

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

DATED THIS THE 30TH DAY OF JUNE, 2026

PRESENT

**HON'BLE Ms. JUSTICE J.M. KHAZI,
CHAIRPERSON**

AND

**HON'BLE SRI SANTHOSH KUMAR SHETTY N.
JUDICIAL MEMBER**

APPEAL NO. (K-REAT) 33/2025

BETWEEN:

Ms. Manisha Gupta,
D/o. Nanak Gupta,
Residing at SLS Symphony,
No.223, 2nd Cross,
Bhuvanewari Nagar,
Bengaluru – 560 024.

...APPELLANT

(By Sri. Akash Bantiya, Advocate)

: AND :

1. Ozone Urbana Infra Developers
Private Limited,
A private limited company
having its registered office at
No.38, Ulsoor Road,
Bengaluru – 560 042.

Represented by its Managing Director
Mr. Vasudevan Satyamoorthy.

2. Mr. Vasudevan Sathyamoorthy,
S/o. Mr. Sathyamoorthy,
Residing at No.32, Norris Road,
Richmond Town,
Bengaluru – 560 025.
3. Mr. Sathyamoorthy Sai Prasad,
S/o. Mr. Sathyamoorthy,
Residing at No.103,
Nishanth Prime Apartments,
Prime Street, Richmond Town,
Museum Road,
Bengaluru – 560 025.
4. Real Estate Regulatory Authority,
Represented by Secretary,
No.1/14, 2nd Floor,
Silver Jubilee Block,
Unity Building,
CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.

...RESPONDENTS

(R.1 to R.3 – Sri. Deepak Bhaskar and
Miss. Varshitha K. Advocates
Sri. Gowthamdev C.Ullal, Advocate, for R.4 - RERA)

This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 15.02.2025, passed by the 4th Respondent-RERA in Complaint No.00627/2024.

This appeal having been heard and reserved for Judgment, coming up for pronouncement of Judgment, this day, the **Hon'ble Judicial Member** delivered the following:

JUDGMENT

The captioned appeal arises out of the Order dated 15.02.2025 passed by the Karnataka Real Estate Regulatory Authority (hereinafter referred to as 'the Authority' for short) in Complaint No.00627/2024, whereby the Authority dismissed the Complaint filed by the Appellant/Allottee (for short 'the Allottee') against the Respondents No.1 to 3.

2. The background leading to the filing of the present Appeal is that, the allottee booked an apartment in the project developed by Respondent No.1 - Ozone Urbana Infra Developers Private Limited (for short "the promoter") under the Subvention Scheme on 18.01.2017 and paid a sum of Rs.67,77,881/- to the promoter towards the sale consideration. At the time of agreement, the promoter had agreed to pay the Pre-Equated Monthly Instalment (for short "PEMI") till the date of possession. As per the sale agreement supra, the promoter was committed to handover the possession of the apartment by the end of August-2018

with a grace period of 6 months, which was extended to 2019.

3. As per the Subvention Scheme, the promoter would bear the PEMI until the handover of possession. Despite delay of over 4 years, the apartment was not finished and the promoter breached the terms of the subvention and stopped paying PEMI. After several follow ups the promoter on the instructions of Respondents No.2 and 3 (for short “the Directors”), started issuing credit notes stating that they would be adjusted in the final amount payable to the promoter at the time of handover of apartment. Even after lapse of agreed date, the apartment was not handed over to the allottee. Hence, allottee filed a complaint before the Authority. After hearing arguments on both sides, the Authority passed the Order on 30.09.2022. The operative portion of the said order reads as under:

“In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/UR/200909/0006519 is hereby allowed. Respondent is (promoter) directed to pay a sum of

Rs.95,65,400/- towards refund with interest to the complainant (allottee) within 60 days from the date of this order, calculated at 9% from 09.01.2017 to 30.04.2017 and MCLR + 2% from 01.05.2017 till 02.07.2022 to the complainant within 60 days from the date of this order. The interest due from 03.07.2022 upto the date of final payment will be calculated likewise and paid to the complainant. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.”

4. In the present Appeal, the allottee has contended that, despite several follow-ups, the promoter failed to comply with the order of the Authority. It is further contended that, notwithstanding the issuance of a Revenue Recovery Certificate (for short “the RRC”) dated 22.12.2022 by the Authority, the promoter has neither complied with the said order nor have the jurisdictional Deputy Commissioner and Tahsildar taken any effective steps to enforce the recovery proceedings. It is further contended by the allottee that several other projects undertaken by the promoter have been declared as lapsed by the Authority. It is also alleged that the promoter and its directors have submitted false and fabricated Chartered Accountant reports before the Authority. The promoter had mortgaged

several of its properties to M/s. Piramal Finance Limited for the purpose of development and construction of the project, which has not been disclosed to the Authority. Accordingly, the allottee filed a complaint before the Authority seeking imposition of penalty upon the promoter and its directors under Section 63 r/w. Section 69 of the Act. The allottee also prayed for issuance of appropriate direction to call for documents and to conduct an investigation into the affairs of the promoter and its group companies.

5. However, the Authority, by its Order dated 15.02.2025, dismissed Complaint No.00627/2024 on the ground of maintainability. While passing the impugned order, the Authority observed that execution and recovery proceedings were already in process and in the event of failure on the part of the respondents to comply with the directions issued therein, the jurisdictional Deputy Commissioner would, in the ordinary course, initiate appropriate action against the respondents for contravention of the provisions of the Act to recover the

awarded amount as arrears of land revenue, to be deposited in the designated account of the Authority.

6. Being aggrieved by the impugned order supra, the allottee has filed this Appeal on the grounds that, the Authority has committed a grave error in dismissing the complaint. It is urged that the impugned order is illegal, contrary to the principles of natural justice and unsustainable both in law and on facts. The allottee further contended that the Authority failed to take into consideration the list of lapsed projects, the non-disclosure of loans/mortgage deeds in their quarterly filings and sale of same apartment unit to different persons. The Authority also failed to consider crucial material on record, including the quarterly reports submitted by the promoter, the non-execution of the project and the Promoter's wilful disobedience of the orders and directions of the Authority. According to the allottee, these acts clearly constitute violations of the Act. Accordingly, the allottee has prayed to setting aside the impugned order dated 15.02.2025 and for imposing appropriate penalties on Respondents No.1

to 3 holding them jointly and severally liable. The allottee has further sought such other reliefs as this Tribunal may deem fit and proper in the facts and circumstances of the case, including an award of costs, in the interest of justice and equity.

7. Respondents No.1 to 3 filed a common Statement of Objections contending that, the allottee has failed to demonstrate the joint and several liability of Respondents No.2 and 3. The allottee is attempting to initiate a roving inquiry against the promoter and therefore, cannot seek imposition of penalty upon the directors solely on the basis of alleged liability of the promoter. Further, the allottee having failed to file the initial complaint against the directors, cannot now assert individual liability for the orders passed against the promoter. Further, both promoter and directors contended that even under Sections 63 and 69 of the Act, imposition of vicarious liability on a director requires proof of active knowledge and a failure to exercise due diligence in committing the alleged offence. This is a detailed question of fact that represents a triable

issue, which cannot be determined by Authority or this Tribunal, both of which exercise only summary powers under the Act. As such, seeking for a relief of imposition of penalty against the directors, in absence of any document to show their direct involvement, is not maintainable. Further they have contended that the allottee has failed to demonstrate any liability that can be fastened upon the directors. Therefore, both and promoter and directors prayed to dismiss Appeal with costs.

08. Having considered the submissions of the Parties and the material on record, the following points arise for our consideration:

i) Whether the allottee proves that the impugned order dated 15.02.2025 passed by the Authority in Complaint No.00627/2024 is illegal, violative of the principles of natural justice and therefore warrants interference by this Tribunal?

ii) What Order?

09. Our findings on point No.(i) in the **Affirmative** for the following:

REASONS

10. Point No. (i):- Before dealing with the issues in controversy, it is necessary to advert to certain undisputed facts. As narrated in paragraph No.3 above, the allottee had lodged a complaint before the Authority, which came to be allowed, directing the respondents to refund a sum of Rs.96,65,400/- together with costs and interest from the date of the order until realisation. Since the respondents failed to comply with the said order, the allottee approached the Authority seeking recovery of the awarded amount. Consequently, the Authority issued a Revenue Recovery Certificate to the concerned Deputy Commissioner for recovery of the said sum. As the said proceedings did not yield any fruitful result, the allottee, exercising his rights under Sections 63 and 69 of the RERA Act, filed a second complaint before the Authority. However, the said complaint came to be dismissed. Aggrieved by the impugned order of dismissal and left without an effective remedy, the allottee has preferred the

present appeal before this Tribunal seeking redressal of his grievance.

11. While examining the impugned order, the Authority observed that, pursuant to the award passed in favour of allottee, execution proceedings had already been initiated in Complaint No.CMP/UR/200909/0006519 and a Revenue Recovery Certificate had been issued to the then jurisdictional Deputy Commissioner for recovery of the award amount. The Authority further held that no separate complaint by the allottee was required in that regard and on that premise, proceeded to dismiss the Complaint.

12. Since the Complaint in question was filed invoking Sections 63 and 69 of the RERA Act, we considers it appropriate to reproduce the said provisions for ready reference.

“Section 63. Penalty for failure to comply with orders of Authority by promoter.—If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for

everyday during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority.

Section 69. Offences by companies.—(1)

Where an offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*For the purpose of this section,—

- (a) “company” means any body corporate and includes a firm, or other association of individuals; and
- (b) “director” in relation to a firm, means a partner in the firm.”

13. Section 63 specifically deals with failure of a promoter to comply with the orders or directions of the Authority. The provision authorises imposition of continuing penalty for every day during which the default continues, subject to the statutory ceiling. Section 69 further provides that when the offence is committed by a company, every person who was in-charge of and responsible for the conduct of the business of the company shall also be deemed guilty, unless they establish due diligence or absence of knowledge.

14. It is thus clear that the failure on the part of the promoter to comply with an award/order passed by the Authority, even after initiation of execution proceedings and coercive recovery measures constitutes a fresh and independent cause of action for initiating penal proceedings under Sections 63 and 69 of the RERA Act, as the case may be depending upon the nature of the order or direction violated. Thus, execution proceedings under Section 40 and penal proceedings under Section 63 are distinct and operate in different fields. Therefore, the mere pendency of

execution proceedings or even the exhaustion of all coercive measures undertaken therein, does not operate as a bar to the initiation of proceedings under Sections 63 and 69, if the promoter continues to remain in wilful disobedience of the RERA order.

15. In the course of his arguments, the learned Counsel for the allottee placed reliance on the decision rendered by the Authority in Complaints No.01181/2024 and 01182/2024, dated 09.03.2026. On a perusal of the said order, it is evident that, similarly situated allottees, namely Mrs.Kanchan Lata Sharma and 3 others, had initially lodged complaints against 1st respondent-promoter seeking refund of the amounts paid by them. The said complaints came to be allowed. Despite the awards having been passed in their favour, the promoter and its directors failed to comply with the same and did not come forward to pay award amount. Consequently, the said allottees instituted fresh complaints under Section 63 of the RERA Act alleging non-compliance with the orders of the Authority. Upon consideration the Authority allowed the

said complaints. The operative portion of the order therein is as under:

“In exercise of the powers conferred under Section 63 of the Real Estate (Regulation and Development) Act, 2016, the above mentioned complaints are hereby allowed, as under:

1. The Respondent Company is held liable for non-compliance of order dated 11.07.2024 in CMP/00018/2024 and order dated 09.07.2024 in CMP/00019/2024 respectively.
2. The Authority hereby imposes penalty under Section 63 of the Act upon the Respondent Company for failure to comply with the earlier orders of this Authority. The penalty shall be cumulatively extended upto 5% of the estimated project cost payable within 60 days from the date of this order.
3. The Managing Director and the Directors who were responsible for the conduct of the business of the Respondent Company during the relevant period shall appear either personally or through authorized representative before the Authority and show cause within 30 days as to why proceedings under Section 63 read with Section 69 of the Real Estate (Regulation and Development) Act, 2016 should not be initiated against them for non-compliance of the orders of this Authority.
No order as to costs.”

16. On a perusal of the said order, it is clear that, the project involved in those cases and the project forming the subject matter of the present proceedings are one and the same. While allowing the said complaints, the Authority undertook a detailed examination of the provisions contained in Sections 63 and 69 of the RERA Act. The Authority also considered the findings of the **Haryana Real Estate Appellate Tribunal in Parsvnath Developers Ltd., Vs. Kiran Khyalia & Anr.**, as well as law laid down by the Hon'ble Apex Court in **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla¹** and **Iridium India Telecom Ltd. Vs. Motorola Inc.²** In the aforesaid decisions, the Hon'ble Supreme Court has categorically held that the persons who are in-charge of and responsible for, the conduct of the business of a company can be proceeded against and held liable for statutory violations committed by the company, subject to the requirements prescribed under the relevant statute being satisfied.

¹ AIR 2005 SC 3512

² AIR 2011 SC 20

17. It is now manifestly clear that, in its subsequent decision, the Authority has categorically held that the pendency of execution proceedings does not operate as a bar to initiate proceedings under Section 63 of the RERA Act. Proceeding on that basis, the Authority allowed the complaints and passed the order referred to in preceding paragraph.

18. In this background, it is appropriate to examine the *Principle of Parity*. The Doctrine of Parity in Indian Law, rooted in Article-14 of the Constitution of India, embodies the concept of equality before law. It permits a person to claim similar relief where another similarly situated person has already been granted such relief, thereby ensuring consistency and uniformity in judicial decisions. In summary, it serves as a tool to promise equality rather than a strict legal mandate applied by Courts to ensure fair and consistent justice. The Hon'ble Supreme Court in ***State of U.P. Vs. Arvind Kumar Srivastava and***

Others³, has held that similarly situated persons are entitled to be treated alike. In the present case, since the issues involved herein are identical to those considered by the Authority in the case of Mrs. Kanchan Lata Sharma and 3 others, the benefit extended to the Allottees therein ought, in all fairness, to be extended to the Allottee herein as well. Any deviation from this principle would result in inconsistency and arbitrariness in the administration of justice.

19. It is pertinent to note that the defence taken by the respondents in the present proceedings is substantially identical to the defence raised in complaints No.01181/2024 and 01182/2024. All the contentions advanced therein were duly considered and rejected by the Authority, while ultimately proceed to pass the aforesaid order. It appears that neither the promoter nor its directors preferred any appeal challenging the said order and consequently, the order has attained finality. Therefore, having regard to the provisions contained in

³ [2015 (1) SCC 384]

Sections 63 and 69 of the RERA Act, as well as law laid down by the Hon'ble Apex Court in the afore-cited decisions, we find no merits in the objections raised by the promoter and its directors.

20. One more aspect that merits for consideration is that, the common Statement of Objections filed on behalf of the respondents is supported by the verifying affidavits sworn to by its directors, namely respondents No.3 and 4. In their respective affidavits, both respondents No.2 and 3 have categorically admitted that they are the authorised representatives/signatories of the 1st respondent company and are duly competent to swear to and verify the affidavits on its behalf. The unequivocal admissions made by respondents No.2 and 3 further makes it clear that, being directors of the promoter company, they cannot evade responsibility for the consequences arising from the company's act and omissions. On that ground as well, we find no merits in the contention advanced by the respondents.

21. In view of the foregoing discussion and for the reasons assigned herein-above, the appeal preferred by the allottee deserves to be allowed. Consequently, the promoter and its directors are held liable for non-compliance of the order dated 30.09.2022. In the result, the Authority is required to impose a penalty under Section 63 of the RERA Act upon the promoter and its directors for their failure to comply with the earlier order of the Authority. The penalty shall be determined in accordance with Section 63 of the Act and may extend upto 5% of the estimated cost of the project. The amount of penalty so imposed shall be paid within 60 days from the date of said direction. With these findings, point No.1 is answered in the 'affirmative' and proceed to pass the following:


ORDER

- (a) The appeal is allowed;
- (b) The impugned order dated 15.02.2025 passed by the 4th Respondent-RERA in complaint No. 00627/2024 is hereby set-aside;

- (c) The Authority is hereby directed to initiate proceedings and impose penalty under Section 63 of the RERA Act upon the promoter and its directors for their failure to comply with the order of the Authority dated 30.09.2023 in Complaint No.CMP/UR/200909/0006519 and the penalty shall be levied in accordance with law and may extend cumulatively upto 5% of the estimated cost of the project and the amount so determined shall be paid within 60 days from the date of such direction;
- (d) In view of disposal of the main appeal, pending I.As., if any, shall stand disposed of, as they do not survive for consideration;
- (e) Registry is directed to comply with the provisions of Section 44(4) of the Act and to return the records to RERA, if any received.

There is no order as to costs.

Sd/-
(Ms. JUSTICE J.M. KHAZI)
HON'BLE CHAIRPERSON

Sd/-
(SRI. SANTHOSH KUMAR SHETTY N.)
HON'BLE JUDICIAL MEMBER