

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

APPEAL (K-REAT) NO. 13/2021

DATED THIS THE 02ND DAY OF JUNE 2023

BETWEEN:

Zuari Infracore India Limited
(Formerly known as Adventz Infracore India Limited)
Registered office at 1st Floor, Adventz Centre
#28, Union Street Bengaluru 560 001.
Rep by its Authorised Signatory
Mr. Anshul Amit Bansal

:APPELLANT

AND:

1. Owners and Purchasers of Zuari Garden
City Association
No. 31, Srinivas Apartments, # 102,
6th Cross, Malleshwaram
Bengaluru 560 003.
Represented by its Secretary
2. Karnataka Real Estate Regulatory Authority
#1/14, 2nd Floor, Silver Jubilee Block,
Unity Building Backside,
CSI Compound, Mission Road,
Bengaluru-560 027.
Represented by its Chairman
3. Zuari Garden City Home Owners Association
Having its registered office at
Zuari Garden City, Hulikere Village,
Belagola Post, Srirangapatana Taluk,
Mandya District, Karnataka 571 606
Represented by its President
Mr. P Krishnan

...RESPONDENTS

Hon'ble Judges/Coram**PRESENT****HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN****AND****HON'BLE K P DINESH, JUDICIAL MEMBER****AND****HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER****Counsel:**

(By Sri Yeshu Mishra for M/s Haranahalli Law Partners, Advocates for appellant)

(Sri K.V Omprakash for M/s M/s Concientia Law Association, Advocate for R1 & R3)

(R2-RERA-Absent)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before this Tribunal, to set aside the order dated 16.12.2020 in Complaint No. CMP/UR/190701/0003209 passed by the RERA-Authority, Respondent No.2.

This appeal having coming up for pronouncement of Judgment this day, the **Judicial Member**, Made the following:

JUDGMENT

This appeal is filed under Sec 44 of the Real Estate (Regulation and Development) Act, 2016 read with Rule, 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (herein after referred in short as ("**The Act and The Rules**") against the impugned order

dated 16.12.2020 in Complaint No. CMP/UR/190701/0003209 passed by the RERA-Authority, Respondent No.2.

BRIEF FACTS OF THE CASE:

2. This appeal is filed by the promoter of a Real Estate Project known as "Zuari Infraworld India Limited" which is a company incorporated under the Companies Act, 1956 and is engaged in the business of development of real estate projects.

3. As could be seen from the Memorandum of Appeal, the Volunteer Consumer Association Owners and Purchasers of Town house luxury villas by name "Zuari Garden City Phase-1" of the villas in the said project filed complaint under Section 31 of the Act against the promoter, alleging as under:

- That the project is not registered under the provisions of the Real Estate (Regulation and Development) Act, 2016;
- That penalty has to be levied on the project as provided under RERA Act;
- That the promoter has failed to hand over possession of the houses to the complainant/1st Respondent in time and is in violation of clause 3.2 of the construction agreement;
- That the respondent-promoter failed to include common facilities and amenities as promised in the sanctioned plan;

- That the promoter by email made false statement regarding completion of all construction work and demanded unreasonable charges without providing common amenities and maintenance services;
- That the appellant-promoter threatened the allottees with coercive action without having fulfilled its obligations and adjust the deposit collected from the purchaser towards maintenance charges from the month of May-2017;
- That the promoter failed to complete 3000 sq ft club house as promised by collecting Rs.1,50,000/- each from the allottees;

That on the above and other grounds, the allottees had sought for the following reliefs:

- Direct the Respondent to pay to each owner/purchaser of the Town House, Luxury Villa and Grand Villa in ZGC-1 interest @ 10.25% per annum on the amount paid by his/her including the club membership fees and maintenance deposit for every month of delay till it provides all the promised common facilities and amenities in the ZGC-1/Project;
- Direct the Respondent to pay the owners/purchasers of Town Houses, Luxury Villas and Grand Villas in ZGC-1 compensation of Rs.10,00,000/- (Rupees ten lakh only) each for having failed to

discharge its obligations under the agreements to Sell and Construction Agreements entered into by it with them;

- Direct the Respondent to refund to each owner/purchaser of the Town House, Luxury Villa and Grand Villa in ZGC-1 the deposit amounts illegally adjusted by it towards maintenance charges or in the alternative direct it to transfer the same to the Association of Owners of houses to be formed by it for maintenance of ZGC-1;
- Direct the Respondent to provide all the agreed common facilities and amenities listed in the above complaint without further delay;
- Direct the Respondent to continue to provide water, electricity and other amenities now being provided in the layout to all the Town Houses and Luxury and Grand villas and maintain the layout without demanding any charges from any person till it provides all the promised common facilities and amenities in the layout and hand over management of the same to the Association of House owners;
- Levy penalty on the respondent for not having registered ZGC-1 under the provisions of Real Estate (Regulation & Development) Act, 2016;

- Grant such other relief as deemed just and necessary in the facts and circumstances of the case including cost of this complaint, in the interest of equity and justice;

4. The promoter/Respondent appeared before the Authority through their counsel and filed statement of objections contending that the complaint filed under Section 31 of the Act is not maintainable and further denied the averments made in the complaint *inter-alia* contending:

- that the present complaint claims to have been filed by a registered association of "Zuari Garden City Phase-1", however all the purchasers of the unit have not joined the said Association or consented to form the said Association. The formation of the Association itself is in breach of the terms and condition of the Sale Deed, Sale Agreement and Construction Agreement entered into between the parties;
- that the Members of the Association have taken possession of their respective units several years ago and have been in peaceful possession and enjoyment of the same. The sale deed expressly discloses the execution of the same is in full and final settlement of all matters between the parties;

- that the complaint is bereft of material particulars and the complainant is guilty of suppression of material facts rendering the complaint vexatious and liable to be dismissed in limine;
- that the allegations made in the complaint are without any basis and without considering the provisions of the Act and Rules of Karnataka Real Estate Regulation Act;
- that the appellant has duly completed the construction of the residential tenements ZGC-1 including development of all infrastructure such as road, electric, water, sewage facility along with operational HTP and organic converter, landscaping, garden and play area etc;
- that it is pertinent to note that construction, handing over possession and obtaining occupancy certificate of ZGC-1 was completed prior to the Karnataka Rules coming into force.
- that after completion of construction of ZGC-1 the respondent had applied for occupancy certificate on 5th April 2017 and the same was issued by MUDA on 20th September 2017. Copies of the occupancy certificate dated 05th April 2017, acknowledgment issued by the MUDA for accepting the application dated 05th April 2017, occupancy certificate and completion certificate issued by MUDA are produced. Therefore, as per the provisions of section 3.2(b) of Act read with 4 of the Karnataka Rules ZGC-1 did not

require to be registered and does not come within the ambit of Act and Karnataka Rules. *Interalia* on this ground the Authority may be pleased to reject the complaint as not maintainable;

- that the Respondent has denied all other para wise allegations;

5. The Authority based on the averments and grounds urged in the complaints of the allottees and in the statement of objections of the promoter, raised the following issues for its consideration:

- a) Whether registration of the project is required?
- b) Whether respondent/promoter was within his rights to collect maintenance charges as per the Sale Agreement?
- c) Whether the home buyers are entitled to compensation in view of the delayed handing over of the possession?

6. The Authority after hearing the learned counsel appearing for the parties, perusing the averments made in the complaints, documents produced by the complainants and the statement of objections filed by the Promoter by majority view passed the order as under:

ORDER

“In exercise of power conferred under section 37 of the RERA Act, 2016 the promoter is hereby directed to:

- (vi) Get the project Zuari Garden City Phase-1 project registered within a period of sixty days under Section 3 read with

Section 4 of the Real Estate (Regulation and Development) Act, 2016.

- (vii) A penalty proceedings for not registering the project under the provisions of the Act shall be initiated against the promoter.
- (viii) To immediately take steps to form a homebuyers association and handover the common areas and the undivided share of the land in favour of the said association.
- (ix) To convene a meeting of the homebuyers and provide an account of the money collected towards maintenance and to refund wherever necessary. And to handover the maintenance of the project to the association of homebuyers.
- (x) The homebuyers are directed to file separate complaints, if any before the Adjudicating officer of this Authority seeking individual compensation interest etc., for delayed possession."

7. We have heard Sri Yesu Mishra for M/s Haranahalli Law Partners learned counsel for the Appellant-promoter and Sri K.V Omprakash for M/s Concientia Law Association, learned Counsel appearing for the respondents on IA No. V & VI and on main appeal.

RERA though served, remained absent. We have also perused the grounds of appeal, documents produced by the parties and the impugned order passed by the Authority.

8. Sri Yeshu Mishra, learned counsel appearing for the promoter while reiterating the grounds urged in the memorandum of appeal, at the outset, submits that it is a villa project completed in the year 2017. Completion certificate was issued by the architect on 31.02.2017. Application for completion certificate was filed before the MUDA on 05.04.2017 and received the completion certificate from the MUDA on 05.05.2017. The occupancy certificate for the project was received on 30.09.2017 and the first sale deed was executed on 18.12.2013. It is further submitted that MUDA issued a letter dated 26.05.2017 to promoter seeking further documents and the promoter replied to the said letter with documents on 14.08.2017. It is further submitted by the learned counsel that the completion report given by MUDA on 20.09.2017 is as good as occupancy certificate as the Act says that the "certificate or such other certificate by whatever name called issued by the competent Authority under Section 2(zf) of the Act. It is submitted that the contention of the respondent that promoter has applied for Occupancy Certificate on 14.08.2017 after the prescribed period is not correct and on the contrary it is only further document sought by the MUDA vide letter dated 26.05.2017 was produced on the

said date and the original application was filed on 05.04.2017 within the prescribed time as the Rules came into force on 10.07.2017. It is also submitted that intimation was given to all the allottees but some of them failed to come forward and get the sale deed executed. Learned counsel further submitted that since the promoter has completed the work and submitted application before the MUDA along with the certificate issued by the architect well within the time i.e., 05.04.2017 the project in question squarely false within the proviso to Rule 4(iv) of the Karnataka Rules and the project is exempted from registration. The learned counsel submits that the contention of the respondent that the completion certificate issued by the registered architect cannot be construed as the one issued by the competent Authority as defined under Section 2(q) of the Act and therefore the project is ongoing as on the date of commencement of the Act and is required to be registered under Section 3 of the Act, but nevertheless the project is exempted from registration under Explanations (iii) and (iv) of Rule 4 of the Rules, since all development works have been completed as per the Act and certified by the competent agency and sale deeds of 60% of the apartments have been registered and executed pursuant to the completion certificate issued by the Registered Architect, an application has been filed on 05.04.2017 before the Competent authority for issue

of occupancy certificate much prior to the notification of the Rules, dated 10.07.2017.

9. Learned counsel submits that the promoter has filed two applications I.A.V and I.A.VI to produce a number of documents by way of additional evidence and prays this Tribunal to consider these documents and exempt the project from registration either under Explanation (iv) of Rule 4 of the Rules by exercising it's original jurisdiction.

10. In support of the above submissions learned counsel relied upon the decisions of the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. **reported in 2021 SCC ONLINE SC 1044** and a decision of the High court of Judicature at Bombay in the case of MACROTECH DEVELOPERS LIMITED Vs. STATE OF MAHARASHTRA AND OTHERS- **WRIT PETITION (ST) NO. 1118 OF 2021 DD 1st March, 2021.**

With the above and other grounds urged in the appeals, the learned counsel prays for allowing the appeal and setting aside the impugned order.

11. Whereas, Sri K.V Omprakash, learned counsel for respondents 1 & 3 – allottees submits that the allottees being home buyers in the project, are aggrieved by the illegal and arbitrary acts of the promoter

in not completing the project in all respects and therefore, the complaints filed by them under Section 31 of the Act are maintainable, as rightly held by the Authority.

12. Learned counsel submits that even though obtaining of sanctioned plan by the promoter, agreements of sale and construction agreements entered between the parties are all prior to the commencement of the Act, since the promoter has failed to complete the project in all respects, the project is deemed to be an ongoing project as on the date of commencement of the Act and provisions of the Act are squarely applicable to the project.

13. It is the submission of learned counsel for Respondent 1 & 3 that the appellant/promoter has not complied Rule 4(iv) of the Karnataka Rules in letter and spirit as the promoter has not completed the work as per the agreement and the provisions of the Act.

14. It is submitted that all amenities were not provided to phase-1 of the project and the deed of declaration is not in proper form. The 1st Respondent has produced registration certificate.

15. It is the submission of the learned counsel that MUDA granted approval for 404 villas which consists of type 1 & 3 with a condition that promoter should provide all amenities as promised in the brochure and the construction agreement.

16. Learned counsel submits that the completion certificate issued by a Registered Architect cannot be construed as one issued by the competent authority as defined under Section 2(q) of the Act. He further contends that in the instant case, there is no completion certificate issued by the competent authority and therefore the project of the promoter is liable to be registered under Section 3 of the Act.

17. Learned counsel submits that the documents now sought to be produced by the promoter were very much available with the promoter even at the time of filing of the complaint and there is no plausible explanation put forth by the promoter for the delay in producing them and therefore, the promoter is not entitled to rely upon these documents produced belatedly before this Tribunal by filing I.A. V and VI and prays that this Tribunal may not rely upon these documents and grant relief to the promoter.

18. Learned counsel further submits that it is not enough that if project is completed, but it should be with all amenities as promised by the promoter in the agreement of sale.

19. After hearing the parties on both sides and perusing the documents and records, the points that arise for our consideration are:

- (I) Whether the finding of the Authority on Issue No. (a) that registration of the Zuari Garden City

Phase-1 of the project is required under Section 3 of the Act, is sustainable in law?

- (II) Whether the finding of the Authority on Issue No. (b) in holding that till the common areas are handed over to the association of home buyers promoter is responsible to maintain the same till the transfer of common areas and the undivided share to the association is sustainable in law?
- (III) Whether the findings of the Authority on Issue No. (c) in holding that with respect to compensation and interest, the adjudicating officer will have to conduct separate proceedings and pass orders is sustainable in law?
- (IV) Whether the documents now sought to be produced along with I.A.V and I.A.VI filed under Order 41 Rule 27 r/w Section 151 CPC by way of additional evidence are required to be allowed?
- (V) What order?

POINT NO.(I):-

20. The promoter in the statement of objections filed before the Authority and in the grounds of the appeal mainly contended that the complaint filed by the allottees under Section 31 of the Act is not maintainable for the following grounds:

- a) That the work of the project was completed long back and the villas have been handed over to the respondent prior to the RERA Act coming into force and the project was not an ongoing project as on the date of commencement of the Act and therefore is not liable to be registered under Section 3 of the Act.
- b) That the respondent had applied for the completion report for ZGC-1 prior to the cut-off date during April 2017 itself which is evident from the documents on record and appellant had also executed the registered sale deeds and handed over possession of the units to 124 purchasers upto the end of June 2017
- c) That the respondent in terms of the development plan had completed construction of Phase-1 villa project comprising 217 residential villas, including development of all infrastructures such as roads, electricity, sewage along with operational STP and organic converter, WTP, land scalping, garden, club house and play area etc., and entire project was completed prior to the implementation of the KRERA Rules. Therefore as per the provisions of Section 3(2)(b) of the Act read with Rule 4 of Karnataka Rules, ZGC-1 was not required to be registered and does not come within the ambit of the Act and the Rules.
- d) That the preponed hearing date on 2nd July 2020 was not communicated to the appellant and it came to the notice of the appellant only on 1st July 2020 through the email sent by the respondent's counsel. The appellant could not visit the 2nd respondent office to follow up the matter and later came

to know that the matter was finally heard on 2nd July 2020 in the absence of the appellant and posted for orders. That the appellant filed an application for recalling of the order dated 2nd July 2020 and to reopen the case but the 2nd Respondent refuse to consider the said application. At that juncture left with no alternative the appellant has filed written arguments before 2nd Respondent and without appreciating the material facts and documents filed by the appellants 2nd respondent has passed the untenable order. That the impugner order is not only violative of the principals of natural justice but also opposed to the facts and circumstance of the case and provisions of KRERA Rules.

- e) That the promoter has not violated any of the provisions of the RERA Act, Rules and Regulations for the complainants to invoke the jurisdiction of K-RERA.

Before discussing the points framed for consideration on merit, it is useful to extract the relevant provisions of the RERA Act.

Section 2. Definitions.—In this Act, unless the context otherwise requires,—

(q) “completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

Section 3. Prior registration of real estate project with Real Estate Regulatory Authority.—

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment

or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section

(1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately

Section 31. (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 promoter, allottee or real estate agent, as the case may be.

Section 88. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Section 89. Act to have overriding effect.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

It is also necessary to extract Rule 4 of the Karnataka Real Estate (Regulation & Development) Rules, 2017.

4. Additional disclosure by promoters of ongoing projects.-

(1) Upon the notification for commencement of sub-section (1) of section 3, promoters of all ongoing projects which have not received completion certificate shall, within the time specified in the said sub-section, make an application to the Regulatory Authority in the form and manner as specified in rule 3.

Explanation: For the purpose of this rule "Ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules, namely:-

(i) in respect of layouts where the streets and civic amenities sites and other services have been handed over to the Local Authority and Planning Authority for maintenance;

- (ii) in respect of apartments where common areas and facilities have been handed over to the registered Association consisting of majority of allottees;
- (iii) where all development works have been completed as per the Act and certified by the competent agency and sale lease deeds of sixty percent of the apartments/houses/plots have been registered and executed;
- (iv) where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate /occupation certificate; and
- (v) where Partial occupancy certificate is obtained to the extent of the portion for which the partial Occupancy Certificate is obtained.

That after coming into force of the RERA Act "No promoter can do Real Estate Business without getting the project registered with the Real Estate Regulatory Authority under Section 3 of the Act.

Whereas under first proviso to section 3(1) of the Act, the projects that are Ongoing on the date of commencement of this Act for which the completion certificate has not been issued the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act, that means to say the projects for which the completion certificate has been issued prior to the commencement of the Act, are not required to be registered.

Further, the project which do come under proviso to sub-Section 2 of Section 3 are also not required to be registered.

Again, the project which fulfill any of the criteria mentioned under Explanation (i) to (v) of the Rule 4 on the date of notification of the Rules are also not required to be registered.

Therefore, whenever the Authority receives a complaint under Section 31 of the Act against any Real Estate Project shall first verify from its records, whether the said project is already registered with it or not.

If the Authority finds that the project is already registered with it, then it could proceed to adjudicate such complaint in the manner as provided in the Act and Rules thereto.

If the Authority finds that the project involved in the complaint is not already registered with it, then in the first instance itself shall determine as to whether the said project is required to be registered under Section 3(1) of the Act or exempted from registration either under any of the proviso to section 3 or any of the Explanation under Rule 4 (1) of the Rules, because of the reason that in the event of Authority after holding enquiry coming into a conclusion that the project is not required to be registered it cannot proceed with the complaint as it lacks jurisdiction to do so in view of the law laid down by the Hon'ble Supreme Court of India in the case of NEWTECH and in the judgment of a division bench of the Hon'ble High Court of judicature at

Bombay in the case of MACROTECH that "No registration No application of the Act".

21. It is the case of the promoter appellant that work of the project is completed and the project is not an ongoing one on the date of commencement of the Act as per Section 3(1) of the Act and the project is not required to be registered. The promoter alternatively contends that even in the event of holding that though the work of the project is completed prior to the coming into force of the Act since completion certificate was not issued by the competent Authority as defined under Section 2(q) of the Act as contended by the allottee and therefore, it is an ongoing project on the date of commencement of the Act and is required to be registered, nevertheless the project in question is excluded from the definition of ongoing project since it fulfils the criteria of explanation (iv) of Rule 4(1) of Karnataka Rules. The promoter in support of his contention has filed IA. No V & VI under Order 41 Rule 27 read with Section 151 of CPC seeking permission to produce documents by way of additional evidence.

22. In the above circumstances, it has become necessary for us to consider whether the documents now sought to be produced by the promoter by way of additional evidence are relevant and necessary for the purpose of effective and complete adjudication of the issue relating to exemption of the project from registration.

23. A perusal of very nature and description of the documents produced along with IA.V would show that all these documents are pertaining to the project in question and existed prior to filing of the complaints, especially the certificate issued by the competent agency (Registered Architect) certifying that all development works have been completed as per the sanctioned plan and the acknowledgment for having submitted the application to the competent authority for issue of occupancy certificate prior to the notification of the Rules, are very relevant for the purpose of consideration of the contention of the promoter that all developments works have been completed as per the Act and certified by the competent agency. About 59% of the sale deeds have been executed and registered in favour of the allottees and application for issuance of occupancy certificate has been filed before the competent authority much prior to the notification of the Rules.

24. A careful perusal of the above order sheet and impugned order passed by the Authority shows that the case was preponed and the notice was not issued to the promoter by the Authority and the promoter came to know about the same on 1st July 2020 through the email of 1st Respondent and the date of hearing was 2nd July 2020. Immediately after noticing the date of hearing promoter tried to approach the Authority and make his submission with documents, but could not do it due to the lack of response from the Authority and the appellant has

filed written argument without producing all the relevant documents. Now the documents sought to be produced by the appellant by way of additional evidence in IA.No. V pertain to the project, however, certain documents like copy of the certificate of registered architect dated 31.3.2017 annexed along with the application submitted to MUDA for grant of occupancy certificate and copy of the letter issued by promoter to MUDA dated 14.08.2017 with further documents sought by the MUDA for considering the application are relevant for examination and consideration of the issue regarding the requirement of registration of the project in question or otherwise to exempt the project from registration under Rule 4(iv) of the K-RERA Rules. Out of the document now sought to be produced as additional evidence by way of IA.No. V many of them have not been produced before the Authority while passing the impugned order particularly the certificate of the registered architect dated 31.03.2017 along with application submitted to MUDA for grant of occupancy certificate/completion report. Having regard to the above facts and circumstances IA. No. V deserves to be allowed and accordingly, allowed. As far as IA No. VI is concerned it is not relevant for just consideration of the issue on hand and accordingly, rejected.

25. The contention of the appellant-promoter before the Authority as well as this Tribunal is that appellant-promoter has completed the phase-1 of the project Zuari Garden prior to the advent of

RERA Act and Rules and further applied for completion report certificate on 05.04.2017 along with the report of the architect and has been duly acknowledge by the MUDA. In view of the same the provisions of Rule 4(iv) of the K-RERA Rules are squarely applicable to the said project and the project did not require to be registered under the RERA Act as an on going project. It is the contention of the appellant-promoter that the MUDA has sought for some additional documents as per communication dated 26.04.2017 and the appellant has submitted additional documents. The MUDA issued a completion report on 20th September 2017 for the villa project. It is the case of the appellant that 2nd Respondent-RERA Authority had neither considered the document produced nor the contention raised by the appellant while passing the impugned order. On the contrary the contesting Respondent.1 has try to justify the impugned order. Perusal of the LCR reveals that appellant has produced a copy of the endorsement issued by MUDA dated 26.05.2017 as per document No.2 page 17 of the LCR, completion report dated 20.09.2017 as per document No.3 page 18 of LCR and copies of some sale deeds. The appellant has now produced copy of the certificate of the registered architect dated 31.03.2017, copy of the letter dated 05.04.2017 purported to have been submitted by promoter to MUDA for obtaining completion report certificate/occupancy certificate and copy of the letter submitted by the promoter to MUDA dated 14.08.2017 with

latest tax paid receipts in reply to the letter dated 26.05.2017 issued by MUDA. It is pertinent to note that the appellant-promoter is heavily relying on the copy of the endorsement issued by the MUDA on 26.05.2017 and letter dated 14.08.2017 submitted by the appellant to MUDA in response to the letter dated 26.05.2017 of the MUDA to establish his claim that all developmental works were completed as per the provisions of the Act and application was filed before MUDA along with the certificate issued by the architect for issuance of completion report/occupancy certificate. But what is purported to have been produced before the Authority and also before this Tribunal is only an endorsement issued by the MUDA regarding submission of letter dated 05.04.2017 and the very letter dated 05.04.2017 set to have been submitted to the MUDA Authority along with certificate of registered Architect dated 31.03.2017 has not been produced neither before the Authority nor before this Tribunal. It is only for the first time as an additional evidence the certificate issued by the registered architect dated 31.03.2017 has been placed before this Tribunal. There was no occasion for the 2nd Respondent-Authority to go into the application dated 05.04.2017 submitted by the appellant-promoter to the MUDA Authority along with registered architect certificate dated 31.03.2017 to consider the issuance of completion report/occupancy certificate. The appellant-promoter without producing the copy of the application dated

05.04.2017 submitted to the MUDA Authority along with registered architect certificate, sought for exemption of registration under Rule 4(iv) of RERA-Rules with Respondent No.2-Authority. Even the 2nd Respondent-Authority without insisting for appellant to produce those relevant document to consider the exemption under Rule 4(iv) of RERA Rules and without adhering to the said provision, simply passed the impugned order to get the project Zuari Garden City Phase-1 registered within a period of 60 days under Section 3 & 4 of Real Estate (Regulation and Development) Act, 2016. There is no whisper in the impugned order regarding Rule 4(iv) of K-REA Rules which exempt registration of an ongoing project on satisfying the condition stated therein.

26. The 2nd Respondent-Authority without appreciating the contention of the parties and unmind full of the provisions of 4(iv) of Karnataka RERA Rules has passed the impugned order directing the appellant to get the project Zuari phase-I registered within a stipulated period is patently incorrect and is not sustainable under law. Hence, the matter requires reconsideration by the Authority in view of the relevant documents now produced by way of additional evidence and also the copy of the application dated 05.04.2017 submitted by the promoter to the MUDA Authority for grant of completion report certificate. In view of our above discussion point No. I is answered in the negative.

Point No. II, III & IV

27. In view of our finding on point No. I, point Nos. II and III do not survive for consideration and point No.IV is answered partly in the affirmative.

28. We wish to place on record our displeasure towards the attitude of the Authority that in the cases of this nature where the Authority is one of the respondents which ought to have defended its action in the matter of registration of a project, fails to arrange counsel to represent the case on its behalf before this Tribunal to substantiate the orders passed by it and that too in matter where State exchequer is involved.

29. Before parting with the case we state that as per Section 44(5) of the Act, the appeals shall be disposed of within sixty days from the date of receipt of appeal. The appeals was filed on 10.02.2021. During pendency of the appeals, at the request of the parties that the matter is likely to be settled amicably, considerable time was granted. Thereafter, whenever the parties filed interlocutory applications seeking permission of the Tribunal to produce documents etc., notice was ordered to secure the appearance of the parties and in the process sufficient time was taken. Further, on account of lockdown due to Covid-19 pandemic during 2020 and 2021, for want of presence of the

parties and their counsel the matter was adjourned from time to time and the appeals could not be disposed of within time prescribed under Section 44(5) of the Act.

30. In view of the foregoing reasons, we pass the following:

ORDER

- (i) The appeal is partly allowed;
- (ii) The impugned order dated 16.12.2020 passed by the Authority in complaint No. CMP/UR/190701/0003209 is set aside and matter stands remitted to the Authority for fresh consideration in accordance with law and in the light of the observations made in the course of the judgment, after affording an opportunity to both the parties to produce documents, if any, in addition to the documents produced along with IA's within an outer limit of 45 days from the date of appearance of the parties.
- (iii) The interlocutory application No. V filed under Order 41 Rule 27 R/w Section 151 of the CPC by the promoter is allowed and IA.VI is rejected;
- (iv) All the contentions of the parties are kept open to be urged before the Authority;
- (v) Since the promoter and allottee-respondent have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on **12.06.2023** without expecting further notice from RERA;
- (vi) In the event of the Authority is not sitting on that day, the matter may be taken up on the very next sitting day;
- (vii) The Registry is hereby directed to circulate a copy of this judgment to the Secretary RERA who in turn shall bring the same to the notice of the Hon'ble

Chairman and learned Members of the RERA-Authority, so that they would take note of the observations made in this judgment while entertaining the complaint filed under Section 31;

- (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

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