

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

**DATED THIS THE 15<sup>th</sup> DAY OF JUNE, 2022**

**PRESENT**

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

**AND**

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

**AND**

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

**APPEAL No.(K-REAT)-43 of 2021**

**C/W**

**APPEAL No.(K-REAT)-64 of 2021**

**IN APPEAL No.(K-REAT)-43 of 2021**

**BETWEEN:**

Sri. B. Prashanth,  
S/o. Sri. R. Bhadrappa,  
No.79/99, 4<sup>th</sup> Main,  
Bapuji Nagar,  
Bengaluru-560 026.

**....APPELLANT**

(By Sri. S.A. Maruthi Prasad, Advocate)

**AND**

1. Karnataka Real Estate Regulatory Authority,  
#1/14, 2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building Backside, CSI Compound,  
3<sup>rd</sup> Cross, Missions Road,  
Bengaluru-560027.  
Represented by its Secretary
2. a) Sri. C. Nagaraj,  
S/o late Chennarudriayya,  
Aged 63 years,

- b) Smt. Latha Chandrashekar,  
D/o C. Nagaraj,  
Aged 38 years,
- c) Smt. Asha Santosh,  
D/o C. Nagaraj,  
Aged 36 years,
- d) Smt. Suma Renukesh,  
D/o C. Nagaraj,  
Aged 31 years,
- e) Sri. Ravi.N. Tito,  
S/o C. Nagaraj,  
Aged 29 years,
- f) Smt. Bharathi Devanath,  
W/o Late K.C. Devanath,  
Aged 48 years,
- g) Smt. Spoorthi,  
D/o Late K.C. Devanath,  
Aged 25 years,
- h) Sri. Prajwal.D.K,  
S/o Late K.C. Devanath,  
Aged 23 years
- i) Sri. Kuchangi.C.Vasanth Kumar  
S/o Smt. Usha Kumari  
Aged 51 years
- j) Sri.K.C.Shankar,  
S/o Sri.K.G.Channabasavaiah  
Aged 47 years
- k) Sri.K.G.Channabasavaiah  
S/o Late Gubbaiah  
Aged 82 years
- l) Smt. Tara Manjunath,  
D/o Late Prema Rajashekar,  
Aged 55 years

- m) Smt. Asha Mahesh,  
W/o Late K.R. Mahesh,  
Aged 45 years
- n) Sri. K.R.Dinesh,  
S/o Late Prema Rajashekar,  
Aged 49 years
- o) Dr. Himanshu.M,  
S/o Late Akkamahadevi,  
Aged 30 years,
- p) Dr.G Mohan Kumar,  
H/o Late Akkamahadevi,  
Aged 62 years
- q) Smt. Sujatha Shivashankar,  
D/o Late D.R. Chennarudriayya,  
Aged 58 years
- r) Smt.Siddalakshmi Sastry,  
D/o Sujatha Shivashankar,  
Aged 27 years
- s) Miss. Karuna Shastry,  
D/o Late G.T.Shivashankar,

Respondents 2(a) to 2(s),  
are represented by their GPA Holder

M/s Tirumala Constructions,  
A partnership Firm having its office at  
No.326, 5<sup>th</sup> main, 10<sup>th</sup> Cross,  
4<sup>th</sup> Stage Vinayaka layout,  
Nagarabhavi  
Bengalore – 560 072.  
Represented by its Partner  
Mr. Praveen Mohan .

**....RESPONDENTS**

(R.1/RERA –served, unrepresented)  
{R.2 (a to s) are represented by Sri. R N Mallikarjuna A/w Sri  
K. Chethan Kumar, Advocates, for M/s Avadhutha's Solicitors}

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 01.03.2021, in complaint No. CMP/200907/0006518.

**IN APPEAL No.(K-REAT)-64 of 2021**

**BETWEEN**

Sri. B. Prashanth,  
No.79/99, 4<sup>th</sup> Main,  
Bapuji Nagar,  
Government Electric Factory,  
Bangalore South,  
Bangalore Urban – 560 026.

**....APPELLANT**

(By Sri. S.A. Maruthi Prasad, Advocate)

**AND**

1. Karnataka Real Estate Regulatory Authority,  
#1/14, 2<sup>nd</sup> Floor, Silver Jubilee Block,  
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Aged 29 years,

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D/o Late K.C. Devanath,  
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- h) Sri. Prajwal.D.K,  
S/o Late K.C. Devanath,  
Aged 23 years
- i) Sri. Kuchangi.C.Vasanth Kumar  
S/o Smt. Usha Kumari,  
Aged 51 years
- j) Sri.K.C.Shankar,  
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Mr. Praveen Mohan.

**....RESPONDENTS**

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{R.2 (a) to (s) are represented by Sri. R N Mallikarjuna A/w Sri K.  
Chethan Kumar, Advocates, for M/s Avadhutha’s Solicitors}

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 01.03.2021, in complaint No. CMP/200907/0006502.

These appeals coming on for hearing along with I.A.III and I.A.I this day, Hon’ble Chairman delivered the following:

### **J U D G M E N T**

Appeal No.43/2021 and 64/2021 are preferred by an allottee of flats in a real estate project undertaken to be developed by the 2<sup>nd</sup> respondent in the above appeals, seeking to set aside

the common impugned order passed by the Authority on 01.03.2021, in complaint Nos. CMP/200907/0006518 and CMP/200907/ 0006502.

**2.** Since, the challenge in the above two appeals is against the common impugned order and common questions are involved, both the appeals are clubbed together and heard along with I.A.III and I.A.I- applications for impounding the document and disposed of by this common judgment.

For the purpose of convenience and to avoid confusion, the appellant in both the appeals will be hereinafter referred to as 'the allottee/purchaser'; respondent No. 2 (a) to (s) are the landowners and they are represented by their GPA holder M/S. Tirumala Constructions, A partnership firm, represented by their partner Mr. Praveen Mohan. Hence, the landowners and Builder are together referred to as 'Promoter' hereinafter.

**Facts of the case:**

**3.** As could be seen from the records of RERA, the appellant filed two separate complaints on 10.09.2020 in the prescribed proforma. Under the heading "Details of complaint", the complainant described the respondent as Builder, the project name as "Tirumala K. Park Central" and the Builder name as

“Praveen Mohan”. However, under the heading facts of the complaint, he has made all the landowners as respondents 1 (a) to (s), represented by their GPA holder M/s Tirumala Constructions. A Partnership Firm having its office at No.326, 5<sup>th</sup> Main, 10<sup>th</sup> Cross, 4<sup>th</sup> Stage, Vinayaka Layout , Nagarabhavi, Bengaluru – 560 072, represented by its partner Mr. Praveen Mohan.

**4.** He has pleaded in the complaint that the respondent/Builder represented to him stating that he has entered into registered Joint Development Agreement dated 13.03.2017 with the land owners for development of the property bearing Sy. No. 12, 12/1, and 12/2 (Old site No.5) situated at serpentine Road and Pipe Line Road, 8<sup>th</sup> Block, Kumara Park Extension, Bengaluru – 560 020 etc., for constructing multistoreyed residential apartments in the project known as “Tirumala K Park Central” and on the same day, the land owners have also executed a registered General Power of Attorney in his favour empowering him to develop the property. The Builder has further assured that he would take all necessary approvals for commencement of the project. The complainant, believing the representation of the Builder has entered into three separate agreements of sale dated 19.07.2019 to purchase three flats bearing No. G-1, G-2 and G-3 situated in the ground floor of the project. The total sale consideration for G1 and G3 is



Rs.1,83,00,000/- for each flat. Since the Builder has assured huge discount for one time payment, the complainant has paid Rs.50,00,000/- on 19.07.2019 and Rs.1,32,00,000/- on 22.07.2019 for each flat bearing Nos.G1 and G3 through various cheques. In addition to the above payments the complainant has paid additional sum of Rs. 17,00,000/- for each flat Nos.G1 and G3. It is further pleaded in the complaint that the Authority has jurisdiction to try the complaint in view of the fact that flats are constructed in an area of more than 500 Square meters and Builder has constructed more than 15 flats on schedule 'A' property. The complainant has alleged that as per proviso to section 3 (2) of the Act, the Builder deliberately has not registered the project as required under the Act and further the Authority has power to issue direction under Section-37 of the Act to the Builder restraining/creating charge over the flat. The Builder has violated the provisions of Section-37 and Section 11 (4)(h) of the Act, in collecting more than 10 percent of the sale consideration without taking steps for registration of the sale agreements.

**5.** The complainant has pleaded that he has entered into another agreement of sale in respect of flat No.G2 in the same project and paid the entire sale consideration but recently he came to know that the Builder without the consent of the

complainant had sold the said flat through an absolute sale deed on 11.11.2019 and the complaint filed in respect of the said flat is still pending consideration before RERA. Hence he filed two separate complaints in respect of flat G1 and G3 against the Builder with the Authority praying to restrain the Builder from creating third party charge over flat Nos. G1 and G3 in 'Tirumala K Park Central' and to pass such other orders as the Authority deems fit to grant in the circumstances of the case in the interest of justice and equity.

**6.** In the complaint itself, the complainant has sought for interim order praying to restrain the Builder from creating third party charge over flat Nos. G1 and G3 in the project known as 'Tirumala K Park Central'. However, he has filed a separate application under order XXIX, Rules 1 and 2 read with Section-151 of CPC and read with Section-3, 11 (4) and Section-37 of the RERA Act praying to grant an ad interim order of temporary injunction restraining the respondent No.2 from creating charge/alienating the schedule-B property till disposal of the complaint.

**7.** That on 06.11.2020, the complainant has filed an application under Order-VI, Rule-17 read with Section-151 of the Code of Civil Procedure, 1908 praying the Authority to permit him to amend the prayer made in the complaint as under:

“(c): Direct the respondents to complete the construction of schedule-B flat as per the time stipulated in the agreement of sale dated 19.07.2019 and thereafter execute an absolute sale deed for Schedule-B property in favour of the complainant.”

**8.** After receipt of notice from the Authority, the respondent entered appearance through an advocate and contested the case *inter alia* contending that the complaint filed by the allottee is not maintainable under Section 11(4)(h) and 37 of the RERA Act, as the same relates to function and duties of the Builders and powers of the Authority; the Builder is engaged in the business of development of layout and construction of multistoried building, and after obtaining the plan approved from BBMP has entered into registered Joint Development Agreement on 13.03.2017; the Builder has not entered into any agreement of sale with the complainant, the said agreements have been fraudulently created by the complainant to cheat the Builder and that the Builder has not at all received the amount alleged to have been paid by the allottee and that the said amount was in respect of some other transactions and not relating to sale of flat Nos. G1, G2 and G3, as claimed by the allottee; the complainant who was a Director of M/s Super Royal Holiday India Private Limited had transferred Rs.6,00,00,000/- from his personal account to the account of the

Builder, and on the same day, one Mr. Praveen, the partner of respondent-Builder in turn transferred the said amount to M/s Super Royal Holiday India Private Limited represented by its Director Mr. Prashanth. B. It is contended that Mr. Prashanth. B is none other than the complainant himself and the said transaction clearly demonstrates that the amount which the complainant is referring to as sale consideration in the sale agreement, has been completely repaid by the respondent to the complainant on the same day.

**9.** It is further contended that the complainant taking advantage of the above transactions has created and concocted three sale agreements dated 19.07.2019 and has filed the above complaints to harass the respondent and to make unlawful gain of the amount and to secure apartments illegally. It is stated that the respondent has not entered into any agreement except the above mentioned transaction of the amount and complainant has failed to prove that the above money transaction is paid towards sale consideration mentioned in the sale agreements. Hence, question of restraining the Builder from creating any third party charge and executing sale deed does not arise.

**10.** It is further contended that as per clause-6 of the sale agreement, the remedy available to the complainant is to enforce

the agreement for specific performance or refund of the amount. The respondent has totally denied the facts of paying any sale consideration by the complainant under the agreements of sale. The respondent also has contended that the sale agreements are not registered and proper stamp duty has not been paid by the complainant in accordance with the provisions of the Stamp Act/RERA Act. Hence, on these grounds the respondent-Builder contended that the complaint is devoid of merits and the same is liable to be dismissed with exemplary cost.

**11.** As could be seen from the order sheet dated 15.10.2020, the Authority granted an interim order to the effect "till next hearing G-1 & G-3 shall not be alienated" and on 3.11.2020 the said interim stay order was extended until further orders.

**12.** That after hearing the learned counsel for the complainant and the promoter and perusing the material placed by the parties, the Authority, by common order dated 01.03.2021, dismissed both the complaints filed by the allottee as not maintainable. The operative portion of the impugned order reads as under:

"In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing No.CMP/200907/0006502 & 6518 are hereby rejected as not maintainable.

The respondent is hereby directed to immediately take steps to complete the process of registration of the project under the provisions of the Real Estate (Regulation and Development) Act, 2016.”

Being aggrieved by the above common order, the allottee of flats bearing Nos. G1 and G3 has preferred the above two appeals praying this Tribunal as under:

“Call for and examine the records and set aside the order dated 01.03.2021 passed by the Respondent no.1 the Karnataka Real Estate Regulatory Authority, Bengaluru, in Complaint No.CMP/2000907/0006518 dated 01.03.2021 and thereby allow Complaint No.CMP/2000907/0006518 and grant such other reliefs as this Hon’ble Tribunal deems fit to grant in the interest of justice”.

**13.** By way of amendment, the appellant has prayed as under:

“Call for and examine the records of the Karnataka Real Estate Regulatory Authority, (Respondent no.1) in Complaint No.CMP/2000907/0006518 dated 01.03.2021 and pass the following order:

a) Set aside the order dated 01.03.2021 passed by Respondent no.1 in Complaint No.CMP/2000907/0006518 and to remand the matter to the Respondent no.1 to decide case on merits and also consider the Application filed by the appellant under Order 6 Rule 17 of Code of Civil Procedure dated 06.11.2020 on merits.

b) To Direct the Respondent no.2 to register the project with the Respondent no.1 as required under Section 3(1) of the RERA Act.

c) And to pass such other relief or reliefs as this Hon'ble Court deems fit to grant under the facts and circumstances of the case in the interest of justice and equity."

**14.** Respondent No.1- RERA, though served with the notice of this appeal, remained unrepresented.

**15.** We have heard Sri. S. A. Maruti Prasad, learned counsel appearing for the allottee in both the appeals and learned counsel Sri. Mallikarjun appearing along with Sri. Chethan Kumar. K, for the 2<sup>nd</sup> respondent-landowners /Builder and perused the records.

**Submissions of the parties:**

**16.** Sri. S. A. Maruti Prasad, learned counsel for the allottee submits that Respondent No.1 RERA committed an error in holding that the appellant is not an allottee in relation to a real estate project. It has failed to consider the agreement of sale entered into between the appellant and Respondent No.2 on 19.7.2019 wherein it was mentioned that the respondent has agreed to sell the schedule B property in favour of the appellant for a sale consideration of Rs1,83,00,000/- for each flat No. G1 and G3 of

which, he paid Rs.1,82,00,000/- ( Rupees One crore Eighty two lakhs) for each flat No. G1 & G3 through various cheques.

**17.** The learned counsel further submits that the Authority failed to note that the respondent in their statement of objection has admitted the receipt of entire sale consideration. The Authority committed an error in holding that the sale consideration received by the respondent was returned to M/s Super Royal Holiday India Pvt. Ltd., in which the appellant was a Director and on the alleged date of return of amount, he was ceased to be the Director of the said company as he had resigned from the said post on 26.06.2019 as evident from the document issued by the Registrar of Companies. The appellant has nothing to do with the financial transactions between the respondent and M/s Super Royal Holiday India Pvt. Ltd., There can be no connection between the amount paid by the appellant to the respondent under the agreements of sale dated 19.07.2019 and the alleged transfer of amount from Respondent No.2 to M/s Super Royal Holiday India Pvt. Ltd., and it is an attempt to confuse or mislead the court and the respondent is attempting to fraudulently wriggle out of their liabilities due to the appellant.

**18.** Learned counsel submits that the submission made by the learned counsel for the Builder that in all there are three



agreements, the advance amount of Rs.50,00,000/- was made under one cheque bearing No.000122 itself is an indication that the said agreements of sale are concocted one is also incorrect, inasmuch as, the entries made in the bank statement which is produced before the Authority clearly establishes that the advance amount has been paid through three different cheques of the same date and the cheque numbers mentioned in the agreement of sale are only due to typographical error and no credence should be attached to the same.

**19.** Learned counsel for the appellant submits that he had filed one more complaint as regards flat No.G-2 which has been sold by the Builder to the third party in complaint No.CMP/UR/210903/0008297/2021 which is pending consideration with Bench-1 of the RERA and to avoid conflicting orders, this Tribunal, while allowing the appeal and remitting the matters to the Authority may direct the Authority to club the said complaint with complaint Nos. CMP/200907/0006518 and CMP/200907/0006502 and decide all the three complaints together.

**20.** He further submits that since the allottee, during the proceedings before the Authority, had the benefit of an interim order restraining the Builder from alienating the remaining two

flats i.e., flat No.G-1 and G-3, the Authority may be directed to revive the said interim order till disposal of the complaints.

**21.** The learned counsel submits that the appellant-allottee is challenging only the first part of the impugned order as regards dismissal of the complaint as not maintainable and that the appellant is not challenging the second part of the impugned order directing the respondent-Builder to take steps for registration of the project inasmuch as already the RERA has given a direction to the Builder to register the project. On these grounds, he prays for setting aside the first part of the impugned order by allowing both the appeals filed by the allottee and prays for remanding the matter to the Authority for fresh consideration.

**22.** The learned counsel submits that the appellant-allottee, as an abundant caution, filed an application I.A. No.IV seeking amendment of the prayer made in the appeal filed before this Tribunal, which was allowed on 15.06.2022. As per amended prayer-B, the allottee sought for a direction to the Builder to register the project with the Authority. However, he fairly submits that since the Authority has already granted the said relief and directed the Builder to register the project and as the same has not been challenged either by the landowners or the Builder, the said portion of the impugned order need not be disturbed.

**23.** Per contra, Sri. Mallikarjuna, learned counsel appearing for the promoter, while reiterating the contentions urged before the RERA, submits that the agreements dated 19.07.2019 are concocted agreements and the Builder is not a signatory to the said agreements. Apart from that, since the said sale agreement is insufficiently stamped, the Tribunal has to impound the same as per Section 33 of the Karnataka Stamp Act, 1957, and the said agreements cannot be termed as valid agreements of sale at all.

**24.** He further submits that as the project in question is not registered, the provisions of the RERA Act does not apply to the facts of the case and, hence, the Authority was justified in dismissing the complaints filed by the complainant as not maintainable.

**25.** He submits that the amount of Rs.6,00,00,000/- paid by the complainant is not in relation to the flats in question but the said amount has been paid by the complainant in his capacity as a Director of Super Royal Holiday India Private Limited in respect of another agreement to sell dated 15.02.2018 entered into between (1) Mr. Mohan, (2) Mr. Praveen Mohan, the Directors of M/s Tirumala Construction and M/s Super Royal Holiday India Private Limited represented by its Director Mr.B. Prashanth (complainant) and Mr. Madhukara under which the Builder agreed to sell a

residential property situated at Nagarabhavi, Bengaluru, to the allottee-complainant and that the amount of Rs.6,00,00,000/- paid by the complainant has nothing to do with the project undertaken by the Builder. The learned counsel further submits that to maintain a complaint under Section 31 of the Act either he must be an allottee or a Builder or a real estate agent. Since the complainant is neither an allottee nor a Builder nor a real estate agent, he cannot maintain the complaint. On these and other grounds he prays for dismissal of both the appeals filed by the complainant.

**26.** In view of the above, the points that arise for our consideration is:

- (i) Whether the Authority was justified in proceeding to decide the complaints filed by the complainant as not maintainable without considering the application filed by the complainant under Order VI Rule 17 read with Section 151 CPC for amendment of the prayer made in the complaint?
- (ii) Whether the Authority was justified in holding that the complainant is not an allottee as defined under Section 2(d) of the Act and it can be inferred that he is an investor and consequently dismissing the complaints as not maintainable?

(iii) Whether the amended prayer (b) in the appeal seeking direction to the Builder to register the project with RERA does arise for consideration?

(iv) Whether the applications I.A.III and I.A.I filed by the respondents 2(a) to (s) under Sections 33 and 34 of the Karnataka Stamp Act, 1957 for impounding the documents survive for consideration?

(v) What Order?

Reg. Point No.(i):

**27.** As already stated above, the appellant filed complaints before RERA on 15.10.2020 praying to restrain the Builder from creating 3<sup>rd</sup> party charge over Flat G1 and G3 in the project Tirumala K Park Central and praying an interim order in similar terms. Subsequently, on 6.11.2020, the appellant filed two separate applications in each complaint under Order 6 Rule 17 read with Section 151 CPC praying the Authority to permit him to amend the complaints by adding one more prayer in para (b) as follows:

“(c) Direct the Respondents to complete the constructions of Schedule ‘B’ flat as per the time stipulated in the Agreement of sale dated 18.7.2019 and thereafter execute an absolute sale deed for Schedule B property in favour of the complainant.”

That on 15.10.2020, the Authority granted an interim order as:

“ Till next hearing G1 & G3 shall not be alienated” and on 3.11.2020, extended the interim order until further orders.

**28.** That after service of notice, respondents entered appearance through their counsel and filed their statement of objections denying the case of the complainant and contending that the complainant has to approach civil court for the relief of specific performance and prayed for dismissal of the complaints.

**29.** It is relevant to note here that the complainant while filing the complaints just prayed for a direction to restrain the Builder from creating 3<sup>rd</sup> party charge over flats G1 and G3 in Tirumala K Park Central, without seeking consequential prayer. Hence, he filed an application for amendment of the prayer column seeking direction to the respondents to complete the construction of Schedule 'B' property as per the time stipulated in the agreement of sale dated 19.7.2019 and thereafter execute an absolute sale deed for Schedule 'B' property in favour of the complainant. The Authority has committed an error in proceeding to decide the complaints without considering the application filed by the complainant for amendment of the prayer made in the complaint. Thus it is held that the Authority was not justified in proceeding to dismiss the complaints as not maintainable without considering the application

filed by the complainant for amendment of the prayer made in the complaints.

Point No.(i) is answered accordingly.

Reg. Point No.(ii):

**30.** In order to answer this point, it is just and necessary to look into the Statement of Object and reasons of the RERA Act which reads thus:

**Statement of Objects and Reasons.** - The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and Builders in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear

appeals from the decisions, directions or orders of the Authority.

1. **The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and Builders by imposing certain responsibilities on both. It seeks to establish symmetry of information between the Builder and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.** The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run".

Further, to decide the point No (ii) formulated by us, it is just and necessary for this Tribunal to refer to the definitions 'allottee' 'development' 'project' 'Builder', 'real estate project', as defined under Section-2 of the RERA Act, which are extracted below:

(d) **"allottee"** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the Builder, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(s) "development" with its grammatical variations and cognate expressions, **means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any**



**immovable property or land and includes re-development.**

**(zj)** “project” means the real estate project as defined in clause (zn);

**(zk)** “**Builder**” means –

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- (iii) any development authority or any other public body in respect of allottees of—
  - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
  - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
- (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
- (v) **any other person who acts himself as a Builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on**

**which the building or apartment is constructed or plot is developed for sale;** or

(vi) such other person who constructs any building or apartment for sale to the general public.

*Explanation.*—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the Builders and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

**(zn)** “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, **or the development of land into plots or apartments,** as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

*(underlining by me)*

It is also necessary to refer to the provisions of Section-31 of the RERA Act which reads thus:

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

*Explanation.*—For the purpose of this sub-section “person” shall include the association of allottees or any

voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under subsection (1) shall be such as may be prescribed.

**31.** A perusal of the averments made in the complaints along with the recitals of the agreements of sale, would reveal that Respondent Nos. 2(a) to (s) are described as landowners and they are represented through their GPA holder M/s Tirumala Constructions Pvt. Ltd, A Partnership firm, engaged in the business of development of real estate project represented by its partner Mr. Praveen Mohan. The Agreements of sale produced by the complainant would show that it is entered into between the complainant and the Builder, the complainant is described as purchaser; the land owners and M/s Tirumala constructions Pvt. Ltd., are together referred as 'Builder/Vendor'. Further, in the said agreements of sale, a reference has been made to the registered Joint Development Agreement dated 13.3.2017 entered between the landowners and the developer for developing the land bearing Sy.Nos. 12,12/1 and 12/2 ( old site No.5) situated at Serpentine Road and Pipe Line Road, Kumara Park Extension, Bengaluru-560 020 and on the same day the landowners have executed a registered General power of Attorney in favour of the developer

authorising the Builder i.e, M/s Tirumala Construction to develop the land into real estate project by constructing multistoreyed apartments.

**32.** Further, the Builder/vendor in para 4 of their statement of objections, have clearly stated that M/s Tirumala Constructions Pvt. Ltd., is represented by its partner Mr. Praveen Mohan. Respondents (a) to (s) i.e., Landowners having decided to develop Schedule 'A' property as multistoreyed apartments, approached the Builder to take up the development and construction at its cost and expense, after obtaining a plan approved by the BBMP, and for sharing of the land and building in the ratio 50:50, they entered into a Joint Development Agreement dated 13.3.2017 .

**33.** As per Section 31 of the Act, the requirement for a person to maintain a complaint under Section 31 of the Act with the Authority or the Adjudicating Officer is that he should be an aggrieved person and such aggrieved person can maintain a complaint against a developer or an allottee or a registered real estate agent ventilating his grievance for violation or contravention of any of the provisions of the Act. Hence, for a person to maintain a complaint, he need not necessarily be an allottee or a Promoter or a real estate agent. However, the opposite party has

to be one among them i.e., an allottee or a Builder or a real estate agent.

**34.** Further, the second part of the definition in Section 2(d) of the Act, commencing from “...and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise.....” would show that a person who entered into an agreement of sale to purchase a plot or flat or apartment in a real estate project is covered under the second part of the definition of the allottee. Thus the approach of the Authority that the complainant is not an allottee as defined under Section 2(d) of the Act is contrary to the materials on record and relevant provisions of the Act applicable to the case.

**35.** It is pertinent to note that the complainant in his complaint has specifically averred that he had paid the sale consideration of Rupees six crores to the Builder from his personal bank account through various cheques in respect of flat Nos.G.1, G.2 and G.3 Whereas, the Builder in their statement of objections, have contended that they returned the said amount to the firm M/s Super Royal Holiday India Private Limited., in which the complainant happened to be a Director. Here, the Authority has failed to consider that the sale consideration was paid through various cheques from the personal bank account of the

complainant to the account of the firm of the Builder. If the Builder wanted to return that amount to the complainant, the Builder should have returned the same to the personal Bank account of the complainant and not to the firm M/s Super Royal Holiday India Private Limited., and it was contended that at the time of alleged return of the amount, the complainant ceased to be the Director of the said company. Regarding the submissions of the learned counsel for the promoter that in all there are three agreements of sale and the advance amount of Rupees Fifty lakhs for each flat bearing Nos.G1, G2 and G3 is shown to have been paid under the same cheque bearing No.000122 itself is an indication that the agreements of sale are concocted, the learned counsel for the complainant replied stating that due to typographical error the same Cheque number is mentioned in all the three agreements of sale, but perusal of entries made in the bank statement would clearly show that the sale consideration for each flat was made through separate cheques.

**36.** In view of denial of Agreements of Sale and the signature of Mr. Praveen Mohan, the partner of M/s Tirumala Constructions Pvt. Ltd.,- (the Builder), the Authority ought to have verified the disputed signatures of Mr. Praveen Mohan found in the Agreements of sale with that of his admitted signatures found in

his statement of objections, vakalath and such other documents available in the record.

**37.** When the complainant has alleged that there was a separate transaction entered into between his former company M/s Super Royal Holiday India Private Limited.,and the Builder-company whereunder a sum of Rupees nine crores was paid by M/s Super Royal Holiday India Private Limited.,to the Builder-company-M/s Tirumala Constructions Private Limited.,and in connection with the said transaction, the Builder-company might have returned a sum of Rupees six crores to M/s Super Royal Holiday India Private Limited., and taking advantage of the said transaction, the Builder is trying to mislead the Authority as if the Builder has returned the amount of the complainant, the Authority, ought to have verified both the transactions, the one held between the complainant and the Builder firm and the other held between the Builder-firm and M/s Super Royal Holiday India Private Limited., Thus, the finding of the Authority holding that the Complainant is not an allottee as defined under Section 2(d) of the Act and it can be inferred that he is an investor and there are no transactions between the parties is contrary to the above material on record and to the relevant provisions of law mentioned hereinabove and, therefore, it is liable to be set aside.

**38.** It is true that under the heading of the complaint, the complainant has mentioned the provisions of law as under Section 3(1)(a), 11(4)(h) read with Section 37 of the Act. As already stated that if the Authority had carefully read the complaint, it is the case of the complainant that the respondent-Builder without registering their company as required under Section 3 of the Act, is proceeding to develop a real estate project in violation of Section 3 of the Act and as such the Authority has got power under Sections 3, 11(4)(h) and 37 of the Act to issue appropriate direction against the Builder-company to register their company with RERA as required under Section 3 of the Act and to issue necessary direction as contemplated under Section 11(4)(h) of the Act. It is settled principle of law that the provision of law mentioned for filing a complaint is not material and what is material is the subject matter of the complaint which really matters.

**39.** In view of categorical admission made by the respondents in their statement of objections that M/sTirumala Constructions Pvt. Ltd., is a partnership firm engaged in the field of development of real estate projects, it is proved that respondents are promoters and they are engaged in the business of real estate project. Then the only dispute that remains for consideration by the Authority is whether the complainant is an allottee as defined under Section



2(d) of the Act and whether there are agreements of sale entered into between the complainant and the promoter. If the Authority had carefully examined the averments made in the complaint, the contention of the respondents in their statement of objections, agreements of sale dated 19.07.2019, the registered Joint Development Agreement entered into between the land owners and the Builder and registered General Power of Attorney executed by the land owners in favour of the Builder, the extract of the bank statement regarding payment made by the complainant to the Builder with reference to the relevant provisions of law applicable to the facts of the case, the Authority would not have come to the conclusion that the complainant is not an allottee as defined under Section 2(d) of the Act and it could be inferred that he is an investor. Therefore, it has become just and necessary to set aside the impugned order and remand the matter to the authority for reconsideration of the complaint afresh by carefully examining the above materials with reference to relevant provisions of law applicable to the facts of the case and in the light of the observations made hereinabove.

Accordingly, point No.(ii) is answered in the negative.

Reg. Point No.(iii):

**40.** The Authority considering the grievance of the complainant as averred in the complaint regarding non-registration of the project by the respondent and the admitted facts of the Builder in their statement of objection that their firm is engaged in the business of real estate project and noticing that it is proceeding to develop the instant project without registering the project with the Authority as required under Section 3 of the Act, has rightly directed the respondent to take immediate steps to complete the process of registration of the project under RERA Act in the second part of the impugned order. In view of the same, the amended prayer seeking direction to the Builder to register their project with RERA does not arise and that portion of the impugned order shall remain undisturbed, inasmuch as, none of the parties has challenged the said portion of the order.

Thus, Point No.(iii) is answered accordingly.

Reg. Point No.(iv):

**41.** During the pendency of the appeals, respondents 2(a) to (s) filed separate applications I.A.III and I.A.I in each appeal on 7.2.2022 under Sections 33 and 34 of the Karnataka Stamp Act, 1957 to impound the document styled as Sale Agreement dated

19.7.2019 relied upon by the allottee on the ground that the said document was not duly stamped by paying requisite stamp duty.

**42.** The learned counsel for the appellant filed objections opposing the applications on the ground that during the pendency of the proceedings before the Authority, he subjected the original instrument-Sale Agreement before the competent authority i.e., Commissioner (Stamps) and District Registrar, Gandhinagar, Bengaluru, for examination regarding payment of proper stamp duty and the said authority issued certificate under Section 39(1)(a) of the Karnataka Stamp Act, 1957 stating that the document is duly stamped by imposing penalty, and as such, the question of impounding the document does not arise and prays for rejection of the said applications.

**43.** Whereas, Sri Mallikarjuna, learned counsel for the promoter, while reiterating the averments made in the affidavit filed in support of the applications, submits that the sale agreement dated 19.7.2019 is a concocted agreement and the promoter is not a signatory to the said agreement and apart from that the agreement is insufficiently stamped document, and, therefore, the Tribunal has to impound the same as per Section 33 of the Stamp Act.

**44.** Indisputably, as per the provisions of Section-33 of the Karnataka Stamps Act, 1957, a document is required to be impounded if it appears to the Court that such instrument is not duly stamped. In the case on hand, the complainant-allottee voluntarily initiated steps before the competent Authority i.e., the Commissioner (Stamps) and District Registrar, to get the said instrument stamped by paying requisite stamp duty and penalty and obtained certificate on 23.11.2020. The certificate issued by the Commissioner (Stamps) and District Registrar, reads thus:

"This Document is impounded u/s 33 of KSA 1957

Sd/- The Commissioner (Stamps) and District Registrar,  
Gandhinagara, Bengaluru, dated 23.11.2020

GNR/ADJ/68/2020-21

C E R T I F I C A T E

Certificate u/s 41 of the Karnataka Stamp Act, 1957 Certificate that a sum of Rs.25000/- (Rs. twenty five thousand Only) (Stamp Duty Rs. 18000/- + Penalty Rs.7000/-) being the deficit/proper stamp duty has been recovered by Janatha Seva Co-Operative Bank, DD No.214833 dated 21.11.2020 by Sri. B Prashanth, S/o Sri. R. Bhadrappa.

Sd/- The Commissioner (Stamps) and District Registrar,  
Gandhinagara, Bengaluru, dated 23.11.2020

Certificate u/s 39(1)(a) of Karnataka Stamp Act, 1957

This is to certify that this document is duly stamped

Sd/- The Commissioner (Stamps) and District Registrar,  
Gandhinagara, Bengaluru, dated 23.11.2020"

**45.** It is relevant to observe here that the above appeals were filed on 7.7.2021 and 17.11.2021 respectively and the promoter has filed two applications for impounding the document on 22.3.2022 in both the appeals. Whereas, the instrument i.e., Sale agreement was certified on 23.11.2020 by the Commissioner(Stamps) and District Registrar, Gandhinagar, Bengaluru, stating that the document is duly stamped. Thus, on the date of promoter praying the Tribunal to impound the said document alleging that it is insufficiently stamped, document was already certified by the competent authority that it is duly stamped. As such, the prayer made in the applications does not survive for consideration. Accordingly,- I.A.III and I.A.I are rejected as infructuous.

Point No.(iv) is answered accordingly.

**46.** Admittedly, during pendency of the proceeding before the Authority, the complainant-allottee filed an application on 09.10.2020 praying the Authority to pass an injunctive order restraining the Builder not to alienate flat Nos. G-1 and G-3. As

could be seen from the order sheet dated 15.10.2020 (file No.1), the Authority which granted an interim order to the effect "till next hearing G-1 & G-3 shall not be alienated" and on 03.11.2020 extended the said Interim order until disposal of the complaint. Under such circumstances, the allottee-complainant shall make appropriate application before the Authority for revival of the said order till reconsideration of the complaint.

**47.** In the circumstance of the case, we pass the following:

**ORDER**

- (i) Both the Appeal Nos.43/2021 and 64/2021 filed by the complainant-allottee are allowed in part;
- (ii) The common impugned order dated 01<sup>st</sup> March, 2021 passed by the First Additional Bench of the Karnataka Real Estate Regulatory Authority, in complaint Nos. CMP/200907/0006502 and CMP/200907/0006518 insofar as it relates to holding that the complaints filed by the allottee are not maintainable is hereby set aside;
- (iii) The impugned order passed by the Authority, insofar as it relates to the second part, directing the Builder to take steps immediately for registration of the project under the provisions of the RERA Act, 2016 is concerned, the same remains undisturbed;

- (iv) The matter is remitted to the Authority for fresh consideration after affording opportunity to both the parties to adduce additional evidence, if any, with reference to the observations made in this judgment and in accordance with law;
- (v) The appellant-allottee is at liberty to file an application seeking revival of the interim order granted by the Authority during the enquiry and on such application being filed, the Authority shall consider the same and pass appropriate order;
- (vi) The Authority is directed to club all the three complaints filed by the allottee viz., CMP/200907/0006518, CMP/200907/0006502 along with CMP/UR/210903/0008297/2021 which is pending adjudication before the Authority and decide the same afresh on merit and in accordance with law;
- (vii) All contentions of the parties are kept open and both the allottee and Builders are at liberty to adduce additional evidence, if any;
- (viii) Since the appellant as well as the respondents have already entered appearance through their respective counsel, they shall appear before the RERA on **28.07.2022** without expecting further notice from RERA. If there is no sitting on the

said date, the Authority shall take it immediately on the next working day;

- (ix) I.A.No. III filed in Appeal No. 43/2021 and I.A.No.I filed in Appeal No. 64/2021 are rejected as infructuous in view of our finding on point No.(iv);
- (x) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

**Sd/-  
HON'BLE CHAIRMAN**

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

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