

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

DATED THIS THE 10TH DAY OF JUNE, 2022

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) 56/2021

BETWEEN:

Shoba Limited
(Earlier known as Sobha Developers Limited),
Sarjapur- Marathalli Outer Ring Road,
Devarabisanahalli, Bellandur Post,
Bangalore – 560103, Karnataka India
Represented by their Authorized Signatory
Mr. Prasad M.S.

...APPELLANT

(By Sri. Adithya Sondhi learned senior counsel
for Veeksha Law LLP, Advocate for Appellant)

AND

1. Karnataka Real Estate Regulatory Authority,
No. 1/14, 2nd Floor,
Silver Jubilee Block,
Unity Building, CSI compound,
Mission Road,
Bengaluru-560 027
Represented by its Secretary.

2. Mr. Amrith Thomas,
Represented by Mathew Thomas,
Row House No.2, Aristos, Sobha City,
Thanisandra Main Road,
Bangalore – 560064.

..RESPONDENT

(R-1-RERA served and un-represented
Sri. Chaitanya, Advocate for R.2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal, praying to set aside the impugned order passed by the Karnataka Real Estate Regulatory Authority, Bengaluru, vide order dated 17.03.2021, in complaint No. CMP/18110/0001620.

This appeal coming on for hearing this day, 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- M/s Sobha Limited (for short, 'the promoter') challenging the impugned order dated 17.03.2021 passed by the Karnataka Real Estate Regulatory Authority in CMP/18110/0001620. By the impugned order, the Authority, apart from issuing certain directions has directed the promoter to register its project under Section-4 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act').

Brief facts leading to this appeal are:

2. The 2nd Respondent (for short 'allottee') purchaser of a flat bearing No.2 of a real estate project known as "Shoba City-Aristos" filed a complaint bearing No. CMP/18110/0001620 before RERA seeking direction to the promoter to register the project with RERA and to provide amenities which are not provided to the said flat.

3. Seeking similar reliefs, another complaint bearing no. CMP/090819/0003946 has been filed by the Homebuyers Association and the same was ordered to be clubbed with complaint No. CMP/18110/0001620 filed by an allottee. However, despite clubbing both complaints as per its own order, the Authority had taken up the complaint filed by the allottee and disposed off the same vide impugned order. Challenging the said order, the promoter has preferred the said appeal.

4. We have heard Sri. Adithya Sondhi, learned senior counsel appearing for the appellant and Sri. Chaitanya, learned counsel appearing for 2nd respondent –allottee and

perused the records. There is no representation for the 1st respondent-RERA.

5. The learned senior counsel submitted that once the Authority ordered to club both the complaints filed by the allottee as well as Homebuyers Association, it ought not to have proceeded to enquire the complaint filed by the allottee alone without there being an order of segregation of the complaint filed by the Homebuyers Association. He further, submitted that to avoid any conflicting order to be passed in the pending complaint no. CMP/090819/0003946 filed by the homebuyers association, it is necessary for this Tribunal to set aside the impugned order and remand the matter to the Authority for fresh consideration, by clubbing both the complaints together.

6. On the other hand, Sri Chaitanya, learned counsel appearing for the 2nd respondent-allottee submitted that there is no legal impediment for the Authority to consider the complaint filed by the 2nd respondent independently and pass orders, even though the complaint filed by homebuyers for similar reliefs was clubbed. He submitted that in the event if this Hon'ble Tribunal decides to set aside the impugned order,

remitting the matter to the Authority for consideration of both the complainants together, the Authority may be directed to dispose off both the complaints expeditiously.

7. After hearing the arguments of the learned counsel for both sides and on perusal of the records maintained by the Authority in complaint no. CMP/18110/0001620, it is noticed that in paragraph-6 of office note dated 04.09.2019 it was noted that the 'complainant is present and submits there are 2 similar complaints, club them all'. Further, at paragraph- 9 of the office note dated 10.10.2019 it was noted that 'case called. Both sides advocates are present. The complaints filed by the association is to be clubbed'. Pursuant to the above office notes, two complaints i.e., CMP/18110/0001620 and CMP/090819/0003946 which were filed for the similar reliefs were clubbed together at the instance of the complainant. But, without their being an order for segregation of the complaints, for the reasons best known to the Authority, took up the complaint filed by the allottee in no. CMP/18110/0001620 for enquiry and passed the impugned order. Though, initially, the two complaints were ordered to be clubbed together and heard together, without assigning any valid reason the complaint

filed by the allottee has been disposed of which is not proper in the absence of an order for separation of the complainants. At the same time, there was no legal impediment for the Authority to hear both the complaints together and dispose off them by passing a common order. Apart from that, if this Tribunal were to decide the present appeal and pass orders on merit, the same would definitely influence the Authority while deciding the pending complaint filed by the homebuyers association in complaint no. CMP/090819/0003946 and possibility of taking conflicting view by the Authority cannot be ruled out which would ultimately result in miscarriage of justice. Further, the authority, which is a quasi-judicial authority, ought not to have adopted such practice which is against the well established practice and procedure. Moreover, such act would also result in multiplicity of proceedings and passing of two inconsistent orders for the same relief, which is highly deprecated.

8. In view of the discussions made above, without expressing any opinion on merits of the case, this Tribunal is of the considered view that the impugned order is liable to be set aside and matter requires to be remitted back to the

Tribunal for fresh consideration. Accordingly, we pass the following:

ORDER

- (i) The appeal filed by the promoter is allowed;
- (ii) The impugned order dated 17.03.2021 passed in complaint no. CMP/18110/0001620 by the Authority is hereby set aside;
- (iii) The matter is remitted back to the Authority for fresh consideration on merit along with complaint No. CMP/090819/0003946 filed by the Homebuyers' Association and in accordance with law;
- (iv) All contentions of the parties are kept open and both the allottee and promoter are at liberty to adduce additional evidence, if any;
- (v) Since the appellant as well as the respondents have already entered appearance through their respective counsel, they shall appear before the Authority on 22.06.2022 without expecting further notice from RERA. If the Authority is not sitting on 22.06.2022, it shall take up the matter on the immediate next sitting day;
- (vi) Keeping in mind that the matter relates to the year 2018, the Authority shall make an endeavor to dispose of the matter on merit, as expeditiously as possible, but not later than the

outer limit of forty five (45) days from the date of parties entering appearance;

- (vii) In view of disposal of the Appeals, all pending I.As. if any, stands rejected, as they do not survive for consideration;
- (viii) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER