

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 19th AUGUST 2022

COMPLAINT NO: CMP/UR/191006/0004376

COMPLAINANT.....

**SOBHA CITY BENGALURU BUYERS
ASSOCIATION,**

No. 14, 2nd Floor, 3rd Cross Road,
Old Gangenahalli, R.T. Nagar Post,
Bengaluru – 560032.
(Represented in person)

V/S

RESPONDENT.....

SOBHA LIMITED,

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

(Rep. by Sri. Ravishankar, Advocate)

1. The complainant in the case is one Sobha City Bengaluru Buyers Association. The complaint is filed against the promoter of the project Sobha city and is registered in RERA as complaint no. CMP/191006/0004376. The complaint is against an unregistered project. The complaint is regarding violation of sections 12, 14, 18 and 19 for incomplete property handover and forced maintenance without conveyance. It is said that the promoter handed over apartments with partial occupancy certificate (POC, in short) but without basic amenities like water, power. It is said that the promoter began maintenance at owners' costs without conveyance. The reliefs sought,

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inter alias / include a direction to the promoter of the project to maintain property at its own cost till conveyance is done in favour of the allottees.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

2. That the complainant is an Association of Allottees (AOA). The members of the Association have entered into agreement for sale and construction agreements from 2011 onwards. As per the agreements, the respondent was required to complete and handover the project in the year 2015 itself, but the respondent could not complete the project within the completion dates. Due to inordinate delay and no proper response from the respondent, this Association was formed in August 2015 to take up issues on behalf of allottees. The respondent forced them to take the possession in the year 2015 even before obtaining OC. Due to inordinate delay, in completion of the project in all respects, they were not in a position to bear rent and EMI simultaneously. On forceful demand from the buyers for OC the respondent produced partial OC in the year 2016 for various blocks.
3. Complainants have also alleged that there is frequent power disruption, shortage of water and foul smell around the property. Association members were not getting BESCOM bills for use of electricity. On enquiry, the respondent assured that BESCOM meters would be installed within a month and individual billing will be available. But same is not done so far as the respondent has taken only temporary connection and not applied for permanent connection. Even respondent had not applied for electrical safety for high rise buildings and not obtained lift operating license and generator installation. The sewage treatment plant was not working as expected. BWSSB confirmed that the respondent had applied for NOC only

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for the row houses which were accorded. But he has not applied for NOC for the remainder of the project. The respondent has violated the conditions of SEIAA.

4. This project is not registered under RERA. Further allegations of the complainants include that on the basis of partial OC the respondent made the owners to believe that it is a real OC and has compelled the allottees to carry out maintenance of the project without executing conveyance deed of the property and has forced the occupants to maintain the property without providing essential services such as BESCOM and BWSSB connections and sewage treatment plant. On the basis of Deed of Declaration (DOD), the respondent has claimed the formation of an Association of Allottees (AOA). The respondent has been initiating handover and execution of sale deeds to other owners on the basis of fraudulent partial OC. Therefore, by way of this complaint the complainant Association named herein above has sought for the following reliefs:-

- (i) Direct the respondent to register the entire project Sobha City
- (ii) Direct the respondent to obtain occupancy certificate for the entire projects and maintain the project at their own costs till such time
- (iii) Direct the respondent to strictly adhere to the sections 11(2)(d), 11(2)(e), 11(2)(f) and 11(2)(g) of RERA in letter and spirit
- (iv) Direct the respondent to register the Association of allottees as cooperative society, as per the letter of the Registrar of cooperative societies dated 12th September 2018,
- (v) Direct the respondent to execute the conveyance of the project land in favour of the Association of allottees

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- (vi) Direct the respondent to maintain the entire project at its own costs until the conveyance of the property in favour of the association of allottees formed as per RERA.
- (vii) Term the deed of declaration (DoD) as null and void as such document is not only unrecognized by RERA but also does not create deemed conveyance or registration of allottees association
- (viii) To pass an order declaring the Sobha City Apex Association, formed by way of DoD, as illegal as the same is devoid of the certificate of registration, and direct the respondent to refund the maintenance amounts collected thus far.
- (ix) Direct the respondent to compensate each member of the complainant Association to the extent of loss of UDS, due to respondent's unilateral expansion of the project in 2013 (UDS reduction due to far expansion from 1.99 to 2.34)
 - a) The respondent unilaterally reserved out an area of 55,000 sqft and thus caused further reduction in the UDS for the complainant members
- (x) Direct the respondent to register agreements of sale as per the model agreement to sale
- (xi) To compensate each member of the complainant association at Rs.2,00,000 (Rupees two lakh, 24% interest in case of default) per month from the date of handover for calling upon them to execute sale deed for the incomplete property based on fraudulent and illegal partial OC's till proper conveyance of the project.
- (xii) Direct the respondent to return the entire corpus fund to the association of allottees to be formed as per RERA along with the accrued interest thereon.

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- (xiii) Pass an order to keep the members of the complainant association indemnified from all prosecution and penalties until proper conveyance in consonance with the provisions of RERA
- (xiv) Direct the respondent NOT to demand back dated BESCOM charges pertaining to the temporary power supply, which was meant for construction purposes, from the members of the Association, and refund the same to the members of the complainant association.
- (xv) Direct the respondent into giving NOC's to the members of the complainant Association and to affect BESCOM meter ownership transfer.
- (xvi) Direct the respondent to rectify and maintain the STP infrastructure at its own costs until conveyance
- (xvii) Direct the respondent to pay all the outgoings to BWSSB and procure municipal water supply to the project.

5. Hence, this complaint.

6. On 16/10/2019, the complainants have produced following documents in support of its contentions:

- (i) Association registration certificate bearing No. SOR/GNR/146/2015-16
- (ii) Extract of Minute Book, certified copy of the resolution dated 15/09/2019
- (iii) E-mail conversation between the allottees and promoter for handing over possession without obtaining occupancy certificate
- (iv) Partial Occupancy certificate dated 18/04/2016

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Issue

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- (v) BESCOM RTI response dated 11/09/2018 related to the respondent who had taken only temporary power connection and not applied for permanent connection.
- (vi) CEIG RTI response dated 22/09/2018 reveals that respondent had not applied for electrical safety for high rise buildings.
- (vii) CEIG RTI response dated 16/10/2018 reveals that respondent had not obtained lift operating license.
- (viii) KSPCB RTI response dated 02/11/2018 that respondent had applied for NOC only for the row houses which were accorded.
- (ix) BWSSB letter dated 02/12/2010 that the respondent has not applied for NOC for the remainder or its subsequent modification in the year 2013 nor made payment for availing the water connection to BWSSB.
- (x) Specific conditions and general conditions of SEIAA regarding environmental clearance.

7. On 13/07/2021, the complainant has produced following documents in support of its contentions:

- (i) Letter dated 30/09/2020 from Respondent to the department of fire seeking NOC for plan sanction of their project.
- (ii) Letter from Department of Fire services fire dated 03/03/2021 to this Authority in which the department communicated non issuance of fire clearance certificate for partial OC.
- (iii) Registered deed of re-mortgage of 36 acres property by the builder 2018.
- (iv) E-mail communications from complainants to this Authority.

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- (v) Statement of accounts from the date of inception till April 2020 where the bank account of complainant is maintained.
- (vi) Judgement of Hon'ble High Court of Delhi dated 04/09/2019 between M3M India Pvt. Ltd., and another v/s. Dr. Dinesh Sharma and another dismissing the petitions of several builders and promoters challenging the maintainability of concurrent remediation of CPA and RERA and reliefs available to the apartment buyers.
- (vii) Judgement of Hon'ble Supreme Court dated 09/08/2019 in which both the courts categorically stated that the concurrent remediation and reliefs available to the apartment takers with respect to RERA and CPA.
- (viii) The letter from the Registrar of Co-operative Societies directing the respondent to register association of allottees as co-operative society in consonance with section 10 of KOFA.

8. The complainant Association has submitted written submissions on 17/12/2021 along with following documents.

- (i) SOBHA BDA Approved residential development plan of 2011.
- (ii) SOBHA BBMP approved building plan 2011.
- (iii) SOBHA BDA approved residential development plan 2013
- (iv) SOBHA BBMP approved building plan 2013.
- (v) Partial occupancy obtained without clearances from BWSSB, BESCOM, CEIG and KSPCB.
- (vi) Judgement in W.P.11522/2012 of Hon'ble High Court of Karnataka terming partial OC as illegal.

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- (vii) KSPCB issued show cause notice to the respondent dated 18/08/2020 for non compliance under the provisions of the water (Prevention and Control of Pollution) Act, 1974.
- (viii) KSPCB, CFO dated 27/11/2015 for 624 apartments.
- (ix) Respondent application dated 30/09/2020 for fire NOC for 2013 plan sanction.
- (x) Fire department letter dated 06/02/2021 stating non compliance of clearance for partial OC of December 2016
- (xi) SOBHA BWSSB NOC dated 02/12/2010
- (xii) Subroto Chakraborty (A2-2143) Sale agreement casa paradiso (Block - 15) dated 21/08/2012
- (xiii) Subroto Chakraborty (A2-2143) Casa paradise (Block-15) client Leger summary
- (xiv) SOBHA remortgage deed dated 03/01/2018 showing remortgage record but No Record of owners who executed sale deeds
- (xv) SOBHA Power of Attorney dated 19/06/2006 which names a few individuals for signing sale deed
- (xvi) Transfers of immovable property by way of SA /GPA / Will are bad in law as per the Hon'ble Supreme Court judgment SLP (C) No.13917 of 2009.
- (xvii) Ameya Usgaonkar (E1-1065) sale deed Casa Serenita (Block 13) dated 21/10/2016
- (xviii) Computation of UDS as submitted by respondent in rejoinder (page 26 clause 40)
- (xix) CRP-96/2021 Judgment in which the promoter executed DOD before the AFS

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- (xx) Letter from the Registrar of Co-operative societies directing SOBHA to register owners association as co-operative society under KCS 1959
- (xxi) IGR office response to the High Court in PIL No. 511/2021 which says DOD registration is not association registration
- (xxii) SOBHA Ltd., refusal to comply with registration A2-2143 (through e-mail conversation)
- (xxiii) SOBHA Ltd., forces registration without OC (through e-mail conversation)
- (xxiv) Judgment of Maharashtra RERA Appellate Tribunal upholding section 13 of RERA
- (xxv) Certified copy dated 08/01/2020 of RERA inspection report of Sobha city
- (xxvi) Sobha city minutes of meeting summary on 02/12/2017 at 9 AM
- (xxvii) Sobha City Partial occupancy certificate for blocks 9, 10 with new CFO
- (xxviii) Judgment of Kerala RERA Authority terming non-recognition of the illegal partial occupancy certificates under RERA.

9. The complainant Association has submitted rejoinder under Section 31 of the RERA Act on 10/08/2022 along with following documents.

- (i) Civil W.P. No. 43 of 2019
- (ii) Consumer complaint (CC) 295 of 2018
- (iii) Consumer complaint (CC) 863 of 2018
- (iv) Illachi Devi (D) by Lrs. And Ors vs Jain Society,
- (v) KSPCB – Showcause notice (2016-17)
- (vi) KSPCB – Notice Air and water Act (2018)

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- (vii) Maha-RERA-NO change in plan without approval of flat takers
30/07/2020
- (viii) KSPCB 2010 Inspection report
- (ix) SEIAA – Rejection – 69 CON 2018, dated 05/07/2018
- (x) SEIAA Sobha Proposal SEIAA 69 CON
- (xi) SEIAA Sobha Proposal SEIAA form 1 and 1A
- (xii) A2-2143-Client ledger summary report
- (xiii) Subroto Chakraborty – Sale agreement paradiso dated 21/08/2012
- (xiv) Ameya Usgaonkar – Sale deed serenita dated 21/10/2016
- (xv) BESCOM NOC dated 25/05/2011
- (xvi) KPTCL Substation charges
- (xvii) Sobha Ltd., refuses to comply with registration A2-2143
- (xviii) Sobha Ltd forces registration without OC
- (xix) Possession and handover of A2-2143 without OC
- (xx) Partial OC not legal WP11522-12-01-10-2013
- (xxi) BBMP Approved plan 2011 showing commercial complex
- (xxii) Modified BBMP Approved plan 2013 showing future Development
site

RESPONDENT HAS FILED OBJECTION AS UNDER:-

10. The complainant Association have filed a complaint bearing No. CC2196/2016, CC No. 2198/2016 and CC No. 2199/2016 before NCRDC which has still pending. The OC is obtained on 18/04/2016 and 21/12/2016 for Block 15 and Block 13 respectively. BESCOM is supplying permanent electricity from September 2019 and also issuing individual bills. The STP is for entire Sobha City and is of adequate capacity. Now it is been managed by the Association. The Sobha city is a composite project

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comprising of various blocks. All the blocks except Block 16 in the Sobha City project are not required to be registered under RERA as they were not on-going as on 01/05/2017. Hence, prayed to dismiss the complaint.

11. Learned counsel for respondent has filed statement of objections on 27/07/2020 along with following documents:-

- (i) Copy of complaint before NCDRC in cmp. No.2196/2016 filed by complainant Mr. Santhraju Kuppaswamy (member of complainant Association herein) against the respondent M/s. Sobha Ltd., for the relief of refund with interest and compensation
- (ii) Copy of complaint filed before NCDRC in cmp. No.2198/2016 filed by complainants Vijaya Chakraborty and Subroto Chakraborty (members of complainant Association herein) against the respondent M/s. Sobha Ltd., for the relief of refund with interest and compensation
- (iii) Copy of complaint filed before NCDRC in cmp. No.2199/2016 filed by complainants Ameya Prakash Usgaonkar and Prajakta Ameya Usgaonkar (members of complainant Association herein) against the respondent M/s. Sobha Ltd., for the relief of refund with interest and compensation
- (iv) Copy of the online proceeding sheet in consumer complaint No.2196/2016 pertains to Ameya prakash Usgaonkar and another dated 23/10/2019 directing the complainants to be present in person for arguments as their lawyer had relinquished certain points without their instructions and hence they called for rehearing the matter.

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- (v) Copy of the online proceeding sheets in consumer complaint No.2196/2016, 2197/2016, 2198/2016, 2200/2016, 2201/2016, 2202/2016 dated 23/10/2019 listed for arguments.
- (vi) Copy of registration certificate of K-RERA dated 15/10/2017 pertains to respondent SOBHA City Casa Paradiso Block-4 for the period from 30/07/2017 ending with 01/12/2018.
- (vii) Copy of acknowledgement for having submitted the DOD before the Registrar of Society dated 20/07/2017.
- (viii) Copy of acknowledgements for having handed over the Sobha City project property comprising of club house / common facilities and amenities dated 21/11/2019.

12. Learned counsel for respondent has filed objections / reply to the rejoinder filed by the complainant dated 03/09/2020 along with following documents:-

- (i) Copy of order in W.P. No. 17939/2010 of Hon'ble High Court of Karnataka dated 30/08/2010 wherein one Glen Fedren Picardo is appellant and Rodney Picardo is a respondent. This writ petition is against the suit filed for partition and separate possession on 20/04/2002 against the respondent. The writ petition came to be dismissed.
- (ii) Copy of the proceedings of consumer cases filed before NCDRC in case No.s 1764/2017 and other similar complaints dated 15/04/2019 between allottees (who are not complainants herein) and Today Homes and Infrastructure Pvt. Ltd., (view taken in these decisions is similar to the judgment of Hon'ble Supreme

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Court in case of Ireo Grace Realtech Private Ltd., vs. Abhishek Khanna).

- (iii) Copy of Judgement SCDRC, Punjab Chandigarh dated 17/02/2020 in case of Saloni Jindal V/s. M/s. Country Colonisers Pvt. Ltd., in consumer complaint No. 42/2018.
- (iv) Copy of the State Level Environment Impact Assessment Authority – Karnataka, Corrigendum bearing No. SEIAA 210 CON 2012 dated 05/07/2019
- (v) Copy of Show Cause notice dated 23/06/2018 issued by BBMP to the respondent calling upon to give explanation regarding correction of CFO letter of KSPCB. Reply given by the respondent dated 18/07/2018 to BBMP.
- (vi) Copy of the letter acknowledged by the Registrar of Co-operative Society dated 20/07/2017 regarding filing of deed of declaration by respondent.
- (vii) Copy of the reply dated 08/10/2018 given by respondent to the registrar of co-operative societies.
- (viii) Order sheet of K-REAT in appeal No.259/2020 between respondent herein and K-RERA, Mr. Sudhir Pillai and Mrs. Rama Pillai
- (ix) Copy of the Judgment of Hon'ble High Court of Karnataka dated 06/11/2019 in W.A. No. 974/2019 (GM-KSR) and W.A. No's 1206 – 1211/2019 (GM-KSR) in VDB Celadon Apartment Owners Association and Mr. Praveen Prakash and others
- (x) Copy of Circular dated 30/11/2018 of Government of Karnataka regarding Registration of Associations under the Karnataka Apartment ownership Act, 1972 and The Karnataka Ownership Flat Act, 1972.

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13. On 25/09/2020, the respondent has submitted objections to the written submissions of complainant dated 09/09/2020 along with following documents:-

- (i) A copy of letter dated 09/09/2020 from respondent to RERA that the original complaint is lacking the requisite declaration and it is a defective complaint as admitted by the complainant by filing a fresh declaration.
- (ii) Copy of Complaint No. 2197/2016 filed before NCDRC between Pramodh Narayan Ravichandran and Sobha City Ltd.,
- (iii) Copy of Complaint No. 2200/2016 filed before NCDRC between Nagabushan Balaji, Shreya Balaji and Sobha City Ltd.,
- (iv) Copy of Complaint No. 2201/2016 filed before NCDRC between Tara Srinidhi, Doreswamy Srinidhi and Sobha City Ltd.,
- (v) Copy of Complaint No. 2202/2016 filed before NCDRC between Vinit Monga and Sobha City Ltd.,
- (vi) Copy of Judgment of Hon'ble Apex Court in Civil Appeal No.2206/1968 dated 19/11/1976 in case of Jai Singh v/s. Union of India and others.
- (vii) Copy of Judgment of Hon'ble Apex Court in Civil Appeal No.1707/1969 dated 09/01/1979 in case of Ishwardas v/s. State of Madhya Pradesh and Ors.
- (viii) Copy of Judgment of Maha-RERA in complaint No. 22943 dated 20/09/2019 in case of Pravin S Nadkarni V/s. Clover developers Pvt. Ltd.,

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14. Learned counsel for the respondent has filed memo with 6 documents

- (i) Copy of deed of declaration dated 08/09/2016 executed by M/s. Sobha Ltd.,
- (ii) Copy of letter dated 20/07/2017 written by the respondent to registrar of societies regarding filing of deed of declaration of Sobha City
- (iii) Copies of Form B i.e., form of declaration by Prajakta Ameya Usgaonkar, Thomas Renoy, Smitha H.D and Rear Admiral Sudhir Pillai
- (iv) Judgment of Hon'ble High Court of Karnataka dated 08/09/2021 in case of Mr. Santharam Prabhu and another V/s. Mr. K. Dayanand Ray and others
- (v) Copy of show cause notices dated 11/10/2021 and 16/11/2021 issued by the Registrar of Co-operative Society to the complainant regarding registration of Association.

15. Learned counsel for the respondent has submitted the following documents on 19/04/04/2022.

- (i) Response to the mail dated 18/02/2022 issued by member of complainant
- (ii) Table on the issue of UDS

16. On 07/10/2020, Learned counsel for the respondent has furnished the following documents

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- (i) Copy of plaint in O.S. No. 4872/2020 wherein some of members of complainant Association are arrayed as plaintiffs seeking similar reliefs before the Civil Court.
- (ii) Copy of I.A. No. 2/2020 in O.S. No. 4872/2020 filed by the plaintiffs under order 39 Rule 1 and 2 r/w section 151 of CPC restraining the defendant No. 1 from conducting the AGM of Mykonos Block schedule.
- (iii) Copy of written statement filed by the respondent herein in O.S. No. 4872/2020
- (iv) Copy of written statement filed by the Apex Association herein in O.S. No. 4872/2020
- (v) Copy of print of online case status in 4872 of 2020
- (vi) Copy of order passed on I.A. No. 4 in 4872/2020 dismissing the I.A. filed by the plaintiffs

17. On 17/02/2022, learned counsel for the respondent has furnished the following documents

- (i) Reply to the written submissions of complainant dated 24/12/2021 and mail dated 06/02/2022
- (ii) Copy of show cause notice dated 11/10/2021, 16/11/2021 and 17/01/2022 issued by the Registrar of Co-operative Societies to the complainant Association regarding registration of Apartment Owners Association.
- (iii) Copy of letter to the BBMP to issue OC dated 03/07/2016
- (iv) Copy of statement of account for having made payment of Rs.19,04,760/- towards modified NOC charges.
- (v) Copies of documents obtained under RTI

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- (vi) Copy of notification dated 17/07/2011 regarding safety measures of high rise building.
- (vii) Copy of fire clearance dated 01/07/2020
- (viii) Copy of intimation letter dated 11/01/2022 and reply dated 17/01/2022 regarding NOC from fire department.
- (ix) Copy of discharge deed dated 12/07/2021 executed by CSB Bank Limited in favour of respondent herein.
- (x) Copy of excel sheet calculation regarding undivided share in all 1958 apartments in the DOD is extrapolated
- (xi) Copy of orders passed on I.A dated 26/02/2022 in O.S. No. 4872/2020 dismissing the prayer of plaintiffs to restrain the defendant No.1 to conducting the extraordinary general meeting of Casa Paradiso Block.
- (xii) Copy of order passed by the District Registrar of Co-operative Societies directing the complainant Association herein to follow the aims and objects of bye-laws.

18. Heard arguments of both sides.

19. **On the above averments, the following points would arise for our consideration:-**

1. Whether the entire Sobha City Project should have been registered under RERA?
2. Whether the respondent can be directed to register this Association as co-operative society?
3. Whether the complainant Association is entitled to the execution of conveyance of the project land in its favour by the respondent?

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4. Whether the respondent is bound to maintain the entire project at its own cost until the conveyance of common areas in favour of complainant Association?
5. Whether the complainant Association proves that the deed of declaration is null and void?
6. Whether the complainant Association is entitled for refund of maintenance amount collected by the respondent?
7. Whether the complainant Association proves that the respondent is liable to compensate loss of UDS to each allottee?
8. Whether the respondent proves that the agreements of sale are as per RERA Rules?
9. Whether the complainant Association is entitled to get the entire corpus fund by the respondent in favour of their Association?
10. Whether the complainant Association is entitled for refund of BESCOM charges pertaining to temporary power Supply?
11. Whether complainant Association proves that respondent is liable to rectify and maintain the STP infrastructure at its own cost until conveyance?
12. Whether complainant Association proves that respondent is liable to pay all the outgoings to BWSSB and procure municipal water supply to the project?
13. Whether the complaint is maintainable?
14. What order?

OUR FINDINGS ON THE POINTS RAISED ABOVE:

20. Our findings on Point No.1:-Grievance of the complainant Association is that the occupancy certificates obtained by the respondent are not valid as

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they are not issued in respect of the whole project. Hence, they cannot be considered.

21. Same is resisted by the respondent on the ground that in fact, there are 17 blocks in Sobha City project. Construction of blocks No. 1 to 15 and 17 were completed in the year 2016 and in April 2017 itself before RERA Act came into force. Accordingly, they have obtained occupancy certificates dated 18/04/2016 for block No. 14 and 15 and another occupancy certificate was obtained on 21/12/2016 for block No. 2, 3, 4, 5, 6, 7, 8 and 13. During the arguments learned counsel for the respondent has submitted that Block No. 1 was not there in the plan, since it was demarcated for future development. For Block No. 9, 10 and 17 they had applied for OC on 18/04/2017 and subsequently they had obtained the same. During modification of the plan in the year 2013, Block No. 11 was merged with remaining blocks. Block No. 12 is club house. Further, only Block No. 16 was ongoing and hence they got it registered under RERA: PRM/KA/RERA/1251/309/PR/171015/000429 dated 15/10/2017.
22. Moreover, members of complainant Association are residing in Block No. 14, 15.
23. Ongoing through the materials placed on record, it is evident that the respondent has obtained occupancy certificates on 18/04/2016 and 21/12/2016 respectively for block No. 14, 15 and 2 to 8 and 13 i.e., before RERA came into force. With regard to block No. 9, 10 and 17 the respondent had applied for occupancy certificate on 18/04/2017 and they have obtained occupancy certificates on 19/06/2019 and 24/01/2020.

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Rule 4(iv) and (v) of the Real Estate (Regulation and Development) Rules, 2017 reads as under:-

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

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

25. Our own attention is drawn towards the decision of Hon'ble High Court of Bombay in case of Writ Petition (ST) NO. 1118 OF 2021, Macrotech Developers Ltd., v/s. State of Maharashtra and others in which it is held that:-

55. Thus, from the plain language of Section 3(1) it is clear that registration must be in respect of any Real Estate Project or part of it. The window of three months in the first proviso of Section (3) (1) makes it clear that in so far as ongoing projects are concerned, the promoter has been given the said window of three months within which he can apply for registration of the said ongoing project. The ongoing project would be a Real Estate Project and / or a phase of

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

56. Under Rule 4 (1), the promoter of the ongoing Real Estate Project, where all building as per sanction plan have not received occupancy certificate or completion certificate, as the case may be, prior to the commencement of the Act as provided by sub-Section 2 (b) of Section 3 is required to submit an application for registration for each such phase of the project within a period of three months from the date of commencement certificate of Section 3. Thus, the words 'each such phase of the project' would include a

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building or part WPST-1118-21.doc thereof i.e. number of floors in a multi-storey building / wing. This cannot be given a restricted meaning as 'entire building' as sought to be contended by the learned Counsel for the Respondents / Complainants.

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

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

"5.6. Occupancy Certificate - 5.6.1 (a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to

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according to the licensed plan and if the Authority is satisfied that at least 75 per cent of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

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

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

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

28. In the Judgment cited above, the OC was quashed as not having followed the procedure laid down in the above bye-laws. It is relevant at this point of time that clearance for Fire Service department in the case of high rise buildings is an essential requirement for OC to be valid.

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the Commissioner in writing of such completion accompanied by a certificate in Schedule VIII certified by a Registered Architect / Engineer / Supervisor and shall apply for permission to occupy the building.

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

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

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out

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29. The allegation of the complainant is that the fire clearance obtained is not valid. They have produced a letter issued by Karnataka State Fire and Emergency Services in response to RTI application. In letter dated 06/02/2021, the Deputy Director of Fire Services had issued an endorsement stating that the fire clearances dated 16/06/2016, 21/06/2016 and 01/10/2018 have not been issued by the Fire Services Department.
30. It is the stand of the Respondent that it was their belief that the modified NOC and Clearances by the Fire and Emergency Services are issued on the basis of application made by the Respondent for the same. On this basis they had applied for OC and obtained them. They have stated that application for Fire NOC was given in 2011 itself along with necessary payments. Subsequently applications were also filed for modification to Fire NOC. It is also claimed that inspections of the Blocks were held as per the Provisions of National Building Code.
31. It is not necessary for this Authority to consider and arrive at a conclusion whether the Fire Clearances obtained before RERA came into effect were genuine or not. It suffices to note that the Respondents have themselves admitted that they acted on the bonafide belief that the certificates were genuine and on these basis applications for OCs were made. However, it is clear from the letter of Fire Services Department that no such certificates were issued, the Authority cannot accept that valid OCs obtained without fire clearance can be considered to be valid. The Authority has no hesitation to come to the conclusion that there were no valid OCs on the date when

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RERA came into effect and as such should have been registered with the Authority.

32. **Our findings to Point No. 2 to 5:-** It is pertinent to note the few members of complainant Association namely, Mr. Ameya P Usgoankar, Mrs. Prajakta Ameya P Usgoankar, Mr. Subroto Chakraborty and Mrs. Vijaya Chakraborty have filed a suit in O.S. 4872/2020 against the Apex Association and Sobha Limited and to declare that their Association as formed legally. It is claimed in this suit that the respondent No1 in the OS has no authority to function as an association of allottees in Sobha City Project. The said suit is still pending for consideration before the Civil Court.
33. Contention of Complainant Association is that this Authority has to direct the respondent to register the Association of allottees as co-operative society and that complainant Association is entitled to get executed the conveyance of the project land in its favour by the respondent. Further, it contends that the respondent is bound to maintain the entire project at its own cost until the conveyance of the property in favour of complainant Association and that the deed of declaration dated 08/09/2016 is null and void.
34. On the other hand, contention of respondent is that the complainant Association is formed as a general Association and its registered office is outside Sobha City project. The complainant Association nowhere explained what its objectives are. The complainant Association has not produced list of members of the Association and it is not formed legally. The purchasers of Sobha City project have not become members of complainant Association. The complainant Association has failed to

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produce a single document such as agreement to sell / sale deed on the basis of which they claim ownership.

35. Further, the respondent has contended that the complainant association was formed to self serve the purpose of Mr. Ameya P Usgoankar, Santhraj Kuppaswamy and Subroto Chakraborty have filed complaints before NCDRC at New Delhi and could not get any relief there so far. The respondent has taken appropriate steps to construct and complete the Sobha City project in phases and have completed the construction as per approvals from time to time and after obtaining occupancy certificate handed over possession of units to the allottees who have taken possession of units voluntarily.
36. It is the case of the Respondent that the Complainant Association claiming itself to be the genuine representative of the interest of the apartment owners and they are virtually challenging the authority of the Association which has got registered by the respondent under the provisions of Karnataka Apartment Ownership Act, 1972. In this regard, their claim has also been that unless and until the respondent conveys the property in favour of complainant Association, he is bound to maintain the entire project at its own costs. They have also sought for declaratory relief that the deed of declaration dated 08/09/2016 registered under the provisions of Karnataka Apartment Ownership Act, 1972 is null and void.
37. Undisputedly, the respondent has registered Deed of Declaration dated 08/09/2016 under the provisions of Karnataka Apartment Ownership Act, 1972 which is produced along with memo.

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38. Section 17 of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

17. Transfer of title.—(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as

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*the case may be, within thirty days after obtaining the 1
[completion] certificate.*

39. In addition, once the respondent complied with section 17 of the Act he is under no obligation to maintain the project at his own cost.
40. That means, execution of conveyance of apartment and common areas is to be done as provided under the local laws. Once, the project is handed over to the Association of allottees by the Promoter, no one else can contest it and stake a claim to take over the common areas of the Project as defined under the Act. From the documents provided by the Respondent it is seen that there is an Apex Association Called Sobha City Apartment Owners' Association to whom the common areas have been handed over and that they are maintaining the Sobha City Project maintenance. Such being the case, this Association cannot claim that the builder should have handed over the Project to them for maintenance and enable them to register it under Karnataka Co-operative Societies Act. From the records it is clear that the promoter has taken appropriate steps to hand over the maintenance to the Association namely Sobha City Apartment Owners' Association. By doing this the promoter has complied the functions and duties enunciated in section 11(4)(e)& (f) of the RERA Act. There is no further requirement in law to register every group of allottees who desire to have an Association of their own. Accordingly the constructions and relief sought by the complaint is not entertained by this Authority.

41. **Our findings to Point No. 6:-** While recording findings, on point's No. 2 to 5 this Authority has noted that respondent has already handed over the entire project in favour of main Association namely Sobha City Apartment Owners'

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Association (Herein after referred to as SCAOA) in the year 2019 itself. Maintenance charges are required to be paid by the allottees on taking possession of the apartments, initially to the promoter as per section 11(4)(d) and thereafter to the Association of Allottees as per 11(4)(e) of the Act. The contention of the complainant seeking refund of maintenance charges from the Respondent is misconceived and therefore cannot be entertained by this Authority.

42. **Our findings to Point No.7:-**Question of granting compensation for loss of UDS arises when there is difference in the area allotted to each allottee when compared to AOS and Sale deed. To be precise if the allottee is allotted lesser area than the one agreed under AOS while executing sale deed, it can be said that allottee suffered loss towards UDS. In this case, on going through the AOS and the sale deeds, there is no difference in the area allotted to each allottee. Therefore, there arises no question of loss towards UDS. For this reason, we see no substance in the claim of the complainant Association that they be compensated for loss of UDS.

43. To clarify more, the following table is given pertaining to details of few purchasers with regard to apartment, unit No. and area shown in AOS and Sale deed.

Sl. No.	Name of purchasers	Apartment	Unit No.	UDS in AOS & Sale deed
1	Subrato Chakraborty	Casa Paradiso	2143	652.84
2	G. Umamaheswar Varma	Casa Paradiso	2034	652.84

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3	Anuj Gemawat	Casa Serenita	2183	573.82
4	Ganesh & Chitra	Casa Paradiso	2131	652.84
5	Nagabhushan Balaji	Casa Paradiso	2014	646.73

44. As there is no difference in the area shown in the AOS and sale deed, there is no loss towards UDS.

45. **Our findings to Point No.8:-** Grievance of the complainant Association is that the agreements of sale executed by the respondent are not as per RERA Rules. However, complainant Association has not pointed out the defects in the Agreements of sale which allegedly run contrary to the Provisions of the Act and Karnataka RERA Rules. Even otherwise, the RERA Rules provided for standard Agreement for sale in the form of Rule 8(A) of the Act specifically laying down how Agreement for sale shall be. This notification came into force from 07/01/2020. In view of this legal position, contention of the complainant Association is not entertained.

46. The complainant Association has also sought direction to the respondent to register the agreements for sale by confirming to the notified Agreement Of Sale, contending that agreements of sale executed by the respondent are not as per the RERA Rules. It is brought to the notice of the Authority by the Respondent that sale deeds have also been registered in favour of the allottees and therefore such a proposition can not be entertained by this Authority at this stage. Further, the respondent cannot be directed to comply with the notified Agreement of Sale which came into existence nearly after six years of execution of agreements to sell. In addition, complainant Association has not pointed out any defects in agreements of sale which run

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contrary to the existing RERA Rules or the model agreement of sale prescribed in the form of Rule 8(A) of the Rules specifically laying down how AOS shall be.

Sl. No.	Name of complainant	Unit No.	Block No.	Sale deed dated / Agreement to sell
1	Ameya Usgaonkar	Unit No. E-1065	Block No. 13	21.10.2016
2	Ramaswamy P Reddy	Unit No. B-3065	Block No. 17	28.01.2022
3	Pramodh N. R	Unit No. B-4063	Block No.13	28.10.2016
4	Subroto Chakraborty	Unit No. A2-2143	Block No. 15	21.08.2012
5	Sachin Shekar R	Unit No. D-5131	Block No. 03	04.01.2019
6	Prashant Patil	Unit No. C1-3021	Block No. 02	28.02.2020
7	Santharaj Kuppaswamy	Unit No. A3-2064	Block No. 15	18.11.2016

47. Therefore, merely because the RERA Rules prescribed a model for AOS, the existing AOS which were executed long back cannot be discarded without there being any valid reasons. Even in cases where the sale deeds have been subsequent to RERA coming into force, the individual members are at liberty to file complaints if they have any grievance that can be litigated before the Authority.
48. **Our findings to Point No.9:-**The claim of the complainant Association is that the Respondent shall pay entire corpus fund in favour of their

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Association. Once again this claim of complainant Association is based on their perception that they are the legally formed Association and SCAOA has no authority or it shall have no control over the affairs of the apartment. However, as of now SCAOA has come into existence through their deed of declaration dated 08/09/2016 and it is already looking after the affairs of the apartment. The complainant Association consists of 59 members as per their email sent to this office dated 15/08/22 whereas the project consists of 1958 units. By no stretch of imagination can the Authority accept the prayer of this small group of allottees to take over maintenance where such a large number of allottees/owners of apartments exist, who are not members of this complainant Association. On the other hand, though few members of complainant Association have approached City Civil Court, Bengaluru with O.S. No. 4872/2020 claiming certain a reliefs against SCAOA and respondent herein. The said suit is still pending and the legality and validity of compliance Association is not yet declared by the said court. Therefore, at this juncture, complainant Association cannot seek to lay its claim over corpus fund.

49. **Our findingstoPoint No.10:-**Another prayer of complainant Association is that respondent be directed to refund BESCOM charges for temporary power supply to their Association. On going through the materials placed before the Authority by the respondent with regard to Memorandum of Agreement dated 05/11/2020, at serial No. 4 in respect of compensation towards power charges reads as under:-

A series of discussions were held between the representatives of SL and SCAOA on this subject and a consensus has been arrived at between SL and SCAOA. The details of this

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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

compensation payment are to be made by Blocks Sub Committees to SL and are part of this agreement.

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

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

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

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

Clause 10.1:- The second party is aware that the responsibility of providing water supply, sewage connection and electricity is that of BWSSB and BESCOM / other

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government authorities. In case the water supply from the BWSSB is not available or if available and is inadequate, in that event the Association has to make alternative arrangements for the water through water tankers. Similarly, the first party shall endeavor to get the required quantum of power supply as per the specifications, however, if BESCOM is unable to supply the required quantity of power, the first party shall get the power supply as sanctioned by the authorities and shall accept such reduced load in power.

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

51. During the course of arguments it was brought to the notice of the Authority that the power being supplied to the apartment owners was the one that was procured from BESCOM for purposes of construction of the project. But the Authority is also aware of the fact that power for residential purposes was not being provided by BESCOM till the erection of sub-station at Manyata Tech Park. BESCOM while issuing NOC for the project, in their letter 25/5/2011 have clearly stated that power supply is feasible only after commission of 220kv Manyata sub-station. It is also revealed that the BESCOM authorities permitted drawal of power to the apartments from the connection obtained by the Promoter for purposes of construction. The permanent connection has been obtained from 2019 and subsequently thereafter individual meters are being provided to the apartment owners. The Respondent has filed copy of letter of the Office of Chief Electrical Inspector to Government, Bangalore dated 24/04/2019 for having got the

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project inspected except block no: 1. Further they have also provided complete list of 1976 individual meters for which date of service was on 23.6.2019. It is also not disputed that the power for common areas were being provided at the cost of the Promoter without burdening the allottees.

52. As already noted above, the BESCOM had only provided temporary power supply to the apartments and there was a condition that only after setting up of Manyata Tech Park Substation, BESCOM will provide permanent power supply. Records do reveal that said substation is set up and the BESCOM has provided permanent power supply with effect from 27/09/2019 itself. In view of this position, the contentions of the complainant do not survive for further consideration of this Authority.
53. **Our findings to Point No.11:-**The complainant Association has taken up the contention that the respondent has to rectify and maintain the STP and infrastructure at its own cost until conveyance. On the other hand, the respondent has contended that it has already executed Deed of Declaration in favour of main Association i.e., Sobha City Apartments Owners Association in the year 2019 itself.
54. The complainant Association has not placed any materials before this Authority that what were the structural defects in the STP which were to be rectified. In addition, as already held above complainant Association recognized by a competent court of law to function in place of SCAOA and it is SCAOA which is looking after maintenance of STP and infrastructure by virtue of Deed of Declaration from 2019. Therefore, question of respondent conveying title over common area, club house, STP etc., in favour of complainant Association doesn't arise. As a consequence, no such

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directions can be issued to the respondent to rectify and maintain STP and infrastructure at its own cost until it is conveyed to complainant Association. Considering the handing over of entire maintenance through deed of declaration in favour of main Association in the year 2019, question of rectifying or maintaining by the respondent doesn't arise.

55. **Our findings to Point No. 12:-** Clause 10 of Construction agreement reads as under:-

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

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

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water tankers etc., and the Second party undertakes to pay for the same.

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

Application for the BWSSB Water and Sewerage connections:

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

Process involved:

- a. *SCAOA confirm that they have received approval in their AGM for applying for BWSSB connection by using the corpus amount. However, since the Corpus Fund is maintained at Block level, individual Blocks may also convey their approval for applying for BWSSB connection by using the corpus amount to SCAOA and SL.*
- b. *Upon receipt of approval from all blocks, SL may go ahead and file the application with BWSSB.*
- c. *Tentative Pro rata charges worked out is Rs.40/sft for apartments, Rs.60/sft for Club House and facilities and service charges Rs.8000/- per apartment.*

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- d. Actual demand/deposit will be issued by BWSSB based on the application filed and measurement taken by BWSSB.
- e. On receipt of the sanction and demand from BWSSB, the payment towards pro rata charges, deposit will be paid by SL to BWSSB from the Corpus amount.
- f. Estimated time for completing the application to BWSSB is by 31 Jan 2021'.

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

58. Thus, from the above terms of memorandum of agreement entered into between respondent and SCAOA, it is clear that once the SCAOA came into existence, it is the responsibility of the said Association to look after the water supply charges payable to BWSSB and in the event of shortage of water to make alternative arrangement in the form of borewell or water tank and to collect the necessary expenses from the occupants of the apartments. Nowhere, respondent has been held liable for these expenses / charges. That being the case, respondent cannot be held liable to bear these charges. In addition, being unrecognized Association; complainant Association has no locus standi to claim such charges from the respondent at any stretch of imagination.

- (i) However, the respondent promoter is directed to submit an application to BWSSB for providing water supply for the entire Sobha City. As regard the cost involved in obtaining water supply from BWSSB, the same shall be incurred out of the corpus fund or

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any other manner as decided by the Association of allottees which is presently maintaining the amenities and common areas.

59. **Our findings to point No. 13:-** The complainant Association has approached this forum for seeking the relief of direction to the Promoter to maintain property at its cost till conveyance and with several other contentions, with prayers of consequential reliefs and directions to the promoters, which are dealt with as print No. 1 to 12 of the foregoing paragraphs of this order. In this content the contentions of the Respondent are examined with regard to the maintainability of this complaint.
60. The respondent has resisted the claim of complainant Association on technical grounds as well as on merits. Therefore, it is a just and necessary to record finding on the maintainability of the complaint at the first instance. First and foremost contention of respondent is that in view of the decision of the Hon'ble High Court of Karnataka in Writ appeal No. 974/2018 (GM-KSR) and W.A. 1206-1211/2019 (GM-KSR), this complainant Association has no legal validity as it is registered under Societies Act. The complainant Association should have been formed and registered under the provisions of Karnataka Co-operative Societies Act.
61. Another contention of the respondent is that a few members of the complainant Association have initiated the proceedings before NCDRC, New Delhi on the same set of facts and filed original complaint number 2196/2016 by Mr. Santharaj Kuppaswamy, original complaint No. 2198/2016 by Mrs. Vijaya Chakraborty and Mr. Subroto Chakraborty and original complaint No. 2199/2016 by Ameya Prakash Usgaonkar and Mrs. Prajakta Ameya Usgaonkar before NCDRC, New Delhi. The respondent has

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furnished copy of consumer complaint no 2196/2016; 2198/2016; 2199/2016, 2200/2016, 2201/2016, and 2202/2016.

62. It is relevant to refer to the judgement of Hon'ble Supreme Court in case of Ireo Grace Realtech Private Ltd., vs. Abhishek Khanna and others. Para 20.8 of the judgment reads as under:

"An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action."

63. In the said case, various other pronouncements given by Hon'ble Apex Court were discussed and the concept of 'doctrine of election' was cogitated upon and affirmed. The case of National Insurance Co. Ltd., vs. Mastan was also referred to in para 40 and relevant extracts from this case were quoted. The relevant portion of para 40 of Ireo Grace Realtech Pvt. Ltd., vs. Abhishek Khanna's judgement that is quoted herein:

"23. The 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case."

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64. The view espoused by Hon'ble Supreme Court in Ireo Grace Realtech Pvt. Ltd., vs. Abhishek Khanna is conclusive on the point under consideration and does not admit of any ambiguity or controversy. The complainants have right to file complaints before any forum, but they have to choose to exercise the forum before which they have proceed further. The individual members of this complainant Association have chosen to approach the National Consumer Disputes Redressal Commission and simultaneously by becoming member of this complainant Association have approached this Authority for the same set of relief. This is barred by the judgements of the Hon'ble Supreme Court cited above.
65. **Our findings to point No. 14:-** However, having regard to the findings, in this order to the effect that all the blocks of Sobha City are required to registered with this Authority, the materials placed before the Authority are considered in pursuance of the jurisdiction conferred on the Authority in respect of compliances to be enforced, including the duties and obligations of the promoter, and appropriate directions are issued hereunder.

ORDER

1. The respondent promoter is hereby directed to immediately take steps to get registered all the blocks of Sobha City under Section 4 of the Real Estate (Regulation and Development) Act, 2016, excepting Block-4 for which registration has already been done. This shall be complied with in 30 days, from the date of receipt of this order.


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


(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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