

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

DATED THIS THE 28th DAY OF OCTOBER, 2022

PRESENT

HON'BLE JUSTICE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) No. 27/2022

BETWEEN:

M/s Unishire Build Tech LLP,
A Limited Liability Partnership concern,
Having its registered office at
No.42, Castle Street,
Ashok Nagar,
Bengaluru – 560 025.
Rep. by its Authorized Signatory
Sri. Pratik Mehta
S/o Kirti K Mehta
Aged about 39 years.

Old address of the appellant as per the
Order dated 28/02/2022
No. 36, Railway Parellel Road,
Nehru Nagar, Bangalore – 560 020.

... APPELLANT

(By Sri. G.S. Venkat Subbarao, Advocate)

AND

1. The Karnataka Real Estate Regulatory Authority,
No.1/14, II Floor, Silver Jubilee Block,
Unity Building, back side CSI Compound,
3rd Cross, Mission Road,
Bangalore 560 027.
Rep. by its Secretary.

2. M/s Unishire Spacio Association,
An Association registered under the provisions of
Karnataka Apartment Owners Act, 1962
having its registered office at
No.85/1, 85/2, Arakere Village,
Off Bannerghatta Road,
Bengaluru South Taluk,
Rep. by its Authorized Signatory,
Sri. Lokesh Reddy.
3. M/s Altico Capital India Private Limited,
A Company incorporated under the provisions
of the companies At, 1956, having its office
at 21, 2nd Floor, 5th North Avenue,
Maker Maxity, Bandra Kurla Complex,
Bandra East, Mumbai – 400 051.
Rep. by its Authorized Signatory.
Mr. Dhruv Jain.
4. Sri. C. Krishna Reddy
Aged about 69 years
S/o Late Channappa Reddy.
5. Smt. Pushpa Krishna Reddy
Aged about 62 years
W/o Sri. C. Krishna Reddy

No. 4 & 5 residing at
No.9, Arakere Village,
Bannerghatta Road,
Bangalore – 560 070.
6. M/s Keya Homes Private Limited
A Company incorporated under the provisions
of the Companies Act, 1956, having its office
at Regent Court, #17, 80 Feet Road,
Koramangala 4th Block,
Bangalore – 560 034,
Rep. by its Authorised Signatory
Mr. Dinesh Kejriwal.

...RESPONDENTS

(Sri. Gowthamdev C. Ullal Advocate for R-1-RERA
Sri B.Vachan, M/s Vachan & Associates, Advocate for R-2 and R-6
Smt. Sanjana & Anupama Hebbar, for M/s Keystone Partners,
Advocates & Solicitors for R-3

Sri. Rajeshwara. P.N, Advocate for R-4 and R.5)

This appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 08.11.2021 passed by the Authority, RERA, in complaint No. CMP/201001/0006742.

This appeal coming on for hearing this day, the Hon'ble Chairman, delivered the following:

JUDGMENT

The appellant is a partnership firm and promoter of a Real Estate project known as "UNISHIRE SPACIO", has preferred this Appeal challenging the impugned order dated 08.11.2021 passed in CMP/201001/0006742 by 1st Respondent under Section 8 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act), revoking the registration granted to the appellant and permitting respondent No.2-AoA to take over the project to achieve completion of the project.

2. The facts of the case in brief are:

The facts that emanate from the pleadings urged in the appeal memo and the documents produced are that; the appellant firm is engaged in the business of developing real estate projects by acquiring lands by entering into Joint Development Agreements with land owners. One such project undertaken to be developed by the appellant by entering into Joint Development Agreement with respondent Nos. 4 and 5 (the land owners) on 27.5.2013 is "UNISHIRE SPACIO" situated in Sy.Nos. 85/1 and 85/2 and 81 at

Arakere village, Begur Hobli, Bengaluru South Taluk, totally measuring 3 acres 5 guntas. It is stated that the said project consists of three towers, of which two towers has 20 floors each and the third tower has 19 floors.

3. It is pleaded by the appellant that for the purpose of developing the project, the appellant had raised funds by mortgaging the property of the project along with other properties with the 3rd respondent by executing Facility Agreement dated 31.3.2016 and also mortgage deed for a sum of Rs.140 crores (Rupees one hundred forty crores). That immediately after raising the funds through 3rd respondent, the appellant started construction of the project in the year 2015. That in spite of collecting the amount from the allottees at the time of entering into Agreement of sale and raising the mortgage loan, the appellant was unable to complete the project on account of various reasons beyond the control of the appellant.

4. The another reason stated for the delay in completion of the project is, that on coming into force of the Act in 2016, it was mandatory for the appellant to register the project with the RERA and obtain registration certificate as the project undertaken by the promoter was an ongoing project as on the date of Act coming into force. Accordingly, the promoter applied for registration of the project with the RERA and obtained the registration certificate which process

took considerable time and the extended period of registration was valid till October, 2021.

5. When the matter stood thus, the prospective purchasers of the apartments in the project i.e., allottees, had formed an Association under the provisions of Karnataka Apartment Ownership Act, 1972 by name 'Unishire Spacio Association'- 2nd respondent herein and the said Association of Allottees (AoA) filed a complaint under Section 31 of the Act with the RERA contending that the appellant has failed to complete the project and is unable to deliver possession of the flats within the date specified in the agreements of sale and even as on 1st October, 2020 i.e., the date of filing of the complaint, there is no considerable progress in the construction of the project and apprehending that the project would not be completed by the appellant in near future, sought for a direction to divest the appellant of its control over the project and to hand over the project to the AoA under Section 8 of the Act and for other reliefs.

6. That after issuance of notice by the RERA, the appellant appeared before the Authority and filed written submissions on 6.4.2021, 21.4.2021 and 25.9.2021 at the outset, questioning the *locus standi* of the AoA to file the complaint before RERA under Section 31 of the Act. It is further contended that the delay in completion of the project was due to the process involved for mandatory

registration of the project with the Authority after coming into force of the Act; and for want of funds, the property of the project had to be mortgaged with the 3rd respondent and thereafter work was commenced and as such no default can be attributed against the appellant and therefore revocation of the project was not called for etc.,

7. The Authority, after considering the contents of the complaint, submissions of the parties and the material available on record, by detailed order, issued directions under Section 8 of the Act and the operative portion of the order reads thus:

"ORDER AND DIRECTIONS U/S 8 OF THE ACT

- (i) The Authority hereby directs the AoA to take over the project and achieve completion of the project within a period of 24 months, with a grace period of 6 months, commencing from the date of taking over the project. This direction of the Authority shall take effect immediately after the expiry of the period of appeal provided under the Act;
- (ii) As regards statutory approvals/ renewals/ permissions, the same are deemed to have been extended, so as to facilitate the AoA to achieve the completion of the project."

8. Heard Sri G.S.Venkat subbarao, learned Advocate for appellant, Sri Goutham Dev Ullal, learned Advocate for Respondent No.1-RERA., Sri B.Vachan, learned Advocate for Respondents 2 & 6 (Association of Allottees and Incoming Promoter respectively), Miss Sanjana, learned Advocate for Respondent No.3 (Financier), and Sri P.N.Rajeshwara, learned Advocate for Respondents 4 and 5 (land owners).

9. Sri G.S.Venkat Subbarao, learned counsel for the appellant apart from reiterating the grounds urged in the memorandum of appeal submits as under:

- That the appellant had raised huge loan to an extent of Rs.140 crores from Respondent No.3 by mortgaging the property with an intention to complete the project within the time specified in the registration certificate, but could not do so and the construction of the project was incomplete and the delay in completion of the project is on account of various reasons beyond the control of the appellant;
- That the pendency of litigation before the competent Civil court regarding development of project was also one of the major causes for the delay in completion of the project;
- That the Association of Allottees (AoA) in collusion with the land owners and the Incoming promoter had filed the complaint before RERA for taking over the project;
- That the impugned order is in gross violation of the provisions of Section 7 (3) and 8 of the Act inasmuch as the Authority has not strictly followed the mandate of the said provisions;

- That the Authority instead of revoking the registration of the project at the behest of the AoA and the land owners, ought to have permitted it to remain in force imposing such other terms and conditions as deemed fit in the interest of allottees as per Section 7(3) of the Act;
- That the Authority before revocation of the registration, ought to have consulted the appropriate Government to take such action as it may deem fit including carrying out of the remaining development works by competent authority or by AoA or in any other manner, in accordance with Section 8 of the Act;
- That failure on the part of the Authority in not strictly adhering to the provisions of Sections 7(3) and 8 of the Act has resulted in arbitrary exercise of the power by the Authority;
- That the impugned order passed by the Authority is illegal, arbitrary and not in accordance with law.

On these and other grounds the learned counsel for the appellant prayed the Tribunal to set aside the impugned order.

10. Sri B.Vachan, learned counsel appearing for the contesting respondent-2 - AoA [which consists of allottees of apartments from the share of the appellant-promoter as well as share of the land owners] and respondent No.6-the Incoming promoter for completion of remaining development works of the project, submits that there is absolutely unity and consensus among these respondents in the matter of taking over the project from the appellant and entrusting the same to Respondent No.6 - Incoming promoter for completion of remaining development works of the project.

11. The learned counsel submits that admittedly the total cost of the project is Rs.111.30 crores and the appellant has collected Rs.67.42 crores from the allottees which works out to 62% of the total cost of the project, but the progress shown by the appellant is only to the extent of 35% and still 65% of the construction remains to be completed.

12. The learned counsel further submits that the project had to be completed before 2018 as per the time stipulated in the agreements of sale entered into by the appellant with the allottees. However, the work came to be stopped in February 2017 and by that time only 35% of the construction work was carried out.

13. He submits that the appellant despite raising mortgage loan of Rs.140 crores through the 3rd respondent-Financier has failed to complete the project as promised and therefore, the AoA left with no other option but to approach the RERA with a proposal that the land owners have also agreed to take over the project from the appellant and to entrust the remaining construction work to respondent No.6- the Incoming promoter and prayed for appropriate directions.

14. The learned counsel further submits that during the pendency of the complaint before RERA, the appellant having in fact

given a letter dated 30.7.2020 to RERA stating that the appellant has no objection for the said arrangement, is estopped from contending that the impugned order is arbitrary and illegal.

15. The learned counsel submits that the AoA and the land owners before approaching the RERA for revocation of the registration granted in favour of the appellant and entrusting the project to them for completion of the remaining development works got the existing construction work of the project inspected through external consultants who are structural and Civil Engineers to assess the work carried out by the appellant and the remaining development works to be carried out and estimate the amount required for completion of the balance work. It is only thereafter, the AoA along with the land owners approached Respondent No.3-Financiar to permit them to clear the mortgage loan raised by the appellant under OTS (One Time Settlement), to which the 3rd Respondent agreed by receiving a sum Rs.2.50 crores. It is further submitted that in order to raise additional funds for completion of the project the allottees agreed to pay a sum of Rs.1275/- per Sq.ft in addition to the amount already paid by them.

16. The learned counsel submits that under Section 8 of the Act, the Authority upon lapse of registration or on revocation of the registration may consult the appropriate Government to take such

action as it may deem fit including the carrying out of the remaining development works of the project in any of the following manner:-

- (i) by the competent authority, or
- (ii) by the Association of Allottees or
- (iii) in any other manner as may be determined by the Authority.

17. The learned counsel further submits that words "may consult the appropriate Government" occurring in Section 8 of the Act, is only in the event of entrusting the task of construction to competent authority as it may affect the existing construction activities already undertaken by such competent authority and not otherwise. In the instant case, since the Authority has directed the AoA who have priority over others to take over the project for carrying out of the remaining development works of the Project, the question of consulting the appropriate Government as provided in Section 8 of the Act does not arise.

18. On the above submissions, the learned counsel submits that the order of the Authority is in accordance with law and in the interest of the allottees and as such, the same is not required to be interfered with by this Hon'ble Tribunal.

19. Miss. Sanjana, learned counsel appearing for Respondent No.3-Financier referring to the Memo dated 28.2.2022 along with the documents filed by them, submitted that Respondent No.3 has

entered into an Assignment Agreement dated 4.3.2021 with the Assets Care and Reconstruction Enterprises (ACRE), an assets reconstruction company registered under Section 3 of the SARFAESI Act, 2002 wherein all rights, title and interest of Respondent No.3 over the Spacio property (Project in question) has been assigned to ACRE in its capacity as the trustee of the India Real Estate Trust, 2021 with effect from 10.3.2021 and pursuant thereto Respondent No.3 and ACRE have entered into a comprehensive settlement agreement dated 22.4.2021 with the appellant to take steps for final closure of the account in respect of the facility and mortgage loan and, therefore, Respondent No.3 has nothing to do with the case and prayed the Tribunal to take on record the Assignment and Settlement Agreements and pass appropriate orders.

20. Sri P.N.Rajeshwara, learned counsel for Respondents 4 and 5- the owners of the land submits that the Appellant-promoter after entering into JDA dated 27.05.2013 with the land owners, was supposed to have completed the project within 36 months from 22.08.2016 the date of obtaining commencement certificate i.e., before 21.08.2019. That after obtaining necessary approvals and sanctioned plan from the competent authorities the Appellant-promoter commenced the project work at the total cost of Rs.111.30

crores. Initially, the promoter had collected Rs.67.42 crores from the allottees which works out to 62% of the total cost of the project.

21. Learned counsel for the land owners further submits that the Appellant-promoter could carry out only 35% of the work as on 31.07.2017. Thereafter, alleging that there was shortage of funds, it had mortgaged the property of the project with respondent No.3 and raised mortgage loan to the tune of Rs.140.00 crores. In spite of securing loan from respondent No.3, the appellant failed to complete the project within the specified time for the reasons best known to the appellant.

22. When things stood thus, the land owners and allottees while deliberating about the future course of action for carrying out the remaining development works of the project, fortunately RERA Act was introduced. Therefore, the landowners and AoA from the share of the landowners as well as promoter joined together and approached respondent No.6 to take up the project. Further, in order to obtain an order under Section 8 of Act they together approached the RERA for revocation of the registration granted in favour of the appellant under Section 5 of the Act and to permit AoA to take over the project and get it completed through respondent No.6.

23. The learned counsel submits that the landowners and AoA cleared the mortgage loan raised by the promoter with respondent No.3 and redeemed the mortgaged property. The learned counsel submits that the appellant-promoter though had collected 62% of the cost of the project from the allottees, had carried out only 35% of the work and due to delay in completion of the project, there was escalation to an extent of Rs. 85 to 100 crores for completion of the project. That based on the forensic report obtained from the external consultants, a sum of Rs.85 crores was further required to be mobilized to complete the balance works of the project. For the said purpose the landowners transferred a sum of Rs.3.5 crores which they received from the appellant in favour of AoA and a sum of Rs.32 crores was collected from the allottees. Further the landowners agreed for reduction of their share of apartments by 3% whereby they lost about 6 to 8 apartments which would have fallen to their share. The allottees have agreed for enhancement of the price of the apartment by Rs.1,711/- per Sq. ft. The landowners further agreed for selling of eight unsold flats from their share and to adjust the sale proceeds for utilizing the same to complete the project. In order to reduce the additional burden from allottees, respondent No.6 i.e., incoming promoter, obtained modified plan under TDR scheme and raised extra 66 flats by virtue of which additional price of Rs.1,711/- payable by the allottees has been reduced to 1,235/- per Sq. ft.

24. The learned counsel submits that there is no collusion between AoA, land owners and Incoming promoter as alleged by the appellant. That after taking over the project by AoA, the incoming promoter has already invested a sum of Rs.20 crores on the project and completed the development works upto 55% and further the incoming promoter has promised the AoA and the land owners that they would complete the remaining work by June 2023 well before the extended schedule time.

25. The learned counsel further submits that during the pendency of the complaint before RERA, the appellant has given the letter dated 30.07.2020 to RERA stating that it has no objection for taking over the project from the appellant and entrusting the same to respondent No.6. On these grounds, learned counsel submits that the order of the Authority does not call for interference and prays for dismissal of appeal.

26. Sri. Gowtham C Ullal, learned counsel appearing for RERA while drawing the attention of the Tribunal to the provisions of Section 7(3) and 8 of the Act submits that consulting of Government before revocation of registration is not mandatory inasmuch as the words 'may consult the Government' occurring in Section 8 of the Act is applicable only when the Authority thought of entrusting the incomplete work of the project to any competent authority for

completion of the project, because the work already undertaken by such competent authority should not be made to suffer and also it must be in the interest of the allottees. Further, learned counsel referring to provisions of Section-7(1) of the Act submits that the Authority, may, on receipt of complaint or can *suo motu* intervene in appropriate cases of default on the part of the promoter in doing anything required by or under the provisions of the Act or the Rules or the regulations made thereunder.

27. The learned counsel for the Authority submits that by letter dated 30.07.2020 addressed to RERA, the appellant - promoter has unequivocally requested the Authority to revoke the registration granted in its favour and to transfer the project to AoA and also had enclosed the original registration certificate. Therefore, the appellant is estopped from contending to the contrary and challenging the impugned order.

28. The learned counsel further submits that the promoter is a chronic defaulter even in respect of other projects registered with the RERA. Therefore the appellant has lost that right to oppose the application filed by the AoA along with the landowners under Section-8 of the Act. Lastly, the learned counsel submits that the appellant has not made out a case to interfere with the impugned

order and the appeal is liable to be dismissed by this Hon'ble Tribunal.

29. In view of the above submissions of the learned counsel appearing for the parties and the material placed on record, the question that arises for consideration by this Tribunal is:

(i) Whether the impugned order passed by the Authority in revoking the registration granted in favour of the appellant and permitting the AoA to take over the project and to achieve completion of the project as provided under Section 8 of the Act calls for interference?

(ii) What order?

Point No.(i):

30. There is no dispute between the parties with regard to the facts:- that the appellant entered into a Joint Development Agreement dated 27.05.2013 with the land owners to construct residential apartment and agreed to complete the project within 36 months from the date of obtaining commencement certificate which was obtained on 22.08.2016 i.e., before 21.08.2019. The appellant after entering into JDA with the land owners entered into agreements of sale with the allottees during the year 2013-2014 and agreed to complete the project and deliver possession of flats to the allottees within 36 months from the date of obtaining commencement

certificate i.e., before 21.08.2019 inclusive of grace period of six months. As the Appellant failed to complete the project and deliver possession of the flats to the allottees within the date specified in the JDA and in the agreements of sale despite collecting Rs. 67.42 crores from the allottees which is 62% of the total cost of the project and raising loan to the tune of Rs. 140 crores (Rupees one hundred and forty crores only) from respondent No.3 by mortgaging the property of the project, the AoA, the land owners along with the Incoming promoter approached the RERA requesting to revoke the registration of the project granted to the appellant and to permit the AoA to take over the project and achieve completion of the project through respondent No.6.

31. As could be seen from the material available on record that out of Rs. 111.30 crores, the total estimated cost of the project, the appellant had collected Rs.67.42 crores from the allottees which tantamount to 62% of the total cost of the project and from which the appellant carried out only 35% of the works and no plausible explanation is offered by the appellant as to what happened to the balance amount collected from the allottees. Further, the appellant by mortgaging the property of the project along with other properties with respondent No.3 raised loan to the tune of Rs. 140 crores. In spite of raising mortgage loan and collecting money from the

allottees, the appellant failed to complete the project and was unable to deliver possession of the flats to the allottees within the time specified in the JDA and in the agreements of sale. The appellant having failed to complete the project within the time stipulated in the certificate of registration issued by the RERA, got the completion time mentioned in the registration certificate extended up to October 2021. On the contrary, the appellant alleges that non-payment of balance of amount by the allottees in-time is one of the reasons for the delay in completion of the project.

32. In order to consider the submission of the learned counsel for the appellant that the impugned order is in violation of Sections 7(3) and 8 of the Act, it is apt to refer to the said provisions of the Act, which reads thus:

"7. Revocation of registration.—

(1) The Authority may, on receipt of a complaint or suo-moto in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term “unfair practice means” a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) *falsely represents that the services are of a particular standard or grade;*

(ii) *represents that the promoter has approval or affiliation which such promoter does not have;*

(iii) *makes a false or misleading representation concerning the services;*

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) *the promoter indulges in any fraudulent practices.*

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any

such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause(D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

8. Obligation of Authority consequent upon lapse of or on revocation of registration.—Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent

authority or by the association of allottees or in any other manner, as may be determined by the Authority:

PROVIDED that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

PROVIDED FURTHER that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works'.

33. As per the reasons enumerated in sub-section(1) (a)(b) & (c) of Section 7 of the Act, the Authority may exercise its power of revocation either on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority. Out of the reasons enumerated under Section 7(1)(a)(b)& (c) of the Act, the reason stated in clause (a) is very much satisfied in the instant case as it is an admitted case of default on the part of the appellant in completing the project and delivering possession of the flats to the allottees within the time stipulated in the JDA entered with the land owners and within the time specified in the agreements of sale entered with the allottees.

34. In the instant case, the land involved in the project is a private land belonging to Respondent Nos. 4 and 5 who entered into a Joint Development Agreement with the appellant-developer for

developing the lands in to a real estate project by constructing residential apartments. Thus, it is purely a private transaction between the land owners and the appellant. Further there is no contribution of fund or of any kind by the Government towards development of the project. Therefore, the question of the Authority requiring to consult the Government before revoking the registration granted in favour of the appellant and permitting the AoA to take over the project to achieve completion of the project through respondent No.6-the Incoming promoter, does not arise.

35. Further, Section 7(3) of the Act contemplates that the Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

According to this provision, whenever a request for revocation is sought, the Authority may, instead of revoking the registration under sub-Section (1) permit it to remain in force subject to such further terms and conditions as it may thinks fit to impose if such revocation is in the interest of allottees. Thus the said provision has to be understood that the registration can be revoked by the Authority if it is in the interest of the allottees. For instance, if development works

of the project is substantially completed and only certain formalities are required to be done then it shall be allowed to be completed by the same promoter by imposing such further terms and conditions and in such case, in all probability, registration may not be revoked.

36. In the instant case, as could be seen from the pleadings, the appellant has not even completed 50% of the construction work of the project as against the percentage of amount that it has collected from the allottees. Further, the appellant has not shown any *bona fides* on his part to complete the remaining development works of the project in near future. On the other hand, the promoter has addressed a letter to the Authority unequivocally stating that it has no objection to revoke the registration granted in its favour and permit the AoA and landowners to take over the project. Thus, the Authority coming to the conclusion that even by imposing such further terms and conditions, the promoter was not in a position to complete the project was justified in revoking the registration granted to the appellant and handing over the project to the Association of Allottees to achieve completion of the project as provided under Section 8 of the Act.

37. The further contention of the learned counsel for the appellant is that the Authority has not followed the mandate of Section 8 of the Act inasmuch as it has not consulted the appropriate

Government before revoking the registration. With regard to this contention, it may be stated that the words "may consult the appropriate Government" occurring in the said Section is firstly not mandatory in nature and it is directory. Secondly in the event of the Authority entrusting the task of completion of the remaining development works of the project to any competent authority like BDA, KPWD, BBMP etc., it may have to consult the Government as it may affect the work already undertaken by such competent authorities and not otherwise. Thirdly, in the instant case the Government has not extended any support for development of the project either by way of contributing fund or in any manner that being so the question of, the Authority consulting the Government before revoking the registration granted to the appellant and permitting AoA and the land owners to achieve completion of the project through respondent No.6-Incoming promoter does not arise. Further, undertaking of a real estate project by private promoters by entering into a Joint Development Agreement with land owners is purely a private arrangement between them. When promoter fails to complete the project and deliver possession of apartments to the allottees within the time specified in the agreement, the Authority in order to safeguard the interest of home buyers and achieve the object of the Act is required to revoke the registration granted to any such promoter in the interest of allottees to achieve completion of the

project. The judgment cited by the learned counsel for the appellant to emphasize that the word 'may' occurring in Section 8 of the Act must be read as 'must', has no application to the facts of the present case. As such, there is no merit in the contention of the learned counsel for the appellant that the Authority has not followed the mandate of the provision of Section 8 of the Act.

38. It may not be out of place to state that the 2nd Respondent-AoA and the land owners along with 6th Respondent- Incoming promoter to whom the construction work has been entrusted to complete the remaining development works of the project, prior to approaching the RERA for revocation, got the existing construction work carried out by the appellant inspected and estimated through external consultants viz., civil and structural Engineers as to the quantum and standard of works carried out by the appellant and the amount required for carrying out the remaining works of the project and obtained a report and after coming to know that additional amount is required for completion of the project started mobilizing the funds. The land owners have transferred Rs.3.5 crores which they received from the appellant in favour of the Incoming promoter and they have further agreed for reduction of their share of apartments by 3% whereby they lost about 6-8 apartments. The land owners have further agreed for selling of 8 unsold flats which have fallen to their share and adjust the sale proceeds for utilizing the

same for completion of the project. Similarly, the allottees have also agreed for enhancement of the price of the apartment by Rs.1711/- sq.ft. which would be an additional burden on the allottees, on account of default on the part of the appellant. However, in order to reduce the additional burden of payment on the allottees, the Respondent No.6 has obtained the modified plan under TDR scheme and raised extra 66 flats by virtue of which additional price of Rs.1711/- sq.ft. required to be contributed by the allottees, has been reduced to Rs.1275/- sq.ft. That after entrusting the work to respondent No.6-Incoming promoter, it is stated that the incoming promoter has already completed 50% of the construction work and promised to complete the project well before the schedule date. Therefore, it is not just and proper to interfere with the impugned order at this stage.

39. Further, it is borne out from the records that the appellant voluntarily has submitted a letter dated 30.7.2020 to RERA along with the registration certificate stating that it is unable to complete the project and it has no objection for revoking the registration granted in its favour and permit the AoA and the land owners to take over the project and achieve completion through respondent No.6-Incoming Promoter.

40. We have carefully gone through the impugned order passed by the RERA and found that it is in the interest of the allottees and further it is in consonance with the provisions of Sections 7 and 8 of the Act. As such, we do not find any reason to interfere with the impugned order.

41. The appellant having failed to complete the project and was unable to deliver possession of apartments to the allottees within the time specified in the agreement has preferred this appeal without there being any *bona fide* in its approach and it is an attempt to further harass the allottees. Therefore, the appeal is liable to be dismissed with costs of Rs.25,000/- (Rupees Twenty five thousand only) payable to the 2nd respondent-Association within four weeks from the date of this order.

Accordingly, point (i) is answered in the negative.

42. For the foregoing reasons, we pass the following:

ORDER

- (i) The appeal is dismissed;
- (ii) The impugned order dated 08.11.2021 passed by the 1st respondent -Authority in Complaint No. CMP/201001/ 0006742 is hereby affirmed.
- (iii) In view of the dismissal of the appeal, pending interlocutory applications, if any, do not survive for consideration and accordingly stand disposed off;

- (iv) Appellant is directed to pay costs of Rs.25,000/- (Rupees Twenty five thousand only) to the 2nd respondent-Association within four weeks from the date of this order;
- (v) Registry is hereby directed to comply with the provision of Section 44(4) of the Act and to return the records to RERA, if any.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

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