IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 01st DAY OF SEPTEMBER, 2026

PRESENT

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

AND

HON'BLE SRI SANTHOSH KUMAR SHETTY N. JUDICIAL MEMBER

APPEAL No. (K-REAT) 42/ 2025

BETWEEN:

Goyal Hariyana Realty,
206, Barton Centre,
84 M.G.Road,
Bengaluru Urban.
Reptd by its Authorised Signatory
Sri.Sanjeev Shantisarup Reniwal. **APPELLANT**

(Sri.E.Suhail Ahmed, Advocate)

AND:

1. Mrs.Vinaya, Major,

2. Mr. Rajkumar, Major,

Both are R/at P101,
9th Main, 11th Cross,
Jeevan Bhima Nagar,
Bengaluru – 560 0075.

3. Karnataka Real Estate
Regulatory Authority,
#1/14, Ground Floor,
Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560027.
Reptd. by its Secretary.

4. Value and Assets Holding Pvt. Ltd.
Vaishnavi Bhadri,
48/1, 1st Floor,
5th Main, Near SBI,
Jayamahal Extension,
Bengaluru – 560 046. …….. **RESPONDENTS**

(By Sri.Shafeer A.A. & Sri. Derick Anil, Advocates for R1 & 2, Sri. K.V.Girish, Advocate for R.3 – RERA and Sri. U.C.Sunil, Advocate for R.4)

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 04.02.2023, passed by the 3rd Respondent-RERA in Complaint No.CMP/220416/0009364.

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 judgment and Order dated 04.02.2023 passed by the learned Adjudicating Officer of the Karnataka Real Estate

Regulatory Authority (hereinafter referred to as “the Authority”) in Complaint No.CMP/220416/0009364, whereby the Authority partly allowed the complaint filed by respondents No. 1 and 2 (hereinafter referred to as “the allottees”) against the appellant (hereinafter referred to as “the promoter”) and respondent No. 4 (hereinafter referred to as “the landowner”).

2. Briefly stated, the averments made in the complaint are that the allottees booked Flat No. 61 in J Block of the project “AlanoVille”, developed by the promoter, on 29.10.2015. Thereafter, they entered into an Agreement to Sell and a Construction Agreement with the promoter on 17.08.2016. As per the terms of the said agreements, the promoter had agreed to deliver possession of the apartment in August 2017. It is further averred that, owing to the delay in completion of the project, the allottees sought certain reductions/adjustments towards compensation for the loss suffered by them on account of interest for the delayed period, GST input, etc. They also requested the promoter to hand over the keys to the apartment against the payment of a sum of Rs.1,68,00,000/- made by them. However, the promoter failed to hand over possession of the apartment. Subsequently, on 17.01.2020, the promoter agreed to proceed with the registration and hand over possession of the apartment on 22.10.2020, subject to the terms and conditions stipulated by it. Aggrieved by the aforesaid conduct of the promoter, the allottees filed the complaint raising the following issues for consideration:

1) Excess collection of maintenance charges,
2) GST input credit discount,
3) Differential of 1/75 of actual amount spent on DG, BESCOM, Advocate, e-stamping, AC infrastructure etc.,
4) Facilities committees and not provided,
5) Short amount of undivided share of land,
6) Common facilities committed and not provided party lawns, green corridors with seaters, jogging track, multi-purpose court,
7) Compensation for handover of property without construction not being totally complete,
8) Return of corpus fund, club subscription fund along with interest,
9) Deficiency in construction,
10) compensation for harassment in making proper payments to them
11) Interest on delay in payment of above amounts.

3. In response to the notice, the promoter appeared through its counsel and filed objections, denying the averments made in the complaint. The promoter admitted that the allottees had booked Apartment No. 61 and had entered into an Agreement of Sale and a Construction Agreement. It was contended that, under the terms of the said agreements, the promoter had agreed to hand over possession of the apartment by February 2018, including the grace period of six months. It was further contended that the promoter obtained the Occupancy Certificate on 16.01.2019 and thereafter intimated the allottees to take possession of the apartment. At that time, the allottees had paid a sum of Rs.1,86,48,457/- towards the total sale consideration of Rs.2,47,93,807/-. However, the allottees raised certain claims, including claims for discount towards GST input credit and compensation for the delay in completion of the project. According to the promoter, subsequently, under the Settlement Deed dated 17.01.2020, the allottees agreed to settle all the claims raised by them by accepting a sum of Rs.7,50,000/-. The promoter also granted a discount out of the balance amount of Rs.61,45,350/-, treating the same under the head "additional amounts". Pursuant to the said settlement, the promoter executed the Sale Deed dated 17.01.2020 in favour of the allottees and possession of the apartment was also handed over to them. It was further contended that, after a lapse of about nine months from the execution of the Sale Deed and handing over of possession, the allottees instituted the complaint. The promoter asserted that the Settlement Deed could be challenged only before a competent civil court and could not be revoked except by obtaining an appropriate decree from such court. It was specifically denied that any pressure or coercion was exerted upon the allottees to enter into the Settlement Deed. The promoter also contended that the Authority had no jurisdiction to entertain the complaint. On these grounds, the promoter sought dismissal of the complaint.

4. Upon hearing the arguments advanced on behalf of the allottees and the promoter, the learned Adjudicating

Officer, by order dated 04.02.2023, partly allowed the complaint and directed the promoter and the landowner to jointly pay a total compensation of Rs.6,00,000/- to the allottees within 45 days from the date of the said order, failing which the said amount would carry interest at the rate of 6% per annum until realisation. The promoter and the landowner were further directed to pay a sum of Rs.5,000/- towards the cost of litigation. The learned Adjudicating Officer also directed the allottees to file a memo of calculation in terms of the order after expiry of 60 days, in the event the promoter and the landowner failed to comply with the directions contained therein.

5. Aggrieved by the impugned order, the promoter has preferred the present appeal, reiterating the contentions urged in its objections before the Authority. It is, interalia, contended that the impugned order is contrary to law, the facts and circumstances of the case, and the principles of justice and equity, and is vitiated by arbitrariness. According to the promoter, the Authority committed a serious error in passing the impugned order.

It is further contended that the reliefs sought by the allottees before the Authority were not maintainable in view of Sections 18(1), 18(3), 31(1) and 44(1) of the RERA Act. The project undertaken by the promoter was not an ongoing project, as its development had commenced much prior to the enactment of the RERA Act. It is also contended that the Authority failed to consider the specific objection that the complaint was not maintainable, as all the claims raised by the allottees had already been amicably settled between the parties under the Settlement Deed. It is further contended that, upon completion of the project and handing over of possession pursuant to the settlement between the parties, the promoter could not be treated as a defaulter in respect of any further claims. Once the claims had been settled, there was no occasion for the allottees to subsequently institute the complaint before the Authority. It is also urged that the Authority failed to consider several relevant aspects while adjudicating the complaint and passing the impugned order. On these grounds, the promoter has prayed for setting aside the impugned judgment dated 04.02.2023 passed by the Authority and for dismissal of the complaint as not maintainable.

6. In response to the notice issued by this Tribunal, the allottees, the landowner and the Authority entered appearance through their respective counsel. After admitting the appeal and securing the records of the Authority, this Tribunal heard the arguments advanced by the learned counsel appearing for the promoter and the allottees. The learned counsel appearing for the landowner adopted the arguments advanced by the learned counsel for the promoter by filing a memo dated 18.02.2026.

7. Now the points that would arise for our consideration are :

1. Whether the Appellant proves that the Impugned Order passed by the 3rd Respondent-Authority is illegal, arbitrary and contrary to the facts and circumstances of the case?

2. What order?

8. Our findings on the above points are as under:

Point No.1 : In the Negative.
Point No.2 : As per final order, for the following:

REASONS

9. **Point No. 1:-** Before adverting to the merits of the challenge, it is necessary to notice the somewhat peculiar procedural history of the case, which, in our considered opinion, has a material bearing upon the maintainability of the present appeal and the exercise of appellate jurisdiction by this Tribunal. The allottees, being husband and wife, had purchased the subject apartment from the promoter. After execution and registration of the sale deed, they raised certain claims against the promoter. In one of the proceedings initiated by them in CMP/201029/0006975, they sought compensation on account of delay. It is not in dispute that, on the very date on which the sale deed came to be executed in their favour, the allottees executed a settlement deed in favour of the promoter, whereby they agreed to give up their claim in respect of the matters covered by the settlement. Taking note of the said settlement, the complaint came to be dismissed by the Authority. The appeal bearing No.71/2022 preferred by the allottees against the said order also came to be dismissed by this Tribunal, essentially on the principle of estoppel arising out of the settlement.

10. Simultaneously, the allottees had initiated another proceeding before the learned Adjudicating Officer in CMP/220416/0009364 respect of certain alleged defects in the construction of the apartment. In the said proceeding, on the basis of Certificate dated 30.06.2020 issued by the Interior Designer, the learned Adjudicating Officer awarded compensation of Rs.6,00,000/- in favour of the allottees and further awarded litigation cost of Rs.5,000/-.

11. Aggrieved by the quantum of compensation, the allottees preferred an appeal bearing No.57/2023 before this Tribunal contending that the compensation awarded by the learned Adjudicating Officer was inadequate. The promoter also sought to challenge the very same order by filing a counter claim, questioning the award of

₹6,00,000/- and litigation cost of ₹5,000/- in favour of the allottees.

12. At this juncture, one significant aspect requires to be noticed. The promoter's pleading, in substance, sought adjudication by this Tribunal on the legality, validity and sustainability of the order passed by the Authority and consequently, sought relief in its favour. Hence, it is nothing but a cross–appeal/cross objection. The promoter, being the appellant in the said counter claim, did not comply with the mandatory requirement contained in the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, "the Act"), namely, the requirement of making the statutory pre-deposit as a condition for entertaining an appeal preferred by a promoter.

13. It is well settled that the requirement of pre-deposit contemplated under the proviso to Section 43(5) of the Act is a mandatory statutory condition governing an appeal preferred by a promoter. The Hon'ble Supreme Court has upheld the validity and mandatory nature of the said requirement in Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Others.[1] The statutory requirement cannot be treated as a mere procedural formality or a condition capable of being dispensed with at the discretion of the Tribunal.

14. In the meanwhile, the allottees filed a memo before this Tribunal on 10.12.2024 seeking withdrawal of their appeal. On the basis of the said memo, the appeal preferred by the allottees came to be dismissed. What is significant is that, at the time when the appeal preferred by the allottees was disposed of, the promoter did not bring to the notice of this Tribunal that it had allegedly preferred a counter claim against the very same order of the learned Adjudicating Officer and that the said counter claim was pending consideration. The Tribunal, therefore, had no occasion to adjudicate upon the alleged counter claim/ cross-appeal, particularly when the promoter had also failed to comply with the mandatory requirement of Section 43(5) of the Act.

[1] (2021) 18 SCC 01

15. Thereafter, after a lapse of about five months from the disposal of the appeal preferred by the allottees, the promoter has instituted the present appeal challenging the very same order of the learned Adjudicating Officer. The present appeal has been preferred with a delay of about 831 days. Along with the memorandum of appeal, the promoter filed an application seeking condonation of the said delay. Having regard to the fact that this Tribunal is the first appellate and fact-finding forum, the application for condonation of delay was considered on its own merits and notwithstanding the objections raised by the allottees, the delay came to be condoned.

16. As regards the merits of the appeal, reiterating the grounds urged in the memorandum of appeal, the learned counsel appearing for the promoter vehemently contended that the person who issued the alleged certificate dated 03.06.2020 is not an expert in the relevant field. It was further contended that the opinion expressed in the said certificate is founded merely on assumptions and does not constitute a scientific or expert assessment.

According to the learned counsel, except for the said certificate, the learned Authority has not relied upon any other material in arriving at the conclusion recorded in the impugned order. In support of his contention, the learned counsel placed reliance upon the decision of the Hon'ble Supreme Court in Ramesh Chandra Agarwal Vs. Regency Hospital Limited and Others[2]. In the said decision, the Hon'ble Supreme Court, while considering the evidentiary value and relevancy of expert opinion, referred to the Article titled "Relevancy of Expert's Opinion", wherein the following opinion has been expressed:

> *"Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert, where experts give no real data in support of their opinion, evidence even though admissible, may be excluded from considering as affording no assistance any arriving at the correct value."*

17. Further, inviting our attention to Clauses 4 and 5 of the settlement deed, the learned counsel appearing for

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[2] AIR 2010 SC 806

the promoter contended that the allottees, of their own volition, had irrevocably agreed that any and all disputes or claims subsisting between the parties stood mutually terminated and unconditionally relinquished in relation to Unit No. 61 situated in J Block, together with their interest in the undivided share agreed to be conveyed in their favour. It was, therefore, contended that, having regard to the express terms of the settlement deed, the allottees were precluded from subsequently raising any claim against the promoter in respect of the said unit. The learned counsel further contended that this Tribunal, while considering the earlier appeal preferred by the allottees in Appeal No. K-RERA-71/2022, had, in substance, accepted the settlement deed as a mutually executed and binding document between the contesting parties and on that basis, dismissed the said appeal. According to the learned counsel, the findings recorded in the earlier proceedings operate against the allottees and preclude them from reagitating claims which stood settled under the said document.

18. Further, the learned counsel for the promoter contended that the amenities referred to in the impugned order do not form part of the agreement executed between the parties and therefore, the promoter could not be held liable in respect of the same. It was further argued that, in terms of Section 72 of the RERA Act, compensation can be awarded only upon proof of actual loss or damage sustained by the person claiming such compensation. In the present case, according to the learned counsel, the allottees had neither suffered any actual loss nor established any mental agony or suffering warranting an award of compensation. On these and other grounds urged in the memorandum of appeal, the learned counsel sought for setting aside the impugned judgment.

19. Repelling each of the contentions advanced on behalf of the promoter, the learned counsel appearing for the allottees strenuously argued that, being dissatisfied with the quantum of compensation awarded under the impugned order, the allottees had preferred an appeal before this Tribunal seeking enhancement of the compensation. However, pursuant to an oral understanding arrived at between the parties, the said appeal came to be dismissed on the basis of the memo submitted by the allottees. It was further contended that, in the appeal preferred by the allottees, the promoter had raised a cross-appeal/counter-claim challenging the very same order of the learned Adjudicating Officer. However, when the appeal preferred by the allottees came to be dismissed on the basis of the memo submitted by them, the promoter made no endeavour to prosecute its alleged cross-appeal. Consequently, the said challenge, which was incapable of being independently entertained in the absence of compliance with the statutory requirements, was also rendered infructuous. According to the learned counsel, the promoter thereafter, after a considerable lapse of time, instituted the present appeal challenging the very same order, which clearly demonstrates that the present proceedings are an afterthought and are not maintainable.

20. The learned counsel further submitted that Order XLI Rule 22 of the Code of Civil Procedure permits a respondent to support the decree not only on the grounds decided in his favour but also on the grounds decided against him. However, the said provision does not authorise a respondent to seek reversal or modification of the decree. If the respondent intends to challenge any part of the decree adverse to him, he is required to avail the remedy of filing a cross-objection in terms of the second part of Rule 22. In the present case, according to the learned counsel, the promoter had already sought to challenge the order in the earlier proceedings by way of a cross-appeal/counter-claim. Since that challenge was not pursued and was, in substance, rendered incapable of consideration, the promoter cannot be permitted to institute a fresh appeal against the very same order, particularly after an inordinate delay. The present appeal, therefore, is liable to be dismissed as not maintainable.

21. Turning to the merits of the claim, the learned counsel for the allottees submitted that Section 14(2) of the

RERA Act expressly recognises the liability of the promoter in respect of structural defects and other defects specified therein for a period of five years from the date of handing over possession. It was contended that the claim made by the allottees was therefore well within the statutory period contemplated under the said provision. The learned counsel further invited our attention to Clauses 1.1(gg) and 8 of the sale deed, contending that the said clauses contain specific stipulations relating to defect liability. According to the learned counsel, the contractual provisions themselves reinforce the statutory obligation of the promoter and therefore, the promoter cannot avoid its liability by contending that the alleged defects were not brought to its notice within the period contemplated under the agreement.

22. It was further argued that the objection now raised by the promoter regarding the experience or expertise of the interior designer was never raised before the learned Authority and is being urged for the first time in the present appeal only with a view to circumvent the liability to compensate the allottees. According to the learned counsel, the promoter, having failed to question the credentials or methodology of the interior designer at the appropriate stage, cannot seek to discredit the assessment merely at the appellate stage. The learned counsel also contended that the promoter, being in a dominant bargaining position, had incorporated several terms favourable to itself in the agreement and the sale deed. According to the learned counsel, the contractual terms are substantially one-sided and operate to the disadvantage of the allottees, who had no meaningful opportunity to negotiate the same. Hence, the allottees cannot be penalised by placing undue reliance upon such one-sided contractual stipulations. In support of the said contention, reliance was placed upon the judgment of the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan[3], wherein the Hon'ble Supreme Court observed that terms of an apartment buyer's agreement which are wholly one-sided

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[3] AIR 2019 SC 1779

and unfair to the flat purchasers cannot be enforced by the builder so as to bind the purchasers to such unfair contractual terms.

23. The learned counsel finally contended that, although the allottees were not satisfied with the quantum of compensation awarded by the learned Authority and had accordingly preferred an appeal seeking enhancement, they subsequently gave up their claim pursuant to the oral understanding arrived at between the parties, resulting in dismissal of their appeal. Such withdrawal, according to the learned counsel, was confined to the enhanced claim and cannot be construed as an admission that the promoter was absolved of its liability in respect of the defects forming the subject matter of the present proceedings. On these grounds, the learned counsel submitted that the contentions advanced by the promoter are devoid of merit and that the present appeal, being not maintainable as well as lacking in substance on merits, is liable to be dismissed.

24. Before proceeding to examine the matter in issue, we deem it appropriate to advert to certain causes contained in the settlement deed relied upon by the Promoter. In our considered view, the terms incorporated in paragraph 5 thereof are material for the purpose of adjudicating the present dispute and therefore, the same are recapitulated hereunder:

> *"The first party (the allottees) hereby admit and irrevocably agree that any and all Disputes / Claims which may have been subsisting between the parties are mutually terminated and unconditionally relinquished with regard to schedule C property along with the interest being schedule B property. The first party hereby admit and irrevocably agree that they do not have any further claims or demands against the second party(the Promoter) and hereby abandon; quit claim and relinquish any and all claims against second party with regard to schedule C and D property.'*
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> (underlined for emphasis)

25. The manner in which the terms of Clause 5 of the settlement deed are couched makes it abundantly clear that the settlement was confined to the disputes and claims that were subsisting between the parties as on the date of execution of the said deed. The dispute now raised before us, however, stands on an entirely different footing. The alleged defects in the construction of the apartment were noticed by the allottees only after they had taken possession of and occupied the flat. Thus, the cause of action forming the subject matter of the present proceedings had not arisen, nor was the alleged defect brought to the notice of the allottees, at the time when the settlement deed was executed. Consequently, the settlement of the then subsisting disputes cannot, merely by virtue of the general language employed therein, be construed as an unconditional relinquishment of claims arising from defects which were discovered subsequently and which were not within the contemplation of the parties at the time of entering into the settlement.

26. This being the factual position it is clear that the Settlement Deed arrived at between the parties was confined to the extent of the claims raised by the Allottees in their complaint before the Authority in No.CMP/201029/0006975 and same was confirmed by this Tribunal in Appeal No.71/2022. This being the factual as well as legal position, the complaint filed by the allottees before the learned Adjudicating Officer was essentially in respect of the alleged defects in the construction of the apartment and the consequential reliefs arising therefrom. In this regard, it is relevant to note that the sale deed and the settlement deed came to be executed between the parties on the same day. It was only much thereafter that the allottees noticed the alleged defects in the construction of the apartment. They thereafter availed the assistance of an interior designer for the purpose of assessing and quantifying the loss allegedly suffered by them and on that basis, instituted the complaint before the learned Adjudicating Officer.

27. In the above circumstances, there is no justification to hold that the settlement deed executed between the parties contemporaneously with the execution of the sale deed would operate as a bar to the allottees seeking compensation in respect of defects in construction which, according to them, were noticed only subsequently. The relief granted in the present complaint is distinct from the claim which was the subject matter of the settlement. It is also relevant that the earlier complaint preferred by the allottees seeking compensation towards the period of delay in handing over possession came to be dismissed by the learned Authority, principally on the ground that the claim stood settled under the said settlement deed. The appeal preferred by the allottees against the said order was also dismissed by this Tribunal, holding that the settlement deed would operate against the claim for delay-period compensation. Thus, the effect and scope of the said settlement deed have already been considered in the context of the claim for delay compensation.

28. However, the present complaint relates to a different cause of action, namely, the alleged defects in construction and the loss said to have been suffered by the allottees on that account. Having regard to the totality of the circumstances, particularly the nature of the claim now raised, the point of time at which the alleged defects came to their notice and the fact that the assessment of the alleged loss was undertaken thereafter, there are no sufficient grounds to hold that the settlement deed executed on the date of execution of the sale deed operates as a bar to the present claim. The mere execution of the settlement deed, therefore, cannot, in the facts and circumstances of the present case, disentitle the allottees from seeking the reliefs claimed before the learned Adjudicating Officer.

29. It is relevant to note that, though the allottees had raised a substantial claim in their complaint before the learned Adjudicating Officer, the latter, upon considering each aspect of the matter and examining the report of the expert, awarded compensation of Rs.6,00,000/- together with litigation costs of Rs.5,000/-. Having regard to the nature of the defects alleged, the material placed on record and the expert opinion, we are of the considered view that the compensation so awarded is just, fair and reasonable and cannot, by any stretch of imagination, be termed exorbitant. Added to this, the decision of the Hon'ble Supreme Court in Ramesh Chandra Agarwal, relied upon by the learned counsel appearing for the promoter, does not advance the case of the promoter. The observation made by the Hon'ble Supreme Court in paragraph 26 thereof is relevant for our consideration, wherein it was held as under:

> *"In our view, the principles of natural justice require that a fair opportunity should be given to the complainant to prove his claim based on the report of the expert. Since that opportunity is denied to the appellant, the impugned order passed by National Commission cannot be sustained."*

30. With the aforesaid observation, the Hon'ble Supreme Court permitted the complainant therein to put forth his claim afresh before the concerned authority on the basis of the expert report. Thus, the ratio laid down in the said decision is, in fact, of assistance to the case of the allottees herein. It does not, in any manner, advance the case of the promoter in questioning the legality, validity or evidentiary value of the opinion furnished by the interior designer. On the contrary, the said decision reinforces the necessity of affording due consideration to an expert opinion while adjudicating a claim founded upon such opinion.

31. While examining the other aspect of the matter, the order condoning the delay cannot be construed as conferring upon the promoter an indefeasible or vested right to have the appeal adjudicated on merits. The reason is not merely the length of the delay. What assumes significance is the conduct of the promoter in the proceedings preceding the present appeal. The promoter had already challenged the order of the learned Adjudicating Officer by filing a counter claim. However, it did not comply with the statutory requirement of pre-deposit under Section 43(5) of the Act. Consequently, the said counter claim/appeal could not have been entertained in accordance with the statutory mandate.

32. More importantly, when the appeal preferred by the allottees against the same order was taken up and came to be disposed of on the basis of their memo in December 2024, the promoter, despite being fully aware of the existence of its own cross-appeal, did not assert before this Tribunal that its challenge to the order of the learned Adjudicating Officer was still pending. The promoter did not seek adjudication of its alleged cross-appeal, nor did it bring to the notice of the Tribunal the alleged pendency of such proceedings.

33. Having remained silent at that stage, the promoter subsequently chose to institute the present appeal after a further lapse of about five months. But a party cannot be permitted to keep one proceeding dormant or defective, remain silent when connected proceedings are brought to an end and thereafter, upon finding a convenient opportunity, institute a fresh proceeding challenging the very same order.

34. The appellate process cannot be permitted to be utilised in such a manner. The doctrine against abuse of the process of Court is founded upon the larger principle that judicial proceedings must attain finality and that a litigant cannot be permitted to take advantage of its own omission or default in an earlier proceeding to secure a fresh opportunity in a subsequent proceeding.

35. In the present case, the circumstances, when considered cumulatively, are of considerable significance: (i) the promoter had earlier challenged the order of the learned Adjudicating Officer by way of a cross-appeal; (ii) it failed to comply with the mandatory pre-deposit contemplated under Section 43(5) of the Act; (iii) it did not seek adjudication of the said challenge when the appeal preferred by the allottees was disposed of; (iv) it did not bring the alleged pendency of the cross-appeal to the notice of the Tribunal at the relevant stage; (v) after a further lapse of about five months, it instituted the present appeal; (vi) the present appeal is itself stated to be delayed by about 800 and odd days.

36. These circumstances cannot be viewed in isolation. Taken together, they lead us to the irresistible conclusion that the present appeal is not a bonafide continuation of an earlier appellate remedy, but is an attempt to revive a challenge which the promoter had earlier failed to prosecute in accordance with the statutory scheme.

37. For the foregoing reasons, we are of the considered view that the promoter has failed to make out any merits in the present appeal. Further, having regard to the peculiar procedural history of the matter and the conduct of the promoter noticed hereinabove, we are of the view that the promoter is not entitled to prosecute the present appeal. The appeal, being an afterthought and an abuse of the process of this Tribunal, therefore, deserves to be dismissed. Accordingly, Point No.1 is answered in the Negative. In view of the above, we proceed to pass the following:

ORDER

(a) The Appeal is hereby dismissed;

(b) The Impugned Order dated 04.02.2023, passed by the Authority in Complaint No.CMP/220416/0009364 is hereby confirmed.

(c) The Registry is directed to release the amount in favour of the Allottees, including interest accrued thereon by issuing the bankers cheque/DD after the expiry of the appeal period and by following the due procedure;

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

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