IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 19151 OF 2021 (LB-BMP)

BETWEEN:

1 . KEERTHI HARMONY
APARTMENT OWNERS ASSOCIATION
KEERTHI HARMONY APARTMENT
2ND MAIN ROAD, RAGHAVENDRA NAGAR
KALKERE, BANGALORE-560 016

REPRESENTED BY ITS SECRETARY
MR SHANKAR THANU, AGED 45 YEARS
S/O V S THANU SUBRAMANIAM
R/A H-001, KEERTHI HARMONY
SY.NO.392,393, 2ND MAIN ROAD
RAGHAVENDRA NAGAR, KALKERE
HORAMAVU, BANGALORE-560 016

...PETITIONER

(BY SMT.BEENAP.K., ADVOCATE)

AND:

1 . M/S KEERTHI ESTATES PVT. LTD.
BRANCH OFFICE AT NO.141
SRI SHANTHI TOWER, GROUND FLOOR
3RD MAIN ROAD,
NEAR KASTHURI NAGAR BUS STOP
OUTER RING ROAD, BANGALORE-560 043
INCORPORATED UNDER COMPANIES ACT 1956

ALSO HAVING REGISTERED OFFICE AT
NO.8-2-120/86/1, 4TH FLOOR
KEERTHI PRIDE TOWERS
ROAD NO.2, BANJARA HILLA

HYDERABAD-560 034
REPRESENTED BY ITS MANAGING DIRECTOR

2 . BRUHAT BENGALURU MAHANAGARA PALIKE
LG-34, SAMPIGE ROAD, JAI BHEEMA NAGAR
MALLESHWARAM, BENGALURU
KARNATAKA-560 003
REPRESENTED BY ITS ADMINISTRATOR

3 . THE BBMP COMMISSIONER
LG-34, SAMPIGE ROAD, JAI BHEEMA NAGAR
MALLESHWARAM, BENGALURU
KARNATAKA-560 003

4 . THE ASSISTANT DIRECTOR OF TOWN PLANNING
BBMP MAHADEVAPURA ZONE
NEAR MARUTHI BEML SHOW ROOM
BEHIND CORPORATION BANK
MAHADEVAPURA BRANCH
WHITEFIELD MAIN ROAD, BANGALORE-560043.

5 . MR RAGHU K,
S/O LATE MR R KRISHNA REDDY
AGED ABOUT MAJOR

6 . MR K RAJENDRA REDDY
S/O LATE MR R KRISHNA REDDY
AGED ABOUT MAJOR

7 . MR K CHANDRASHEKAR
S/O LATE MR R KRISHNA REDDY
AGED ABOUT MAJOR

8 . SMT GOWRAMMA
W/O LATE MR R KRISHNA REDDY
AGED ABOUT MAJOR

R-5 TO 8 ARE THE LR’s OF DECEASED
MR.R.KRISHNA REDDY
R/A NO.198, KUVEMPU ROAD

B CHANNASANDRA , BANASWADI POST
BANGALORE-560043.

9 . MRS R HEMAVATHI
AGED ABOUT 43 YERAS
W/O LATE R SHVIANANDA REDDY

10 . MR S ARJUN
AGED ABOUT 24 YERAS
S/O LATE R SHIVANANDA REDDY

11 . MR S REHKA RANI
AGED ABOUT 23 YERAS
D/O LATE R SHIVANANDA REDDY

R-9 TO R-11 ARE LR'S OF DECEASED
MR R SHIVANANDA REDDY
R/A NO.190, KUVEMPU ROAD
B CHANNASANDRA, BANASWADI POST
BANGALORE-560043.

12 . MR HANUMANTHA REDDY
AGED ABOUT 61 YERAS
S/O LATE NALLAPPA REDDY
RESIDING AT NO.255/2
L B NAGAR, B CHANNASANDRA EXTENSION
BANASWADI POST, BANGALORE-560043

13. THE COMMISSIONER,
BENGALURU DEVELOPMENT AUTHORITY,
KUMARA PARK WEST, T.CHOWDAIAH ROAD,
BENGALURU-560 020.

…RESPONDENTS

(BYSRI.SAMMITH.S., ADVOCATE FOR R-1;
SRI. K.S.MALLIKARJUNA REDDY., ADVOCATE FOR R-2 TO R-4;
SRI. M.RAMACHANDRA REDDY., ADVOCATE FOR R-5 TO R-7, R-9 TO 12;
SRI.K.KRISHNE., ADVOCATE FOR R-13,
R-8 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENT Nos.2, 3 AND 4 TO CONSIDER THE COMPLAINT OF THE PETITIONER DATED 25.09.2019 VIDE ANNEXURES "T" AND "U" AND TO PASS AN APPROPRIATE ORDER AS PER LAW, ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE N S SANJAY GOWDA

CAV ORDER

1. The petitioner is a registered Association of the owners of an apartment building, namely *Keerthi Harmony Apartment Owners Association* (for short, ***'the Owners'***).They are before this Court challenging the licence granted by the Bruhat Bengaluru Mahanagara Palike ('***the BBMP***') in favour of respondent No.12 and others, who had applied and secured an approval of the Building Plan for an apartment building that they proposed to construct.

I. BRIEF FACTS:

2. The facts leading to filing of this writ petition are as follows:

(a) On 28.01.2005, respondent No.1 i.e., *M/s. Keerthi Estates Private Limited* (hereinafter referred to as '***the Builder***' for brevity) entered into a Joint Development Agreement with respondent Nos.5 to 12 (hereinafter referred to as '***the land owners***' for brevity) under which it was agreed that the Builder would construct an apartment complex over an area measuring ***05 acres 16 guntas i.e., 2,35,224 square feet***, which belonged to the land owners and that they would share the built-up area in a proportion agreed to under the Joint Development Agreement.

(b) The Builder accordingly applied for sanction of building plan, which was approved by the Planning Authority, namely *the Bangalore Development Authority* ("***BDA***") on 29.03.2007; one of the conditions of the approval was that the Builder should execute a relinquishment deed in respect of the area reserved for two roads.

(c) In 23.07.2007, the Builder had in fact executed a registered Relinquishment Deed in respect of the area ear-marked in the approved building plan as proposed 15.00 meter road widening area to the east of the property.

(d) By virtue of the proposed 15.00 meter wide road shown in the building plan to the east of the property, the entire property was bisected into two bits. In the major portion of the land, the apartment building comprising of Basement, Ground, First, Second, Third and Terrace floors pending approval were to be built.

(e) In respect of the bit of land which came about as a result of the road, the plan indicated that, in that particular plot, measuring 1104.40 sq.mtr., a *Rain Water Harvesting Unit and Sewage Treatment Plant* (for short, '***RWHU & STP***') were supposed to be set up.

(f) In the approved Building Plan, this area was shown as "*Remaining Area of Property 1104.40 sq.mtr.*" and in the Site Area Analysis, it was shown as "*the remaining area of owners reserved for……..".*

(g) It is therefore clear that by executing a relinquishment deed, the Builder was aware of the fact that the property had been split into two bits and in one bit, the apartment complex was to be put up and in the remaining bit, RWHU & STP was to be set up.

(h) Pursuant to this approval, the Builder started selling the apartment/flats to the prospective purchasers.

(i) One such Agreement of Sale dated 20.08.2008 is produced in the writ petition along with the memo dated 06.08.2024. In this agreement of sale pertaining to apartment Flat No.101, it is stated that 0.222% of Un-Divided Share, right, title and interest in Schedule "A" property equivalent to 522.42 sq.ft.

of land, along with the right to construct and own the apartment which was described as "C" Schedule property had been agreed to be conveyed. The Schedule 'A' property, was the entire property measuring 05 acres 16 guntas or 2,35,224 sq.ft.

(j) The Builder thereafter constructed the apartments and has sold the flats so constructed to the members of the petitioner's Association. One such sale deed dated 26.05.2010 is produced along with the writ petition *(Annexure 'H').*

(k) It is not in dispute that the sale deeds containing identical terms and description of the property have been executed in favour of the purchasers. The sale deed contains the following recitals, and the Schedules of the property has been described as follows:

> "5. The VENDORS have delivered actual, physical, peaceful, vacant possession of the SCHEDULE "B" PROPERTY to the

PURCHASERS through the DEVELOPER for the construction of flat described in SCHEDULE "C" PROPERTY.

6. The PURCHASERS shall at all times hereafter peaceably and quietly possess and enjoy the SCHEDULE "B" PROPERTY together with SCHEDULE "C" PROPERTY without any interruption, claim or demand whatsoever from or by the VENDORS or any one claiming through or under or in trust for the VENDORS or by any other person whomsoever.

7. The VENDORS hereby indemnify and shall keep the PURCHASERS indemnified against any claim or loss whatsoever arising due to defect in the title of the VENDORS in respect of the SCHEDULE "B" PROPERTY and shall also be responsible for all dues and outgoings in respect of SCHEDULE "B" PROPERTY.

8. The VENDORS shall at all times hereafter at the request and cost of the PURCHASERS execute and register and cause to be done, executed or registered, all acts, deeds and things necessary for further and perfectly

assuring the title of the PURCHASERS to the SCHEDULE 'B' PROPERTY.

9. The original title deeds of the SCHEDULE "A" PROPERTY are with the VENDORS / DEVELOPER and the same will be delivered to the President / Secretary of the Association of Apartment Owners as and when the same is formed. The PURCHASERS shall on prior notice have reasonable access to the same for reference / verification. However copies of the same have been furnished to the PURCHASERS.

10. The VENDORS has paid up-to-date taxes and other statutory outgoings in respect of the SCHEDULE "B" PROPERTY.

11. All costs and expenses incurred towards registration of the deed of sale in respect of the SCHEDULE "B" PROPERTY have been borne by the PURCHASERS.

12. RIGHTS AND OBLIGATION OF THE PURCHASERS:

a. The PURCHASERS having purchased the SCHEDULE "B" PROPERTY is terms of this sale deed with all conditions, stipulations and restrictions as applicable shall be bound by the said conditions,

stipulations and restrictions and accordingly shall be entitled to ownership, possess and enjoyment rights in respect of the undivided share conveyed herein and the SCHEDULE "C" PROPERTY subject to seminal and mutual rights of owners of remaining shares of undivided interest in SCHEDULE "A" PROPERTY and shall not do or cause to be done any acts, deeds or things which are likely to interface with or the derogatory to common rights of ownership, possess and enjoyment of owners of the remaining shares of the undivided interest in SCHEDULE "A" PROPERTY:

b. The PURCHASERS are bound to utilize the SCHEDULE "B" PROPERTY conveyed herein for the construction of the SCHEDULE "C" PROPERTY in terms of the modified plan sanctioned bearing LP. No BDA/PS/EM/EO2/North/35/2006-2007 dated 29.03.2007 and the PURCHASERS shall be liable to pay the taxes and levies to the competent authority on the said flat so constructed, by or on behalf of PURCHASERS.

c. The PURCHASERS shall be responsible and liable to indemnify the owners of the others shares of undivided interest in SCHEDULE "A" PROPERTY against loss, claims, expenses and damages which might be caused owning to either non compliance or contravention on the part of the PURCHASERS of

all or any of the conditions, restrictions and stipulations applicable to common ownership referred supra.

d. The PURCHASERS shall be bound to become the member of Association of Apartment Owners of SCHEDULE 'A' PROPERTY and duly comply with the provisions of Karnataka Apartments Ownership Act 1972 and shall abide by the bye-laws and majority decisions of the said Association to be formed in future.

e. The PURCHASERS has got the SCHEDULE "C" PROPERTY duly constructed by the DEVELOPER in terms of a separate agreement and the DEVELOPER has signed this Deed of Sale as consenting witness to confirm that they have delivered vacant possession of SCHEDULE "C" PROPERY to the PURCHASERS on receiving the full consideration as per the construction agreement."

SCHEDULE "A" PROPERTY

All the piece and parcel of property of converted Sy.Nos.392 and 393 situated at Kalkere Village. K.R.Puram Hobli, Bangalore East Taluk, Bangalore measuring 2.35.224 Sq. ft and bounded on:

East by : Annayappa's Property,
West by: Horamavu Border,
North by: Byrappa's Property,
South by: Koudenahalli Border,

SCHEDULE "B" PROPERTY

0.318% Percent of undivided share, right, title and interest in the SCHEDULE "A" PROPERTY equivalent to 750.24 Sq. Ft of land together with their all rights, privileges attached thereto.

SCHEDULE "C" PROPERTY

Flat No: 005 on the Ground Floor in G-Block of the building known as "KEERTHI HARMONY" constructed on the Schedule A Property in terms of the modified sanctioned plan bearing L. P. No: BDA/PS/EM/EO2/North/35/2006-2007 dated 29.03.2007 issued by Bangalore Development Authority consisting of hall cum dining, bed room/s, toilet/s, kitchen and balcony along with prorate, common area and facilities with a super built up area of 1545 Sq. Ft with Vitrified flooring and aluminium frame steel windows along with one car parking space in the basement for the exclusive use of the Purchasers. The Purchasers shall have the exclusive liberty and license for use of the adjacent open area measuring 74 Sq. Ft open terrace area. The Purchasers shall not put up any permanent structure or construction in the said open areas.

The subject matter conveyed is limited to share of undivided interest aforesaid and flat is not the subject matter of conveyance by the Vendors. However, this is the first instrument of conveyance in respect of the flat by Vendors and as per 1997 amendment of the Stamp Act under Article 20 (2) the

stump duty is paid on the market value computed as under.

The Present Market Value of the schedule Property for limited purpose of stamp duty:

M.V. of Flat: 1545 Sq.Ft. @ Rs. 880/-	Rs.13,59,600.00
Car Parking:	Rs.1,00,000.00
Terrace Area: 74 Sq.Ft. @ Rs. 150/-	Rs.11,100.00
	Rs.14,70,700.00

The Present Market Value of the schedule property is Rs.14,70,700.00*(Rupees Fourteen Lakhs Seventy Thousands and Seven Hundred Only)*

IN WITNESS WHEREOF the parties herein have set their respective signatures hereunto on the day, month and year first above mentioned."

(l) Thus, as per this sale deed, the owners of the property conveyed 0.318% un-Divided share in the entire extent of 2,35,224 sq.ft. owned by the owners (which is described as 'A' schedule property) and an apartment constructed on this land, measuring 1545 sq.ft. was to be conveyed.

(m) By virtue of executing sale deeds of this nature to all the purchasers of the flats in the apartment complex, it cannot be in dispute that the land owners conveyed the entire extent of property, albeit, in terms of the undivided interest in favour of the purchasers.

(n) Obviously, in respect of the share of the apartment complex retained by them or sold by them as their share, they owned that particular percentage of undivided interest. The fact however remains that on conveying all the flats of the apartment complex, the land owners did not possess any land exclusively with them.

(o) It is also not in dispute that on 27.08.2010, *the Karnataka State Pollution Control Board* granted its consent to the Builder for discharge of sewage in the property and the BDA on being satisfied that the building that had been put up in accordance with the

sanctioned plan, also issued an Occupancy Certificate on 11.10.2010.

(p) It may however be pertinent to state here that the BBMP did notice that there was a deviation in the construction compared to the sanctioned plan, but the same was within the permissible limits and the BBMP had in fact levied compounding fine and also forfeited the security deposit while granting the Occupancy Certificate.

(q) It is the case of the Builder that the Builder had set up the RWHU & STP within the apartment complex and not as indicated in the approved plan.

(r) In the objections filed by the Builder, it is stated in paragraph 10 as follows:

> "***10. Re Paragraph 6:*** The averments in this paragraph are vehemently denied as false and baseless. The STP and the RWH could not be practically installed across the CDP road which divided the properties into two pieces, and therefore, the STP and

RWH had to be installed in the apartment complex, which is duly noted by the BBMP at the time of issuance of the occupancy certificate. The deviation from the sanctioned plan is within the compoundable limits and the same has been regularised by paying the compounding/deviation fine of INR 77,73,412/-. In fact, this factum was never hid from the members of the alleged Petitioner association, and the Petitioner association has demanded and received a sum of INR 9,00,000/- for upgradation of the STP in the year 2014. Having enriched themselves from the same, the Petitioner association by suppressing this fact is attempting to grab the valuable land belonging to the Respondent Nos. 5 to 12 over which this Respondent has development rights. The copy of the communication from this Respondent dated 02/07/2014 handing over the cheque for INR 9,00,000/- along with the acceptance from the Petitioner association is herewith produced and enclosed as ANNEXURE-R3."

(s) It is therefore the case of the Builder that the RWHU & STP were installed within the apartment complex

as it was not feasible to install them in the other bit of the property which came about by virtue of the formation of the road.

(t) It is also the case of the Builder that it had also paid a sum of Rs.9,00,000/- to the petitioner—Association for upgradation of the STP, which was in the relocated portion and therefore, the Association had acquiesced to the establishment of the RWHU & STP.

(u) In the year 2018, it appears that differences cropped up between the *Apartment Owners Association* i.e., the petitioner and the land owners, as a result of which, the Association instituted a suit in on 02.07.2018 seeking for an injunction to restrain the owners of the property from alienating that portion of the property which had been earmarked for establishment of the RWHU & STP and also for a mandatory injunction to remove the encroachment and fencing that had been put up over this portion of the property.

(v) The Trial Court has also granted the petitioner's Association an interim order restraining the land owners from creating any charge, encumbrance or alienating any portion of the property and it is stated that the suit in O.S. No.811 of 2018 is still pending consideration.

(w) On 03.04.2018, the land owners of the property made an application to the BBMP for permission to construct an apartment complex, comprising of a basement, stilt, ground plus three floors, in the area measuring 990.54 sq.mtr. In fact, this was the very area in which according to the original approved plan, the RWHU & STP were to be established.

(x) The BBMP, by considering this bit of property to be an independent bit of property which had been retained by the owners, has proceeded to grant its approval of building plan, for constructing an apartment complex.

(y) As stated above, being aggrieved by this grant of approval of plan for constructing an apartment complex, the present writ petition has been filed.

II. THE CONTENTIONS OF THE PARTIES:

3. **Contentions put forth by Petitioner**:

(a) It is the case of the petitioner's Association that all the apartment flat owners had purchased an undivided interest in the entire property owned by the land owners to an extent of 2,35,224 sq.ft. and by virtue of these alienations made by the land owners, the land owners had not retained any portion of 05 acres 16 guntas exclusively.

(b) It is therefore contended that the land owners could not have approached the BBMP by putting forth the representation that an extent of about 990.00 sq.mtr. had been retained by them and hence, they were entitled to put up an apartment building on that particular piece of property.

(c) It is contended that even if the RWHU & STP had been established within the main property in which the apartment complex had been constructed, that would not result in the title remaining with the land owners.

(d) It is contended that even if the land owners had secured a particular number of apartments as their share, they were only having proportionate undivided interest and by no stretch of imagination could they claim that they retained the property over which no development had been made.

(e) It is contended that once the sale deeds were executed in respect of the entire area for the purpose of construction of an apartment complex, the question of land owners retaining any portion of the land as their exclusive property would not arise. It is therefore contended that the grant of approval by the BBMP in respect of this particular area was illegal.

(f) It is also sought to be contended that merely because in the originally approved plan, it had been indicated that the portion of the property which was abutting the road that was formed on the eastern side, was shown to be *"Remaining area of owner reserved for ……"* and the remaining area of the property, that would not lead to the interference that the land owners retained this property.

(g) It is submitted that even if this argument is conceded, by virtue of the sale deeds executed by the land owners conveying the undivided interest over the entire property, in law, the remaining area reserved for the land owners in the plan would enure to the benefit of the petitioner's Association and its members, since they were the owners of that particular property, by virtue of the registered sale deeds, though, under the registered sale deeds they only owned an undivided interest.

(h) It is also sought to be contended that the owners of the apartment had executed a Deed of Declaration as required under the Karnataka Apartments Ownership Act, 1972 (for short, '***the Act***') on 30.09.2019 and they had made the provisions of the said Act applicable to all of them.

(i) It is contended that by virtue of the said Act being applicable to the owners of the apartment complex, the common areas and facilities in the entire apartment complex could never be divided and would always continue to be the property collectively owned by the apartment owners.

(j) It is stated that the description of land, in the deed of declaration is stated to be 2,35,224 sq.ft. or 05 acres 16 guntas and therefore, the entire area of land would be the land which collectively belongs to the owners of the apartment complex and neither the owners of the apartment complex nor the erstwhile

land owners could claim to have retained any exclusive title over any portion of the property.

(k) It is therefore contended that the attempt of the land owners to represent to the BBMP that they had retained about 990.54 sq.mtr. of land, and hence, they are entitled to put up a construction is wholly illegal.

4. **Contentions put forth by the Builder & land-owners**:

(i) The Builder and the land owners contested this claim of the petitioner's Association by contending that even as per the approved plan, 1104.40 sq.mtr. had been reserved for future development by the owners and it was therefore clear that this extent of the land was the property belonging to the land owners and had not been conveyed to the apartment owners.

(ii) It is contended that, what was conveyed to the owners of the apartment complex was only the built-

up area and they could not therefore claim any extent of land over and above the said built up area of the plot.

(iii) The Builder has in fact contends that if the built-up area of all the apartments is calculated, it is clear that the land owners had only conveyed 2,04,927.4 sq.ft. as against the total sital area of 2,35,224 sq.ft. and even if the area relinquished to the road measuring 20,309.83 sq.ft. is taken into consideration, there still remain an extent of over 10,662.17 sq.ft. *(990.54 sq.mtr.)* and therefore, the land owners had the absolute right to utilize their property for the purpose of construction of an apartment complex.

(iv) It is sought to be highlighted that the petitioner's Association had admitted that the RWHU & STP had to be relocated within the apartment complex and they had also received a sum of Rs.9,000,000/- from the Builder and therefore, they could not contend

that the RWHU & STP should be set up only in the place earmarked in the originally approved building plan.

(v) It is contended that the BBMP had accepted the deviations from the originally approved plan and had levied a compounding fine and as a consequence, the area which had been earlier earmarked for establishing a RWHU & STP became free for the independent use of the land owners.

(vi) It is contended that so long as the owners of the apartment were conveyed with the area over which their apartment complex was constructed and all the facilities that had been promised to them had been provided, they could not lay a claim over any property which remained with the land owners.

(vii) It is contended that the owners cannot be deprived of a valuable property which came about because of the

relinquishment by the land owners of their land for the formation of the road.

(viii) It is submitted that by virtue of the area being relinquished for the formation of the road, the land owners of would have the ethical right and also the legal right to utilize the property which became available after the formation of the road.

(ix) It is lastly contended that the owners of the Apartment can have absolutely no use for this portion of the land which was separated from the apartment complex by a 15 meter road and the attempt by the petitioner's Association was only to blackmail and to extract money from the Builder and the land owners.

(x) It is also contended that this *mala fide* intent of flat owners was clear from the fact that they had not only instituted a suit in the Civil Court, but they had also raised a complaint before the consumer forum.

III. POINTS FOR CONSIDERATION:-

5. In light of the above submissions, the principal questions that would arise for my consideration in this writ petition are :

(i) Whether the land owners of the property on which an apartment complex has been constructed can be said to retain any title after they had executed sale deeds in respect of the apartments constructed on the land over which they had conveyed an undivided interest over the entire extent of land over which the apartment complex has been constructed?

(ii) Whether a statement in the sanctioned plan as "remaining area of the proposed property and remaining area of the owner reserved for...." would lead to an inference that the land owners had retained the property in themselves and could utilize the same exclusively and

independent of the apartment complex?

6. The answer to the above questions would have to be in the ***negative*** and against the land owners of the property, for the following reasons:

IV. REASONS:

7. Before dwelling on the specific issues raised in this writ petition, it would be beneficial to analyse the law relating to the apartment ownership in the State.

8. On 29.06.1973, the President granted his assent to ***the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (Karnataka Act No.16 of 1973),*** (hereinafter referred to as '***the 1972 Act***', for brevity) which was the Act to regulate the promotion of the construction, sale, management and transfer of flats on ownership basis. The provisions of the Act created the general

liabilities of the promoter and the obligations that he was supposed to discharge as a promoter.

9. Section 4 of the said Act mandates that before the promoter accepts an advance payment or deposit, he is required to enter into an agreement and the agreement of sale is required to be discharged.

10. Section 5 creates an obligation on the promoter to maintain a separate account in respect of sums taken as advance or deposit, and mandates that he would be the trustee for the said amount and for their disbursal for the purposes of constructing an apartment complex.

11. Section 6 of the Act creates the responsibility on him for payment of outgoings till the apartments are transferred.

12. Section 7[1] of the said Act stipulates that after plan and specifications have been disclosed to the prospective purchaser, no alterations or additions can be made without the consent of the persons.

13. Section 8 of the Act creates an obligation on the promoter to refund the amount paid with interest if

[1]**7. After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified.-**

(1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make,-

(i) any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person; or

(ii) any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.

(2) Subject to the provisions of sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid.

(3) If any defect in the building or material used, or if any unauthorised change in the construction is brought to the notice of the promoter within a period of one year from the date of handing over possession, it shall wherever possible, be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change.

(4) Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction or as to whether it is reasonably possible for the promoter to rectify any such defect or change or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not, rectified by the promoter the matter shall, on payment of such fee as may be prescribed, be referred for decision to such officer not lower in rank than a Superintending Engineer as the State Government may by general or special order specify in this behalf, within a period of two years from the date of handing over possession. Such officer shall after such enquiry as he deems necessary, record his decision, which shall be final.

he fails to give possession within specified time or further time allowed.

14. Section 9 of the Act bars creation of mortgage etc. without the consent of the parties who have entered into an agreement for sale.

15. Section 10 of the Act casts an obligation on the promoter to take steps for the formation of a co-operative society or a company.

16. In fact, Section 10 of the Act requires that the promoter should submit an application to the Registrar for registration of the organisation of persons who take the flats, as a co-operative society or as a company; and the promoter is in fact required to join, in respect of the flats which had not been taken, in the application for membership of a co-operative society or of a company.

17. It is therefore clear that the provisions of the Act essentially detail the manner in which an apartment

is to be constructed, sold, managed and ultimately transferred.

18. For the purpose of this case, Section 7 of the 1972 Act would be relevant since the said provision bars any alterations in the structures without the consent of the persons who have agreed to purchase the apartment flats.

19. Thus, in law, on the plan being approved by the BDA on 29.03.2007 which stipulated that the RWHU & STP would have to be established in the bit of property abutting the road, the Builder could not have changed this location.

20. It must be stated here that even if the Planning Authority agreed for this change of location, the requirement of securing the consent of the persons who had agreed to purchase the flat would still be needed.

21. To put it differently, merely because the Planning Authority granted or acquiesced in the shifting of the location, that by itself would not entitle the Promoter to contend that the relocation of RWHU & STP was legal, because this approval was not obtained with the previous consent of the persons who had agreed to purchase the flats in the apartment complex.

22. The other act which is required to be noticed is that the *Karnataka Apartment Ownership Act, 1972* which received the assent of the President on 14.07.1973 i.e., about two weeks after the earlier Act received assent. This Act was enacted to provide for the ownership of an individual apartment in a building and to ensure that such an apartment would be heritable and transferable property. The statement of objects and reasons indicate that such a law was necessary since it was found that there was difficulty in securing a marketable title in respect of the apartments and for raising loans to acquire them.

23. Section 2 of the said Act makes the provisions of the Act applicable to those properties in respect of which the sole owner or all of the owners agreed to submit the same to the provisions of the Act by duly executing and registering a Declaration as provided under the Act. Thus, essentially the provisions of the Act are made applicable voluntarily by the owners of the apartment complex by executing a Deed of Declaration and also registering it.

24. The expression ***apartment*** is defined under Section 3(a)[2] of the Act and it states that it would be a part of the property intended for any type of independent use, containing one or more rooms or enclosed spaces located on one or more floors in a building, which is intended to be used for residential purposes. Thus, an *apartment* therefore, can be construed as a

[2] 3. **Definitions**.- In this Act, unless the context otherwise requires,- (a) "***apartment***" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road or highway or to a common area leading to such street, road, or highway;

portion of the building which can be independently used.

25. A ***building***[3] is defined under Section 3(e)of the Act as a building containing four or more apartments, or two or more buildings, each containing two or more apartments, with a total of four or more apartments.

26. Section 3(f) of the Act defines "***Common areas and facilities***". For the purpose of this writ petition, sub-clause (f)(1) of this Section would be of relevance and it reads as under:

> "(f) "***common areas and facilities***" unless otherwise provided in the Declaration or lawful amendments thereto, means,-
>
> (1) *the land on which the building is located;*
>
> (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes, entrances and exits of the building;

[3] (e) "**building**" means a building containing four or more apartments, or two or more buildings, each containing two or more apartments, with a total of four or more apartments for all such buildings, and comprising a part of the property;

> (3) the basements, cellars, yards, gardens, parking areas and storage spaces;
>
> (4) the premises for the lodging of janitors or persons employed for the management of the property;
>
> (5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating;
>
> (6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
>
> (7) such community and commercial facilities as may be provided for in the Declaration; and
>
> (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;"

27. As could be seen from Section 3(f)(1) of the Act, if a deed of declaration has been executed by the apartment owners and the provisions of the Act No.17 of 1973 are made applicable, a common area would mean the land on which the building is located. Thus, in law, the entire land on which the building is located becomes *a common area*.

28. The petitioner has produced the deed of declaration which has been entered into in respect of the entire land, in which they have declared that the entire extent measuring 2,35,224 sq.ft. is the area on which the apartment complex is constructed.

29. More importantly, the very sale deeds executed by the land owners themselves state that the apartment complex is put up on Schedule 'A' property which in fact is the entire area which was owned by the land owners measuring 2,35,224 sq.ft. or 05 acres 16 guntas.

30. Schedule 'B' to the sale deed also stipulates that an undivided interest, specified in the sale deeds, of the entire area was being conveyed to the owners of the apartment complex.

31. These two factors by themselves, read in the context of the definition of ***common areas*** under Section 3(f)(1) of the Act, leave no room for doubt that the

entire land, on which the apartment building was to be put up as per the approval granted by the Planning Authority, would have to be considered as the common area.

32. As a consequence, neither the erstwhile land owner nor the persons who purchased the apartment flats can ever contend that they have exclusive right over that portion of the land over which the building is located.

33. Section 4 of the Act declares the status of the apartments and makes it clear that each apartment complex together with its undivided interest in the common areas and facilities appurtenant to such an apartment complex shall constitute to be the heritable and transferable immoveable property within the meaning of any law for the time being in force and also declares that an apartment owner can transfer his apartment and percentage of his undivided interest in the common areas and facilities.

34. Thus, by virtue of Section 4, every apartment owner becomes the owner of the land on which the building has been constructed and he is also entitled to transfer the same.

35. However, since the sale deeds executed in favour of the owners of the flats categorically stipulate that the purchaser of the apartment were being conveyed a specified percentage of the entire area, it goes without saying that entire extent measuring 2,35,224 sq.ft. is the area on which the apartment building has been put up.

36. Section 6 of the Act deals with *common areas and facilities* and states that each apartment owner would be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.

37. As already stated above, since the apartment owners had purchased the undivided interest in the entire

property as per the terms of the sale deed, every apartment owner would be entitled to an undivided interest over the entire land measuring 2,35,224 sq.ft.

38. An argument is however sought to be advanced by the land owners and the Builder that this statement in the sale deed was being misconstrued, essentially because the land owners did not retain 2,35,224 sq.ft. and they had in fact relinquished certain portions for the purpose of formation of the road.

39. It is stated that the extent of about 20,309.83 sq.ft. out of 2,35,224 sq.ft. had been relinquished in favour of the Planning Authority for the formation road and therefore, the question of the land owners conveying a percentage of 2,35,204.12 sq.ft. was fundamentally incorrect and therefore nothing much can be read into the conveyance of an undivided interest.

40. It is to be stated here that the relinquishment of the road was one of the terms of the approval and merely because that portion is relinquished as adherence to the conditions for construction of an apartment complex, this argument that the averment in the sale deeds would have to be ignored, can never be accepted. In essence, this would amount to the predecessor in title of the apartment owners i.e., the land owners had relinquished the area and this was an obligation which would bind all the apartment owners.

41. The other argument of the Developer that the khatas had been made out in favour of the owners of the apartment only to the extent of 2,04,927.4 sq.ft. and the sale deeds also indicated the conveyance of the built up area of this extent, the apartment owners could not claim the remaining extent of the sital area.

42. This argument also cannot be accepted in light of the clear stipulation that an undivided interest in respect of the entire land had been conveyed to all the apartment owners; merely because a lesser extent was stipulated as a built up area, that would never lead to the inference that the owners had retained the remaining portion.

43. It has to be borne in mind that the law requires a certain percentage of the area to be left apart for various purposes and obviously, the entire sital area will not be and cannot be used for the formation of the apartment building.

44. It is for this reason the provisions of the Karnataka Apartment Owners Act make it abundantly clear that the entire land on which the building was constructed would form a common area and every apartment owner would have an undivided interest.

45. Another argument that was advanced is the approved plan indicated that an extent of 1104.40 sq.mtr. has been reserved for future development by the land owners and, in the site area analysis of the approved plan, an extent of 1104.40 sq.mtr. is found that *"Remaining Area of Owner reserved for……",* cannot also be accepted.

46. Even if it is assumed that the plan did indicate that an extent of 1104.40 sq.mtr. had been retained for future development by the land owners, by virtue of the fact that after the plan was approved, the property was conveyed by the erstwhile land owners in favour of the apartment owners, the ownership of the entire property stood transferred collectively to the apartment owners.

47. It therefore follows that any future development that is mentioned in the plan can only be relatable to the development by the owners who would be the apartment/flat owners collectively as it was the

owners of the apartments would be the collective owners of the entire property.

48. In light of the above, it is clear that the BBMP could not have entertained the plea of the erstwhile land owners who put forth the representation that they had retained an extent of 1104.40 sq.mtr. and were entitled to put up a new apartment building on that extent.

49. As already noticed above, the entire plot measuring 05 acres 16 guntas or 2,35,224 sq.ft. stood in the ownership of the entire apartment owners collectively, and the erstwhile land owners possessed no title to seek for approval of plan from the BBMP.

50. Consequently, the grant of approval by the BBMP to build a new apartment complex would be wholly illegal and as such, Annexures 'A' and 'B' are accordingly ***quashed***.

51. The writ petition is accordingly ***allowed***.

52. In view of the disposal of the petition, all pending interlocutory applications, if any, stand disposed of.

Sd/-
(N S SANJAY GOWDA)
JUDGE

RK
List No.: 1 Sl No.: 137