

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

DATED THIS THE 16th DAY OF NOVEMBER, 2021

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 11/2021

BETWEEN:

M/s Bairavi Properties and construction Pvt. Ltd.,
A Company incorporated under the Companies Act, 1956,
Having its registered office at:
1432, 10th Main, 6th cross, Kodihalli Main Road,
H.A.L 3rd stage, Bengaluru-560 008.
Represented by its authorized representative,
Mr. Balaji Krishna Swamy **...APPELLANT**

(By Sri.Rohan Kothari, Advocate)

AND

1. Manish Singh
S/o Chandan Bhan Singh
Aged 44 years, Residing at No, 303,
Block A, 3rd Floor, Bairavi Cruz Luxor,
Challekere Main Road,
Behind Kalyan Nagar Bus Depot,
Bangalore – 560 043.
2. The Karnataka Real Estate Regulatory Authority,
#1/14, 2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road
Bengaluru-560 027. **...RESPONDENTS**
(Smt Swapna Easwaramoorthy & Others Advs for R-1)
(Sri Robert D' Souza Adv for R-2 (RERA))

This Appellant has filed the appeal under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, praying to quash and set aside the impugned order dated 18th November, 2020 passed in CMP/180531/0000876 passed by respondent No.2-RERA Authority, Bengaluru.

This appeal, having been heard and reserved for judgment coming on this day for pronouncement of judgment, the Hon'ble Chairman delivered the following:

J U D G M E N T

This appeal is by a promoter of a real estate project known as "Bairavi Cruz Luxor", being aggrieved by the impugned order dated 18th November, 2020 passed by the second respondent-Karnataka Real Estate Regulatory Authority (for short 'the RERA') in CMP/180531/0000876 has preferred this appeal.

2. By the impugned order, the RERA directed the appellant herein to get its project 'Bairavi Cruz Luxor' registered under Section-4 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act') within a period of 60 days in accordance with the provisions of Sections 3 and 4 of the RERA Act. The operative portion of the impugned order reads thus:

"The complaint bearing No.CMP/180531/0000876 is hereby allowed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

The respondent is hereby directed to

- (i) Get his project Bairavi Cruz Luxor, registered under Section 4 of the Real Estate (Regulation and Development) Act, 2016 within a period of 60 days, in accordance with the provisions of Section 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. On the basis of the materials on record there is a prima facie that the project were required to be registered with the Authority, since all the internal and external development works were not completed and occupancy certificate were not obtained prior to the commencement of the Act.
- (ii) In view of the above, penalty proceedings under Section 59(1) of the Act are hereby initiated at the promoter of the project is hereby directed to offer in 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.
- (iii) The respondent is hereby directed to complete the project as per the agreements entered with the complainant, within a period of 3 months from the date of receipt of this order.

- (iv) To obtain completion certificate / occupancy certificate and provide copies of the same to the homebuyers.
- (v) To facilitate formation of the homebuyers association.

Being aggrieved by the same, the present appeal is filed by the promoter.

3. For the purpose of convenience and ready reference, hereinafter, the appellant will be referred to as 'Promoter' and the 1st respondent will be referred to as 'Allottee' in this appeal.

Facts of the case:

4. As averred in the complaint filed in (Form 'O') by the allottee before the RERA, the appellant which is a company incorporated under the Companies Act, 1956 and engaged in the business/activities of construction and development of real estate projects, had undertaken a project known as "Bairavi Cruz Luxor" (for short 'the project') consisting of 90 apartments in 'A', 'B' and 'C' blocks situated at Chellekere main road, Bengaluru.

5. The allottee in the instant case had entered into an agreement to build and agreement to sell dated 11th August 2011 (document No.10 and 11) for allotment of a flat bearing No.A-303 in 'A' block of the project for a sum of Rs.72,48,251/-, as mentioned in the sale agreement dated 29.06.2020 (document No.14). There was an

upgrading agreement dated 11.08.2011 as well, entered into between the promoter and the allottee (document No.12). Thereafter, sale deed was executed in favour of the allottee on 29th June, 2015 and possession of which was handed over to the allottee on 8th February, 2016.

6. As per the terms of the agreement particularly, clause-6 of the agreement (document No.11), the promoter was required to complete the project and hand over possession of the flat to the complainant on or before 31.03.2013. According to the complainant, the total cost of the flat was Rs.1,02,12.693/- and as per the payment schedule, as narrated in paragraph-R of the complaint, the allottee has paid total sum of Rs.98,98,998/- to the promoter. It is averred that as per clause 6.2 of the agreement to build dated 11.08.2011, the promoter is entitled to a grace period of three months for delivery of possession and in the event of failure on the part of the promoter to deliver possession within the stipulated time, the promoter is liable to pay damages and since the sale deed was executed on 29.06.2015, there was a delay of more than two years in delivering possession of the flat. Even though the sale deed was executed on 29.06.2015, the promoter has failed to handover possession of the flat, as admitted by the promoter in e-mail dated 22.12.2015 (document No.16). It is further averred in the complaint that as on the date of handing over possession of the

flat, the project was incomplete, inasmuch as, several amenities were not provided including DG set of 320 KVA and STP and the promoter neither obtained 'completion certificate' nor 'occupancy certificate' as on the date of commencement of the RERA Act and hence, the promoter acted in gross violation of the provisions of Section-11, 12, 14 and 18 of the RERA Act, and, therefore, the said project is required to be registered, as the same is 'ongoing project'. On these grounds, the allottee has filed a complaint before the before RERA in CMP/180531/0000876 seeking following directions to the promoter:

- (a) to perform all obligations contained in the agreement to sell by providing all amenities as promised in the 'agreement to sell' and 'agreement to build' particularly in Schedule-D thereof;
- (b) to direct the promoter to obtain 'completion certificate' and 'occupancy certificate';
- (c) to direct the promoter to facilitate formation of Association by submitting a deed of declaration and to transfer the deposit received towards maintenance to the Association.

7. The complaint filed before the RERA was contested by the promoter, primarily on the following grounds:

(i) that RERA has no jurisdiction to entertain the complaint of the allottee or adjudicate the same, as the project was not an ongoing project;

(ii) that the project of the appellant namely, "Bairavi Cruz Luxor" was exempted from registration under the RERA Act, inasmuch as, all the development works have been completed as per the RERA Act, before the commencement of the RERA Act and hence, registration of the project is to be exempted;

8. The RERA, after adjudicating the complaint, passed the impugned order, directing the appellant to get the project registered as per the RERA Act.

Submissions of the parties:

9. We have heard Sri Rohan Kothari, learned counsel appearing for the appellant, Sri. Devaraj and Ms. Swapna Easwaramoorthy, learned counsel appearing for 1st respondent-allottee and Sri. Robert D'Souza, learned counsel appearing for the RERA.

10. Sri. Rohan Kothari, the learned counsel appearing for the promoter, while reiterating the grounds urged in the memorandum of appeal submits that the RERA has failed to consider that the project of the appellant clearly falls within the ambit of explanation (iii) to Rule- 4 (1) of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (for short 'the RERA Rules') which provides for exemption of projects from registration. As such, the

RERA has no jurisdiction to entertain and adjudicate the complaint filed by the 1st respondent-allottee.

11. The learned counsel further, submits that the term 'competent authority' defined under Section 2(p) of the RERA Act and the expression 'competent agency' referred to in sub-clause (iii) of explanation to sub-rule (1) of Rule-4 of the RERA Rules, cannot be termed as one and the same, as they have different meaning and they cannot be used interchangeably and the statute does not specify the 'competent agency' from whom the appellant is required to obtain the 'completion certificate' or 'occupation certificate' and in the absence of defining the word 'competent agency' in the RERA Act as well as the RERA Rules, the definition contained in the Tamil Nadu Rules requires to be referred to by the Tribunal.

12. Learned counsel further submits that since all internal and external development works of the project have been completed and sixty percent (60%) of the registered sale deeds in respect of the plots have already done and executed in favour of the allottee, it is completely irrelevant for the promoter to obtain either 'completion certificate' or 'occupation certificate' from the competent authority or competent agency and hence, the project in question need not be registered. Therefore, the RERA has

committed an illegality/error in directing the appellant to get its project "Bairavi Cruz Luxor" registered with the RERA.

13. Learned counsel for the promoter further submits that an Architect had inspected the project on 31.03.2017 and issued a certificate to the effect that all the development both internal and external works were completed as per the sanctioned plan. In support of the above contention he invited the attention of the Tribunal to the Architect's certificate dated 31.03.2017 (Annexure-H), Purchase order dated 07.11.2013 (Annexure-W), and various work orders, invoices, Bank Statements which are sought to be produced along with an application for production of these documents as additional evidence and contended that the project has indeed completed as on the date of commencement of the Act, and hence, the project of the appellant exclusively falls under explanation (iii) to Rule-4 (1) of the RERA Rules.

14. In support of his submissions, the learned counsel has relied upon a decision of the Apex Court in the case of ***Kailash Nath Agarwal and others -vs- Pradeshiya Industrial and investment corporation of U.P. Ltd and another*** reported in (2003) 4 SCC 305 and the decision of the Division of the High Court of Judicature at Bombay, in the case of ***Macrotech Promoters Limited -vs- The State of Maharashtra and others (W.P. (ST))***

No. 1118 of 2021 disposed of on 01.03.2021). On these grounds, he prays for setting aside the impugned order by allowing the appeal.

15. That on the other hand Sri Devraj, the learned counsel appearing for the allottee and Sri Robert D' Souza, the learned counsel appearing for the 2nd respondent-RERA vehemently opposed the submissions made by the learned counsel for the appellant.

16. Sri Devaraj, learned counsel for the allottee contended that the promoter, in the E-mail dated 21.05.2018 produced as document no. 36 along with the complaint has categorically admitted that as many as 9 works noted in the list of sequence of pending works enclosed to said e-mail will be taken up from 1st June, 2018 and in that regard meeting will be held at the site of the project. Apart from that, the promoter has acted in violation and contravention of Section 11, 12, 14 and 18 of the Act, and hence, the project in question is to be treated as an 'ongoing project' as contemplated under Rule 4 of the Rules.

17. Learned counsel while inviting the attention of the Tribunal to the memo dated 30th July, 2021 under which, the appellant has produced a copy of the occupancy certificate dated 20.04.2021 issued by the competent authority, contended that as could be seen from reference No.1 therein, the application for issuance of

occupancy certificate itself was filed by the appellant on 13th January, 2021 and the same was issued on 20th April, 2021. Hence, the appellant has failed to obtain 'completion certificate' and 'occupation certificate' from the competent authority, as defined under definitions (q) and (zf) of Section 2 of the Act, as on the date of commencement of the Act. And, therefore, none of the clauses under explanation (i) to (v) to Rule 4 (1) of the RERA Rules would attract.

18. The learned counsel further submits that in view of non-obstante class contained in explanation (iii) of Rule 4 (1), only when all development work 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 then only, the Promoter can seek exemption of registration of the project under explanation (iii) of Rule-4 (1) of the Rules. Since, the word 'and' is used, the Promoter cannot claim exemption solely on the basis of execution of sale/lease deeds of sixty percent of the apartments.

19. He further submits that as against the capacity of 50 KLD, the promoter had constructed only 25 KLD capacity of S.T.P which is not at all useful to bear the capacity of sewerage outflow of 90 units of the project and often, the sewerage is overflowing causing much

inconvenience to the inmates of the apartments as well as to the other general public staying in the locality. Apart from that, the D.G set installed is also insufficient to bear the backup power of the entire apartment. Under these, circumstances, the project in question cannot be termed as completed project as per the Act but it should be treated as "ongoing project". Therefore, the RERA was justified in directing the appellant to get its project registered as per the RERA Act and Rules holding that the said project is an "ongoing project" as on the date of commencement of the Act and that there are no justifiable grounds for Tribunal to interfere with the said reasoned order passed by the RERA and prays for dismissal of the appeal.

20. Sri. Robert D'Souza, learned counsel appearing for the RERA submits that the certificate issued by an Architect certifying that all the developmental works have been completed as per plan cannot be construed as the certificate issued by the competent authority as defined under Section 2 (p).

21. The learned counsel further submits that explanation (iii) of sub-rule (1) of Rule-4 contemplates that all development works have to be completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issuance of completion certificate/occupancy certificate. On

these grounds, he submits that the Authority was justified in passing the impugned order holding that the project of the appellant was required to be registered, as it does not fulfill the criteria described under explanation (iii) of Rule 4 (1) of the Rules and, therefore, he also prays for dismissal of the appeal.

22. After hearing the learned counsel for the parties and on perusal of the records, the following questions/issues arise for our consideration:

- i) Whether the RERA has jurisdiction to entertain the complaint filed by the 1st respondent-allottee against the appellant-promoter?
- ii) Whether the appellant-promoter is entitled for exemption of registration of its real estate project "Bairavi Cruz Luxor" as per explanation (iii) to sub-rule (1) of Rule-4 of the RERA Rules?.

23. Issue No. (i) -Regarding jurisdiction: A perusal of the averments in paragraph-2 of the memorandum of appeal makes it clear that the appellant company namely, 'Bairavi Properties and Construction (P) Ltd.,' is a registered company as defined under Section 2(o) of the RERA Act, which was incorporated under the Companies Act, 1956 and its registered/corporate office is situated/located at Bengaluru. Admittedly, primary object of the appellant company is to carry on its business in the field of real

estate projects as defined under definition (zj) and (zn) of Section-2 of the RERA Act and it carries development works in the field of real estate projects situated in a planning area as defined under Section 2 (zh) of the Act coming within the territorial jurisdiction of the 2nd respondent-RERA. Hence, as per the provisions of Section-34 (a) to (h) and Section-35 of the RERA Act, the 2nd respondent-RERA is empowered to adjudicate the issues that are raised by the aggrieved person in the complaint filed by him under Section 31 of the Act. Therefore, this Tribunal is of the considered view that the preliminary grounds urged by the appellant to the effect that the 2nd respondent-RERA has no jurisdiction to entertain the complaint filed by the 1st respondent-allottee is not sustainable and the same is liable to be rejected by holding that the RERA has jurisdiction to entertain the complaint filed by the 1st respondent-allottee. Accordingly, issue No (i) is answered in the affirmative.

24. Issue No. (ii) -Regarding Exemption from registration:

Before adverting to the above issue, it is just and necessary for this Court to refer to the provisions of Section-3 of Chapter-II of the RERA Act, which contemplates registration of a real estate project as well as exemption from such registration, as contained in the RERA Act, which reads as under:

“Chapter-II, Registration of Real Estate Project and Registration of Real Estate Agents.

3. (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 the 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 standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately”.

(Emphasis supplied)

25. Apart from the above provisions, the sub-rule (1) of Rule-4 of the RERA Rules is also relevant to decide the above issue which reads as under:

“(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”.

26. Although the appellant, in the memorandum of appeal, urged that the project in question is to be exempted from registration as per proviso to Section-3 as well as explanations (iii) to (v) of sub-rule (1) of Rule-4, during the course of his arguments fairly submitted that the appellant would claim exemption of registration of its project only under explanation (iii) of sub-rule (1) of Rule-4 of the Rules. Therefore, it is necessary for this Tribunal to examine only issue as to whether the promoter has fulfilled all the criteria contemplated under explanation (iii) to sub-rule (1) of Rule-4 to claim exemption from registration of a real estate project and this Tribunal need not go into the other aspect of the matter.

27. On a bare reading of the criteria contemplated in explanation (iii) to sub-rule (1) of Rule-4 which is extracted above it is very clear that to claim exemption of registration under the above provision, the promoter has to fulfill/satisfy three conditions contained therein simultaneously. The said provisions consists of three parts i.e (i) **“where all development works have been completed as per the Act”** and (ii) **“certified by the**

competent agency” and (iii) “sale/lease deeds of sixty percent of the apartments/houses/plots have been registered and executed”.

28. Before adverting to the issue No (ii) formulated above as regards the appellant-promoter fulfilling the criteria for exemption from registering its project, it is just and necessary for this Tribunal to consider the various additional documents produced by the parties. Both the appellant-promoter as well as the 1st respondent-allottee have filed an application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, (IA No. III/2021 and IV/2021) seeking permission of this Tribunal for production of certain documents by way of additional evidence which were not produced before the RERA and they are produced for the first time before this Tribunal praying this Tribunal to take those additional documents on record and grant the relief sought for, after evaluating those additional documents.

29. For ready reference, the documents now sought to be produced by both the promoter and the allottee by way of additional evidence by filing interlocutory applications (IA-III and IA-IV) are extracted in the tabular form mentioned below:

Additional documents produced by the appellant-promoter:

Sl No	Description of the documents
1	Annexure-H: Copy of project Architect's certificate indicating completion of all developmental works by 31.03.2017.
2	Annexure-W: Proof of payment of pavements
3	Annexure-X: Proof of payment for landscaping
4	Annexure-Y: Maintenance bills from February 2016 evidencing completion of sewage and drainage works.
5	Annexure-Z: Invoice and work orders relating to solid waste management
6	Annexure-AA: Work orders, payment of proof, and invoices regarding footpath/ jogging track
7	Annexure-AB: Work orders, payment of proof, and invoices for water treatment/purifier plant
8	Annexure-AC: Work orders, invoices and proof of payment for tree planting
9	Annexure-AD: Work orders, invoices and proof of payment for street lighting
10	Annexure-AE: Work orders, invoices and proof of payment for clubhouse and gym equipment
11	Annexure-AF: Work orders, invoices and proof of payment towards rainwater harvesting equipment
12	Annexure-AG: Work orders, invoices and proof of payment for energy management works
13	Annexure-AH: Work orders, invoices and proof of payment for public amenities.
14	Annexure-B: Copy of Board Resolution of appellant company dated 13.12.2020.

**Additional documents produced by the 1st Respondent-
Allottee:**

Sl No	Description of the documents
1	Annexure R-1: Copy of the show cause notice date 27.07.2018
2	Annexure R-2: Reply dated 13.08.2018 issued by Appellant.
3	Annexure R-3: Print of email dated 28.08.2018.
4	Annexure R-4: Photograph showing flooring. Was promised to be of granite which is not done;
5	Annexure R-5: Photograph showing flooring. Was promised to be of granite which is not done;
6	Annexure R-6: Photograph to show external emulsion painting and weather proof enamel of building compound of the project, is not done;
7	Annexure R-7: Photograph to show external elevation of elliptical brick structure at rear of the building has not been done;
8	Annexure R-8: Photograph to show external elevation of elliptical brick structure at rear of the building has not been done;
9	Annexure R-9: Photograph to show external elevation of elliptical brick structure at entrance of the building has not been done;
10	Annexure R-10: Photograph to show squash court is not done;
11	Annexure R-11: Photograph to show that instead of Mangalore tiles over each tower, some cheap plastic material is used;
12	Annexure R-12: Photograph to show that entry pavilion and a rear entry foyer is not done;
13	Annexure R-13: Photograph to show water logging in car park;

14	Annexure R-14: Photograph to show water logging in car park;
15	Annexure R-15: Photograph to show no proper garbage disposal system;
16	Annexure R-16: Photograph to show no proper garbage disposal system;
17	Annexure R-17: Photograph to show no proper garbage disposal system;
18	Annexure R-18: Photograph to show Fire Exist is still held by a BRICK
19	Annexure R-19: Photograph to show pipe is left open to the Planting section in the balcony of the Respondent No.1, which causes water logging and the debris of construction is still not cleared in the said space;

30. Learned counsel appearing for the appellant-promoter submits that:

(a) the above documents sought to be produced by the appellant by way of additional evidence are relevant for the purpose of considering their contentions urged in the complaint filed before the RERA and to decide the issue involved in the appeal filed before this Tribunal.

(b) since the proceedings initiated before the RERA for non-registration of the project was not by way of suo-motu but it was at the instance of the complaint filed by the allottees, sufficient opportunity was not afforded to the promoter by the RERA to substantiate the fact that though the project undertaken by the

promoter was an ongoing project as on the date of commencement of the Act, but it is exempted from registration as per explanation (iii) to sub-rule (1) of Rule-4 of the Rules.

(c) If an opportunity is provided to the appellant-promoter to place the above documents sought to be produced by way of additional evidence, the appellant would be able to substantiate that the project in question will have to be exempted from registration.

31. At the same time, learned counsel for the allottee submits that:

(a) the documents now sought to be produced by the allottee by way of additional evidence would demonstrate that all developmental works of the project have not been completed as per the Act, as on the Act coming into force.

(b) He further submitted that allottee the allottee had filed a complaint before the Authority on 6th May, 2018 and the promoter had obtained the alleged report from the Architect as if the Architect had inspected the project on 31.03.2017 and it is a created certificate only for the purpose of showing that the promoter has fulfilled the criteria contemplated under explanation (iii) to sub-rule (1) of Rule-4 of the Rules.

(c) He further submits that the contention of the promoter that since he had no sufficient fund to pay the huge sums required to be paid while applying for occupancy certificate from the competent authority and, therefore, he did not obtain the report from the Architect immediately after the inspection and he secured the same at later point of time i.e., in the year 2019 cannot be accepted.

32. It is relevant to note that application (IA-III) filed by the appellant/promoter is not opposed by the allottee by filing statement of objections. Similarly, application (IA-IV) filed by the allottee is not opposed by the appellant by filing objections. The learned counsel appearing for the promoter as well as the allottee addressed their further arguments placing reliance on the documents now sought to be produced by way of additional evidence. As those documents were not placed before the authority, the Authority had no opportunity to consider the rival contentions of the parties based on the documents now sought to be produced by way of additional evidence.

33. Under the above circumstances, an inference could be drawn that both the parties are strongly relying on those additional documents which were sought to be produced as additional evidence. Hence, after considering the submissions made by the

learned counsel for the parties, this Tribunal is of the considered view that the documents now sought to be produced by both the parties (promoter and allottee) as additional evidence are relevant and necessary to decide the issue/question involved in the matter. Hence, we are of the considered view that the IA-III filed by the appellant and IA-IV filed by the allottee are required to be allowed. Accordingly, we allow both the interlocutory applications (IA-III & IV) filed by the promoter and allottee and the additional documents produced under the said applications are taken on record and they have been treated as part and parcel of the records of this appeal.

34. Admittedly, the additional documents that have been now produced by the promoter as well as the allottee have not been produced during adjudication of the case before the Authority and they have been produced for the first time before this Tribunal. Under such circumstances, this Tribunal is of the considered view that without affording an opportunity to both the parties to confront with those additional documents before the RERA which is a fact finding authority, this Tribunal cannot decide the issue No (ii) formulated above. In the light of our finding that both the parties will have to be given an opportunity to produce additional documents as additional evidence, the Authority is required to consider the complaint filed by the allottee afresh including the issue as to whether the project of the appellant-promoter is

exempted from registration as contemplated under explanation (iii) of sub-rule (1) of Rule-4 of the Rules on merit and in accordance with law.

35. The provisions of sub-section (1) of Section-35 of the RERA Act empowers the RERA to call upon the promoter or allottee, at any time to furnish in writing such information or explanation relating to its affairs **as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of the promoter or allottee, as the case may be.**

Further, sub-section (2) of Section-38 of the RERA Act provides that the Authority shall be guided by the principles of natural justice. After perusal of the additional documents produced by both the parties, this Tribunal is of the opinion that they are required to be considered by the RERA, which is the fact finding Authority, for the purpose of proper and effective adjudication of the dispute/issue involved in the case and decide the matter afresh after evaluating the additional documents/evidence produced by both the parties and after affording opportunity to both the parties to confront with those documents. Hence, in these circumstances, case for remand is made out. Under these circumstances, it will be in the fitness of things and in the interest of justice that the impugned order is liable to be set aside and the proceedings are required to be remanded to the RERA, Bengaluru for holding fresh inquiry in this respect after

giving due opportunity to both the parties to substantiate their case. Under the circumstances, without expressing any opinion on merit of the case, this Tribunal deems it just and proper to remand the matter to the RERA for fresh adjudication of the above questions, after affording reasonable opportunity to both the parties to put-forth their case. Admittedly, both the parties have no opportunity to meet the contents of the additional documents now produced by them. Further, if the Authority is having any doubt about the authenticity of the certificate issued by the Architecture, the Authority is empowered to make an independent inquiry through the statutory machinery of the Local Authority in exercise of its power under Section 35 (1) of the Act. Accordingly, point No (ii) formulated above cannot be considered on merit by this Tribunal and the same is left open to be decided afresh by the RERA after permitting the parties to produce those additional documents/evidence and any other documents which may be relevant for the purpose of deciding the case.

36. For the foregoing reasons, this Tribunal is of the considered view that the appeal must succeed in part and the matter requires to be remanded to the RERA for fresh adjudication. Accordingly, we proceed to pass the following:

ORDER

- 1) Appeal stands allowed in part;
- 2) The impugned order dated 18th November, 2020 passed by the second respondent-RERA in CMP/180531/0000876 is hereby set aside. The matter stands remitted to the 2nd respondent-RERA for reconsideration of the complaint filed by the 1st respondent-allottee afresh, including the issue as to whether the project 'Bairavi Cruz Luxor' undertaken by the appellant is required to be registered under the provisions of the RERA Act or not, after affording an opportunity to both the parties to produce documents and adduce evidence, if any, on merit, in accordance with law and in the light of the observations made in the course of this order;
- 3) IA-III and IV filed by the appellant and the first respondent under Order XLI Rule-27 of CPC., are allowed and the documents produced along with the said applications are hereby directed to be transmitted to the RERA. Further, both the parties are permitted to produce any other documents and adduce evidence, if any, but that shall be done by serving copies of the said documents and list of witnesses on the opposite side in advance, so as to enable them to have their defence and without seeking unnecessary adjournments;
- 4) All the contentions urged by both the parties before this Tribunal are kept open to be urged before the RERA;
- 5) Since the appellant-promoter and the 1st respondent-allottee were represented in this appeal through their Advocates, they

are hereby directed to appear before the RERA on 30.11.2021, without expecting further notice from RERA.

- 6) The RERA shall make an endeavor to dispose of the matter as expeditiously as possible, but not later than the outer time limit of 45 days from the date of appearance of the parties and the parties shall extend cooperation with RERA so as to enable the RERA to dispose of the matter within the time specified herein;
- 7) Registry is hereby directed to comply with the provision of Section 44(4) of the Act and to return the records to RERA;
- 8) In view of the disposal of the appeal, other pending interlocutory applications, if any, shall stand disposed off;
- 9) No order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

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

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