been completed as per the sanctioned plan and the acknowledgment for having submitted the application to the competent authority for issue of occupancy certificate prior to the notification of the Rules, are very relevant for the purpose of consideration of the contention of the promoter that all developments works have been completed as per the Act and certified by the competent agency and more than 60 % of the sale deeds have been executed and registered in favour of the allottees and application for issuance of occupancy certificate has been filed before the competent authority much prior to the notification of the Rules.

41. The next question would be whether the promoter was prevented from sufficient cause in producing these documents before the Authority. A perusal of the order sheet of the Authority would show that pursuant to the complaints filed by the allottees, notice was issued to the promoter on 09.06.2020 and the promoter filed statement of objection on 02.07.2020 and on 09.07.2020 the Authority passed the order as under:

"Case called. Advocate for complainants and the respondents. Complainant filed their written rejoinder. Posted for orders.

Sd/  
9.7.2020

Some more clarifications are required. Explained the issues and the clarification required during the hearing today. Based on the submissions and clarifications, case can be concluded."

Sd/  
9.7.2020"

Thereafter, the Authority passed the impugned order on 6/11/2020.

42. A careful perusal of the above order of the Authority would show that the Authority has not given reasonable opportunity to the promoter to produce documents and establish his contention that the project is completed prior to the commencement of the Act and is not liable to be registered.

43. As the documents now sought to be produced by the promoter could not be produced before the Authority for lack of opportunity and for not listing the case for adducing evidence and in the event of permitting the promoter to produce these documents it is needless to observe that the allottees will have an opportunity to contradict the said documents and will have an opportunity to produce documents, if any, from their side as well to controvert the contention of the promoter. It is relevant to state here that, the RERA Act is a new enactment introduced for the first time in the year 2016 and the parties might not be well conversant with the provisions of the

Act, Rules and the Regulations and the procedure adopted by the Authority. Thus, we deem it just and proper to allow IA.I and IA.II and permit the promoter to produce these documents by way of additional evidence. This exercise should be done before the Authority under its original jurisdiction which has got vast powers under Section 35 of the Act to call for information and conduct investigations.

44. In view of our above discussion IA.I and IA.II filed by the promoter for production of certain documents by way of additional documents in support of their claim that the project is exempted from registration are to be allowed.

**Point No. IV is answered in the affirmative.**

45. That in view of allowing the appeals, setting aside the common impugned order passed by the Authority and remanding the matter to the Authority for fresh consideration, it is not necessary to discuss each and every judgment cited by the learned counsel for the parties..

46. We wish to place on record our displeasure towards the attitude of the Authority that in these cases where the Authority is one of the respondents and ought to have defended its action in the matter of registration of a project, arrangement is not made to represent the case on its behalf before this Tribunal to substantiate the orders passed by them and that too in matters where State exchequer is involved.

47. Before parting with the case we state that as per Section 44(5) of the Act, the appeals shall be disposed of within sixty days from the date of receipt of appeal. The appeals were filed on 06.01.2021. Thereafter, after compliance of office objections, the appeals were listed for admission on 4.2.2021. During pendency of the appeals, at the request of the parties that the matter is likely to be settled amicably, considerable time was granted. Thereafter, whenever the parties filed interlocutory applications seeking permission of the Tribunal to produce documents etc., notice was ordered to secure the appearance of the parties and in the process sufficient time was taken. Further, on account of lockdown due to Covid-19 pandemic during 2020 and 2021, for want of presence of the parties and their counsel the matter was adjourned from time to time and the appeals could not be disposed of within time prescribed under Section 44(5) of the Act.

48. In view of the foregoing paragraphs, we pass the following:

**ORDER**

- (i) The appeals are partly allowed;
- (ii) The common impugned order dated 06.11.2020 passed by the Authority in complaint Nos. CMP/UR/190622/0003362, CMP/UR/190719/0003639, CMP/UR/190719/0003646, CMP/UR/190730/0003770, CMP/UR/190804/0003812, CMP/UR/190826/0003872, CMP/UR/190724/0003681 & CMP/UR/190801/0003788 are set aside and matter stands remitted to the Authority for fresh consideration in accordance with law and in the

light of the observations made in the course of our judgment, after affording an opportunity to both the parties to produce documents, if any, in addition to the documents produced along with IA's and a memo within a outer limit of 45 days from the date of appearance of the parties. However, the findings of the Authority on Issue No.1 relating to arbitration clause remains undisturbed.

- (iii) The interlocutory applications- IA.I and IA.II filed under Order 41 Rule 27 R/w Section 151 of the CPC by the promoter are allowed;
- (iv) All the contentions of the parties, except the contention regarding arbitration clause provided in the agreement, are kept open to be urged before the Authority;
- (v) In the event of either of the parties producing documents and filing further statement of objections, if any, the Authority shall receive and consider the same in accordance with law after affording an opportunity to both the sides;
- (vi) Since the promoter and allottees-respondents have appeared before this Tribunal through their counsel and as parties-in-person, they are directed to appear before the RERA on **08.05.2023** without expecting further notice from RERA;
- (vii) In the event of the Authority is not sitting on that day, the matter may be taken up on the very next sitting day;

- (viii) The Registry is directed to return all the Xerox copies of the sale deeds produced by the promoter along with memo before this Tribunal to enable them to file the same before the Authority along with one set of IA.I and IA.II and annexures thereto, under proper acknowledgment ;
- (ix) The Registry is hereby directed to forward a copy of this judgment to the Secretary RERA who in turn shall bring the same to the notice of the Hon'ble Chairman and Members of the RERA-Authority, so that they would take note of the observations made in this judgment while entertaining the complaint filed under Section 31;
- (x) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

**Sd/-  
HON'BLE CHAIRMAN**

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

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