

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,  
# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building, Backside, CSI Compound,  
3rd Cross, Mission Road, Bengaluru-560027

**PROCEEDINGS OF THE AUTHORITY**

**FIRST ADDITIONAL BENCH**

**Dated 23<sup>rd</sup> of November 2020**

**MEMBERS PRESENT:**

1. M.R. KAMBLE CHAIRMAN, K-RERA
2. ADONI SYED SALEEM, MEMBER-2, K-RERA

**SANTOSH V PATIL AND 100+ OTHERS**

**....Complainants**

No. A 1/906, Elita Promenade,  
JP Nagar, 7<sup>th</sup> Phase,  
Bengaluru - 560078.

AND

**1. MANTRI CASTLES PRIVATE LIMITED,**

**.....Respondents**

**2. SUBRAMANIAN BAASKARAN**

**3. BHARATH DIXIT MADHUKAR**

**(Respondent No. 1 to 3 residing at)**

No. 41, Mantri House,  
Vittal Mallaya Road,  
Bengaluru Urban - 560001.

**4. M/S GOKULAM SHELTERS PRIVATE LIMITED**

**5. SHESHADRI NAGABUSHANA**

**6. MADHUSUDHAN SHIVASHANKAR,**

**7. AMITH CHABRA**

**8. CHANDRA SHEKAR SRIRANGAPATANAM**

**9. M/S ISKON CHARITIES**

**10. INDIA HERITAGE TRUST**

**(Respondent No. 4 to 10, residing at)**

Gokulam Complex, 8th Main,

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Doddakallasandra Post,  
Vasanthapura Village,  
Kanakapura Main Road,  
Bengaluru - 560062.

**11. M/S MANTRI DEVELOPERS PRIVATE LIMITED**

No. 41, Mantri House,  
Vittal Mallaya Road,  
Bengaluru Urban - 560001.

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Mr. Santhosh V Patil and 100+ others have filed complaint bearing No. CMP/200120/0005220 against the respondents 1 to 11 above, with respect to the project Mantri Serenity - 1 by paying a fee of Rs. 1000/-.

It is stated in the complaint that they have filed the complaint against the respondents for non - compliance of various Sections of RERA Act and Rules, for levy of penalties under Section 59 to 63, unfair trade practices. One of the relief urged by the complainants is to revoke or cancel the registration granted to the said project, to freeze the project account, to make reference to competition commission of India, to direct the respondents to furnish the list of number and types of apartments which are booked till date, the amount paid to the landlords, the amount received from the homebuyers towards the BESCO, BWSSB deposits, car parking, GST, sales tax, service tax, VAT and TDS etc., the complainants have also requested the Authority to direct the respondents to produce all RERA quarterly reports.

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Notices were issued and enquiry conducted.

Mr. M Mohan Kumar, Advocate has filed vakalat on behalf of the complainant. Mr. E Suhail Ahmed has filed vakalat on behalf of the respondents.

Along with the statement of objections, the respondents advocate has filed an interlocutory application under order VII Rule 11 of CPC read with Section 31, 35, 85 and 88 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 29 of the Real Estate (Regulation and Development) Rules, 2017.

The case was posted for hearing before the full bench of the Authority on 09/06/2020, 19/06/2020, 01/07/2020, 23/07/2020 and on 12/08/2020 it was posted for orders on I.A, and the case was posted to 25/08/2020.

The complainants advocate has on 23/07/2020, filed written objections to the interlocutory application.

On 23/07/2020, the advocate on behalf of the complainant was personally present and the advocate for the respondent appeared over skype. The respondents advocate was directed to produce statement of the units sold, balance amount payable, balance unsold inventory.

On 23/07/2020 and on 12/08/2020 arguments were heard with respect to the maintainability issue raised in the interlocutory application filed by the respondents advocate. The advocate for the respondent requested for an order on the I.A, as he had raised objections with respect to the very maintainability of the complaint

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and the locus-standi of the complainants, after hearing both the sides on I.A. on 12/08/2020 the case was posted for the orders on I.A.

In the interlocutory application filed by E. Suhail Ahmed, Advocate, along with an affidavit of Mr. B S Ravishankar, authorized representative of the Respondent No. 1, following averments are made.

- (i) The complaint has been filed by 202 individual persons in their personal capacities, who are allottees of 108 apartments in the said project. It is not the case of the complainants that they are the association or a body of individuals representing all the allottees in the project. The total number of homebuyers in this project including the complainants is 1529. Therefore as against 108 allottees who have filed the complaint, there are other 1340 allottees in the project.
- (ii) The reliefs sought in the complaint relate to the entire project in question and any decision taken may affect the rights of the majority of allottees.
- (iii) The complainants are neither an association nor a body of individuals. The court fee paid of Rs. 1000/- is insufficient. The required fee as per the provisions of the Act is Rs. 1000/- per complaint and therefore the complainant were required to pay Rs. 2,02,000/-. Therefore there is a deficit of court fee of Rs. 2,01,000/-. For insufficiency of the court fee, the complaint is liable to be dismissed.
- (iv) The law prescribes that form N has to be adopted for filing of the complaints before the Authority.

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- (v) The complainants do not meet the requirements of a person as defined under Section 2 (zg) and Section 31 of the Act.
- (vi) Assuming, but not conceding, that the complainants be treated as an unincorporated body of individuals, it is necessary that such a body of individuals seeking reliefs which effect a larger body of individuals should constitute the majority of such body of individuals, which in this case is 1529. 108 allottees who have come up before this Authority, cannot be considered as a majority and hence do not constitute a body.

The advocate for the complainants as on 22/07/2020 filed objections to the interlocutory application filed by the respondents. Following grounds are urged in the said objection statement.

- (i) The I.A. filed by the respondent seeking rejection of the complaint is barred by law and for nonpayment of sufficient court fee is contrary to the provisions of the Act and hence the I.A. has to be rejected.
- (ii) The definition of person as per Section 2 (zg) is defined to include an individual, a Hindu undivided family, a company, a partnership or LLP, a competent authority, an association of persons or a body of individuals whether incorporated or not, a co-operative society registered under any law relating to co-operative societies or any such other entity as the appropriate government may, by notification, specify in this behalf.



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- (iii) The definition clause has to be read with Section 31 of the Act. Section 13 of General Clauses Act has also to be read together.
- (iv) A reading of the above provision makes it clear that the complainants can file a common complaint, seeking common reliefs by initiating a single complaint upon payment of fees of Rs. 1000/- only.
- (v) The respondent cannot accuse and allege that reliefs sought is negative reliefs, when the such reliefs is recognized by law.

The case was heard by the Authority on 09/06/2020, 19/06/2020, 01/07/2020, 14/07/2020, 23/07/2020 and finally on 12/08/2020.

A draft final order of the Three Member Bench was prepared and forwarded to Member-1 on 20/08/2020 by the Chairman, K-RERA. Since the draft order was not signed by Member-1 nor a dissenting note was added, the case had to be adjourned on 25/08/2020. Once again on 03/09/2020 the case had to be adjourned for pronouncement of orders since Member-1 had neither signed the draft order nor provided a dissenting note. Once again on 22/09/2020 the order could not be pronounced since Member-1 had neither signed the draft order nor provided a dissenting note. The Chairman once again forwarded the file on 25/09/2020 with a draft order to Member-1. The file was returned to the Chairman Section on 28/09/2020 without either signature or a dissenting note to the draft order by the Member-1.



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A memo dated 01/10/2020 was filed by the Advocate for respondent enclosing memos of 26 allottees submitting the following facts.

- (i) That the complaint has been filed before the RERA by certain allottees to which they are not parties.
- (ii) They want the project funding by Government of India namely fund – SWAMIH 1 fund. To come through for the project for which we understand that the project extension granted requires to be valid.

In order to achieve finality to the complaints so filed, the case was transferred to the first additional bench on 28/10/2020. Notices were issued to both the parties and the case was heard on 03/11/2020.

On 02/11/2020, Mr. M Mohan Kumar, Advocate for the complainants filed a memo contending that the complaints were heard by the Authority and reserved for orders and thereafter it has been posted for hearing before the First Additional Bench. He objected to the issue of jurisdiction and maintainability of the proceedings before the First Additional Bench.

On 03/11/2020, the case was heard on skype. The complainants were represented by Mr. M. Mohan Kumar, Advocate and by Mr. E. Suhail Ahmed for the Respondents.

The advocate for complainant submitted that prior to posting of the case before the first additional bench, he should have been heard. The advocate for respondent submitted that to transfer a case it may not be necessary that the complainants have to be heard. Since the matter was

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already heard at length by the Authority in which both the Chairman and Member-2 (comprising the first additional bench), the case was posted for orders on 03/11/2020.

In order to pass an order on the complaints, following issues are required to be answered.

Issue No. 1:- Whether the first additional bench of K-RERA has been duly constituted and whether it has jurisdiction to hear the complaints?

Issue No. 2:- Whether the complaint is maintainable under the provisions of the Real Estate (Regulation and Development) Act, 2016, in view of the interlocutory applications filed by the respondent.

Our reply to the above issues is as under:-

Issue No. 1:- YES. The First Additional Bench has been duly constituted under the provisions of the Act and necessarily has the jurisdiction to hear these complaints.

Issue No. 2:- NO. The complaint is not maintainable.

The reasons for arriving for the same is as follows.

**Issue No. 1**

The advocate for complainant has raised objection with respect to jurisdiction and maintainability of the complaints before the first additional bench, stating that the provisions of the Act do not allow creation of additional benches.

It is seen that four additional benches were constituted in exercise of the powers conferred on the Authority under Section 81 of the Real



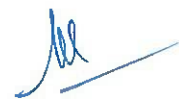
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Estate (Regulation and Development) Act, 2016. This delegation of powers was done by virtue of proceedings dated 13/03/2020 of the K-RERA. One of the bench so constituted is the present First Additional Bench which has heard the complaints on 03/11/2020. Similar delegation of powers under Section 81 of the Act was also done by the UP-RERA, which was challenged before the Allahabad bench of the Hon'ble U.P High court. The Hon'ble Bench of Allahabad vide its judgement dated 04/02/2020 in the case of M/s. K.D.P. Build well Pvt. Ltd., V/s. State of U.P. and four others, has held as under:-

*We are further not inclined to interfere in the impugned orders on the ground taken by the learned counsel for the petitioner that the order passed by a single member is without jurisdiction as contemplated under Section 21 of the Act and has not been passed in accordance with the provisions of Section 21 of the Act. The arguments of the learned counsel for the petitioner appears us to be misconceived. The proposition of Section 21 is not that the complaint could not be decided by a single member of the Authority, whereas it could be decided by a single member or by two members, whichever is better in the interest of justice as per availability of the members and we further observed that Section 81 of the Real Estate (Regulation and Development) Act, 2016 provides "delegation", which says that "The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act ( except the power to make regulations under section 85), as it may deem necessary" and having regard to the provision of Section 81 of the Real Estate ( Regulation and Development) Act, 2016, the authority vide their 5th meeting dated 5.12.2018 as per Agenda 1 delegated the power to a single member to decide the cases in both the*



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*Benches sitting at Lucknow and Gautam Budh Nagar, the delegation of power of the 5th meeting dated 5.12.2018 of U.P. Real Estate Regulatory Authority is quoted as under:.....*

*Therefore, in view of the provision contained under Section 81 of the Real Estate (Regulation and Development) Act, 2016 and as per decision taken by the U.P. Real Estate Regulatory Authority in Agenda No.1 of meeting dated 05.12.2018 the impugned orders dated 13.6.2018 and 29.06.2018 passed by the U.P. Real Estate Regulatory Authority, Gautam Budh Nagar has been rightly passed by the single member and the arguments raised by learned counsel for the petitioner that the impugned order was passed without jurisdiction has no force and is declined.”*

Therefore there is no merit in the contention of the learned counsel for the complainants that the first Additional bench constituted by K-RERA is without jurisdiction.

The Chairman of the K-RERA was well within his rights to transfer the case from the full bench to the First Additional bench. As is stated under Section 25 of the Real Estate (Regulation and Development) Act, 2016, the Chairman has the power of general superintendence in the conduct of the affairs of the Authority.

**Issue No. 2:-**

After going through the I.A. and the objection statement and after hearing both the sides, the short question which arises in order to dispose the interlocutory application filed by the respondent is to decide as to

“Whether the complainants in this case, constitute “aggrieved persons” within the ambit of the Act and further as to whether

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sufficient fees as prescribed under the provisions of the Act has been paid and consequently as to whether the complaints are maintainable.”

The term “aggrieved person” is not defined under the provisions of the Real Estate (Regulation and Development) Act, 2016. However the word “person” has been defined under Section 2(zg) as to include the following:

- (i) An individual;
- (ii) A Hindu undivided family;
- (iii) A company;
- (iv) A firm under the Indian partnership Act, 1932 or the limited liability partnership Act, 2008 as the case may be;
- (v) A competent authority;
- (vi) An association of persons or a body of individuals whether incorporated or not;
- (vii) A co-operative society registered under any law relating to co-operative societies;
- (viii) Any such other entity as the appropriate government may by notification, specify in this behalf;

For the purposes of deciding the issue on hand, it has to come to a conclusion as to whether “an association of persons or a body of individuals whether incorporated or not” can file a complaint.

The complaints which have been filed now is under Section 31 of the Real Estate (Regulation and Development) Act, 2016. It is to be

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emphasised that the word "person" is differently defined which reads as under.

"For the purpose of this sub-section "person" shall include the association of allottees or a voluntary consumer association registered under any law for the time being in force."

The definition of a person in Section 2(zg) is wider in connotation in the sense that a body of individuals or association of persons though unregistered can be considered as "person". But when it comes to the filing of complaints before the Authority under Section 31 of the said Act seeking directions for the violations of the provisions of the Act, the definition of persons gets restricted to only a "registered association of allottees or a registered voluntary consumer association". The intention of legislature in redefining the term "person" appears to be to make the filing of complaints under Section 31 of the Act, more responsible and further to avoid frivolous litigation.

The present complaints are obviously filed under Section 31 of the said Act seeking several directions from the Authority against the respondents project namely "Mantri Serenity - 1".

Further the procedure for filing of the complaints before the Authority under Section 31 is guided by Rule 29 of the Real Estate (Regulation and Development) Rules, 2017. It says that the complaint has to be in form "N" which shall be accompanied by a fee of Rs. 1000/- which shall be payable to the regulatory Authority.



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Hence under the scheme of the Act for each complaint, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, a filing fee of Rs.1000/- is mandatory excepting for a registered association of allottees or registered voluntary consumer association.

There is no concept in the Act for filing of "joint complaint" by paying a fees of Rs.1000/-. The only exception given in this regard is for a registered association of allottees or registered voluntary consumer association, which is allowed to pay the prescribed fee of Rs.1000/- by filing a complaint in a representative capacity.

But in the present case, a group of allottees have filed a complaint which is not a registered body which can be recognised as a juristic person.

A harmonious reading of Section 2 (zg) and Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 29 of the Real Estate (Regulation and Development) Rules, 2017, clarifies the position as under:-

"Where a single individual has filed a complaint by paying Rupees one thousand only as fees, he cannot be allowed to have others as co-complainants / joint complainants and brought on record, unless each of the co-complainants / joint complainants have also paid individual fees of Rupees one thousand each, or unless they are the members of a registered association."

The Authority is not preventing either an individual or an unregistered body of individuals from filing complaints under the

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provisions of the Act. What is being discussed here is the requirement of fees to be paid for each complaint as per Rule 29 of the Rules.

In this case only 108 allottees have joined together to prefer complaints as against total number of 1529 homebuyers who are not represented. Some of the reliefs sought by the complainants is to freeze the bank accounts and revoke the registration granted to the said project. Hence the requirement of a registered body of allottees as prescribed under explanation to Section 31 of the Act appears to be more reasonable and relevant in this case.

Hence in view of the above discussions, the following order is passed.

**ORDER**

The I.A. dated 14/07/2020 filed by the respondent is hereby allowed.

The complaint bearing No. CMP/200120/0005220, filed by Santosh V Patil and 100+ others is hereby dismissed as not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 29 of the Real Estate (Regulation and Development) Rules, 2017 for non-payment of the requisite fee as prescribed under the provisions of the Act.

  
**(Adoni Syed Saleem)**  
Member-2  
KRERA

  
**(M.R Kamble)**  
Chairman  
KRERA