IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 24th DAY OF AUGUST, 2026

PRESENT

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

AND

HON'BLE SRI SANTHOSH KUMAR SHETTY N.

JUDICIAL MEMBER

APPEAL No.(K-REAT)-165 of 2025

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BETWEEN:

1. Shashi Kant Saxena,
   Aged about 74 years.

2. Usha Saxena,
   Aged about 70 years.

Both are residing at
Flat No.EB 1002,
Salarpuria Sattwa,
Greenage Society, Bommanahalli,
Bengaluru-560 068. **...APPELLANTS**

(Parties-in-person)

AND:

1. The Karnataka Real Estate
   Regulatory Authority,
   1/14, 2nd Floor,
   Silver Jubilee Block,
   Unity Building Backside,
   CSI compound, 3rd Cross,

Mission Road, Bangalore – 560 027.
Represented by its Secretary.

2. BCV Developers Pvt. Ltd.,
29 & 30 floor, World Trade Center,
Brigade Gateway campus, 26/1,
Dr.Rajkumar Road,
Malleshwaram,
Bengaluru - 560 055.
Represented by its M.D. **...RESPONDENTS**

(Sri. K.V.Girish, Advocate-for Respondent No.1-RERA
Sri Lomesh Kiran N., Advocate for Respondent No.2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 06.11.2025, passed by the 1st respondent-RERA in Complaint No.CMP/01753/2023.

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 dated 06.11.2025 rendered by the learned Adjudicating Officer of the Karnataka Real Estate Regulatory Authority (hereinafter referred to as 'the Authority' for short) in CMP/01753/2023, whereby the Complaint filed by the Appellants/Allottees (hereinafter referred to as 'the

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Allottees' for short) against the Respondent No.2/Promoter (herein after referred to as 'Promoter' for short), came to be dismissed.

2. The facts gathered from the record broadly reveals that, the Allottees have purchased an apartment/ flat bearing No.B0512 in the project known as "Juniper at Brigade Orchards" developed by the Promoter, under the Sale Deed dated 24.09.2020 and that they are presently in possession of the said apartment. As per the Agreement of Sale dated 12.09.2020 and the Sale Deed dated 24.09.2020, the promoter was under an obligation to provide a clubhouse along with various amenities. The promoter had also collected the prescribed clubhouse membership fee from the allottees at the time of sale. However, despite the lapse of more than three years, the promoter has failed to provide the clubhouse, thereby causing considerable mental agony and hardship to the allottees. Their legitimate expectation of leading a comfortable life after retirement has been seriously frustrated. The non-provision of the promised clubhouse

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and amenities has also adversely affected the value and utility of the apartment, resulting in substantial financial loss to the allottees.

3. It is further contended that the promoter had issued attractive and eye-catching advertisements representing that the project would comprise luxurious apartments equipped with high-end amenities, which induced the allottees to purchase the apartment. If such representations were made with the intention of inducing prospective purchasers and the promised amenities were thereafter not provided, such conduct cannot be countenanced as a mere deficiency in service. It may amount to an unfair and deceptive practice adopted for procuring sales from unsuspecting members of the public and would run contrary to the very object and purpose of the RERA Act, namely, to ensure greater transparency and accountability in the real estate sector and to protect the interests of homebuyers. Therefore, the promoter is liable to pay compensation under Section 18(3) of the RERA Act, read with Rule 16 of the Karnataka RERA Rules, calculated

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on the sale consideration of Rs.68,00,000/-, which amounts to Rs.23,58,612. The promoter shall further be liable to pay compensation at the same rate for the period commencing from the date of default and continuing until the clubhouse is duly provided and made available to the allottees.

4. After registration of the complaint, pursuant to the notice issued by the Authority, the promoter appeared through its counsel and filed its statement of objections, denying each and every allegation made in the complaint. It was contended, at the outset, that the complaint was prima facie barred by limitation. According to the promoter, the allottees had not offered any explanation as to what prevented them from approaching the Authority at an earlier point of time, particularly when the complaint was filed more than three years after the allotment notice and execution of the Agreement of Sale. It was further contended that in so for as the provision of the Juniper Club House was concerned, time was not the essence of the Agreement of Sale and that any timelines stipulated therein

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are merely tentative in nature. The promoter placed reliance upon Clause 10.8 of the Agreement of Sale and contended that the allottees had expressly agreed that non-completion of the clubhouse or any other facilities would not constitute delay in handing over possession of Apartment No.B-0512 situated on the 5th Floor of Block-B, Juniper. It was also agreed that the allottees would take possession of the scheduled property even if the clubhouse had not been completed or made operational.

5. It was further contended that, upon being fully satisfied with the development and amenities provided in the project and on the basis of the mutual representations and warranties of the parties, the allottees and the promoter proceeded to execute the Registered Sale Deed. Under the terms of the Sale Deed, the allottees were entitled to avail themselves of the clubhouse facilities on membership basis, subject to compliance with the bye-laws governing the clubhouse. The promoter further contended that it had already constructed a clubhouse, namely, the "Signature Club Resort", within the premises of Brigade

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Orchard, even prior to the execution of the Sale Deed by the allottees. It was stated that the Signature Club had been completed and that an Occupancy Certificate had been obtained on 06.11.2015. According to the promoter, the owners of apartments in Brigade Orchard, including the allottees herein, were entitled to obtain membership of the Signature Club and avail themselves of its amenities. It was further contended that the Signature Club is a premium club equipped with state-of-the-art facilities and amenities of upscale quality and is situated at a distance of approximately 500 meters from Juniper. It was further contended that as many as 86 owners of Juniper were already utilising the facilities of the Signature Club by paying a nominal monthly membership fee of Rs.1,000/-. However, the allottees had, of their own volition, chosen not to avail themselves of the said facilities. Consequently, according to the promoter, the allottees had suffered neither any loss nor any prejudice in relation to their peaceful enjoyment of the apartment. On these grounds, the promoter contended that it had duly fulfilled its

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obligations under the Sale Deed and had provided the requisite clubhouse facilities and amenities to the allottees. Accordingly, it prayed for dismissal of the complaint.

6. The Authority, upon perusal of the complaint and the statement of objections and after hearing both the parties, dismissed the complaint by the impugned judgment. Aggrieved by the said order, the Allottees have preferred the present appeal, inter alia, on the following grounds:

i) The impugned order is erroneous both on facts and in law. It has been passed without proper appreciation of the documents and other materials available on record and, therefore, is liable to be set aside.

ii) The impugned order is contrary to and in violation of Section 23 of the Indian Contract Act, as the terms relied upon therein have the effect of defeating the provisions of Section 18(3) of the RERA Act, which confer upon the allottees a statutory right to claim compensation from the promoter for its failure to discharge the obligation of providing the clubhouse, as undertaken under the terms and conditions of the Agreement of Sale.

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iii) The expression "delay" occurring in the said clause relates to the handing over of possession of the apartment and not to the completion or provision of the clubhouse or other facilities. However, the Authority has erroneously construed and applied the said clause as though it excluded the promoter's obligation to provide the clubhouse and other promised facilities. Such misreading of the contractual provision has been made the very basis of the impugned order, resulting in an erroneous conclusion.

iv) The Authority grossly erred in recording incomplete facts and overlooking the full and material facts pleaded in the complaint while passing the impugned order. The fact that the Signature Club is situated away from the apartment of the allottees was not the sole ground on which the allottees declined to accept the Signature Club as a substitute for the promised clubhouse. The Authority failed to appreciate the other material objections and circumstances placed on record by the allottees in this regard.

v) The Authority erred in properly appreciating the facts and materials available on record and, instead, grossly misrepresented the factual position and the record of the case. The Authority has further erred in

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observing in the impugned order that the allottees had relied upon the judgment of the Himachal Pradesh High Court. In fact, the allottees had neither relied upon nor placed any reliance on the said judgment. The said observation is, therefore, factually incorrect and contrary to the record.

7. On the aforesaid grounds, the Allottees have prayed that this Tribunal be pleased to set aside the impugned order dated 06.11.2025 and grant the reliefs sought by them in the compliant.

8. In their statement of objections to the memorandum of appeal, the promoter reiterated the contentions urged before the Authority and further contended that the allottees had pursued the complaint before the Authority with the sole intention of exerting undue pressure upon the promoter and seeking compensation on the allegation of non-provision of the clubhouse facilities. It was contended that, having failed to establish their case before the Authority, the allottees had preferred the present appeal by making unsubstantiated assertions regarding errors in the

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appreciation of facts and application of law, without demonstrating as to how the impugned order suffers from any legal or factual infirmity.

9. The promoter further contended that the allottees' assertion that Clause 10.8 of the Agreement of Sale applies only to cases where possession of the apartment has not been taken is incorrect. According to the promoter, the allottees themselves concede that Clause 10.8 does not provide for payment of compensation. However, the allottees have failed to identify any provision in the Agreement of Sale which entitles them to claim compensation for the alleged delay in providing the clubhouse. It was further contended that the memorandum of appeal is replete with unsubstantiated assertions and half-truths, allegedly incorporated to suit the narrative of the allottees. The promoter specifically denied the assertion that the market value of the apartment had been adversely affected by non-provision of the clubhouse. On the contrary, it was contended that the market value of the property had

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appreciated substantially owing to the high demand for apartments in the project.

10. The promoter further contended that the decision in Arifur Rahman Khan and Others Vs. DLF Southern Homes Private Limited and Others[1] is wholly inapplicable to the facts and circumstances of the present case. It was urged that the claim for compensation made by the allottees is arbitrary, has no reasonable nexus with the alleged default on the part of the promoter and is otherwise unsustainable in law. On these grounds, the promoter supported the findings recorded by the Authority and sought dismissal of the appeal.

11. Heard the arguments of the first Allottee, appearing for himself and on behalf of Allottee No.2 and the learned counsel for the Promoter. Perused the records of the proceedings before the Authority, as well as the written synopsis submitted by the Allottees and the learned counsel for the Promoter.

[1] (2020)16 SCC 512

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12. The points that would arise for our consideration are:

1) Whether the impugned order dated 06.11.2025 passed by the Adjudicating Officer of the Karnataka Real Estate Regulatory Authority in Complaint No.CMP/01753/2023 has resulted in a miscarriage of justice and warrants interference by this Tribunal in the present appeal?

2) What order?

13. Our findings on Point No.(1) partly in the affirmative for the following

R E A S O N S

14. Point No.1: Before adverting into the controversy in question, it would be appropriate, at the outset, to recapitulate certain other undisputed facts. In the complaint filed before the Authority, the Allottees alleged that there had been a delay in providing all amenities including the provision of Juniper Club House of approximately three years up to the date of filing of the complaint. It was further asserted that the total sale

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consideration of the apartment was Rs.68,00,000/- and accordingly, the Allottees computed the compensation for the said period of delay at the rate of SBI MCLR plus 2% per annum and claimed a sum of Rs.23,58,612/-.

15. In the impugned order, the learned Adjudicating Officer observed that Allottees do not dispute the facts that facility of the Signature Club facility referred to by the Promoter in the objections is very much available at affordable rate. Only contention of the Allottees is that it is little bit away from their Villa which makes it difficult to avail the facility in rainy season considering their advancing age. The Allottees cannot blame the Promoter for the difficulties being faced on account of their age. Wherever the facility is located, they have to make use of it by making their own arrangements. For their convenience they cannot expect the club house to be shifted next to their villa. Even otherwise as of now club house promised for the Juniper block became operational/ functional with effect from 09.05.2025, as is evident from email addressed to the occupants of the Villas. Ultimately, upon such

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reasoning, the learned Adjudicating Officer returned findings against the Allottees and dismissed the complaint.

16. Reiterating the contentions urged in the memorandum of appeal, the first allottee, in his oral submissions, vehemently contended that, as on the date of execution of the Sale Deed dated 24.09.2020, only the apartment purchased by the Allottees was ready for occupation, whereas the other promised amenities had not been completed. In support of his contention, he drew our attention to various documents referred to hereinabove, as well as the email correspondence exchanged between the parties.

17. He further argued that the Promoter, in its brochure and other agreements executed in favour of the Allottees, had represented that various amenities, including the club house at Juniper block would be provided. In support of the claim for relief under the provisions of the RERA Act, he placed reliance upon the judgment of the Apex Court in Wg.Cdr, Arifur Rahman

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Khan and Aleya Sulthana and others Vs. DLF Southern Homes Ltd[2]. The substance of the principle laid down therein is reflected in paragraph 43 of the said judgment, namely, that a developer must be held accountable for the representations made by it to the purchasers. According to the first allottee, the representations contained in the brochure and the other agreements furnished and executed in favour of the Allottees squarely fall within the ambit of such representations.

18. It was therefore contended that the Promoter was under an obligation to provide the various amenities referred to hereinabove, including the facilities of the Juniper Clubhouse, to the Allottees. Accordingly, he submitted that the Allottees are entitled to the reliefs sought in the complaint and the appeal.

19. Refuting each and every contention advanced by the Allottees, the learned counsel for the Promoter, both in her oral submissions and in the written synopsis,

[2] (2020) 16 SCC 512

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reiterated the contentions urged in the pleadings. She further contended that, as on the date of execution of the sale deed, actual possession of the apartment had been duly handed over to the Allottees. The Authority has rightly appreciated the facts and materials on record in holding that Clause 10.8 of the Agreement to Sell operates as an estoppel against the Allottees raising any claim for compensation on the ground of delay in providing the club house and other amenities. According to her, the Allottees are not entitled to claim compensation, as they have failed to establish that the Promoter had failed to provide the amenities in terms of the agreement of sale.

20. It was further contended that the Allottees have sought to contend that handing over possession of the apartment necessarily includes completion and provision of all the amenities in the project. Such an interpretation, according to the learned counsel, is wholly misconceived and contrary to law. She argued that the Allottees have erroneously conflated the handing over of possession of the

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apartment with the completion of the project amenities and on that basis, have invoked Section 18 of the RERA Act.

21. The learned counsel submitted that Section 18(1) of the RERA Act deals with failure to complete or delay in providing possession of the apartment, plot or building and does not, by itself, contemplate a claim on the ground of non-completion or delayed provision of amenities. It was further argued that even Section 18(3) fastens liability only where the Promoter fails to discharge an obligation imposed under the Act or the agreement for sale, and that the Allottees have failed to establish any such actionable breach warranting compensation under the said provision.

22. Lastly, it was contended that possession of the apartment was handed over to the Allottees on the date of execution of the sale deed itself i.e., within 12 days from the date of execution of the Agreement to Sell. Therefore, according to the Promoter, there was no delay whatsoever on its part in handing over possession, and consequently,

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the claim for compensation under Section 18 of the RERA Act is wholly untenable.

23. Another submission advanced on behalf of the Promoter is that the brochure cannot be treated as a binding document, as it was merely promotional material and expressly stated to be neither an invitation to offer nor an offer. Therefore, according to the learned counsel, the brochure cannot be relied upon to establish any contractual relationship or binding obligation between the Allottees and the Promoter. She submitted that the rights and obligations of the parties are governed exclusively by the agreements executed between them and by no other document.

24. In support of her contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Mangalam Build-Developers Ltd. Vs. Aviral Mathur[3], and submitted that the Apex Court has categorically held that where the Allottees have entered

[3] 2021 SCC Online NCDRC 15

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into an agreement with their eyes wide open, the terms of such agreement govern the contractual relationship between the parties, and the Allottees cannot subsequently raise claims beyond the scope of the contract.

25. The learned counsel further contended that the Allottees have not produced even a shred of documentary evidence to establish that they have suffered any quantifiable financial loss on account of the alleged acts or omissions of the Promoter. In the absence of proof of any such actual or quantifiable loss, according to her, the claim for compensation is wholly unsustainable. The other contention urged on behalf of the Promoter is that, in a contract for sale of immovable property, it is normally presumed that time is not the essence. In support of the said contention, she relied on the decision of Apex court in Welspun Speciality Solutions Limited Vs. ONGC[4]. On these grounds, she urged that the appeal is devoid of merit and is liable to be dismissed in limine.

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[4] (2022) 2 SCC 382

26. In the light of the rival contentions advanced by the parties, we have carefully examined the entire pleadings, the documents produced by them, the records maintained by the Authority, and the principles of law laid down in the decisions referred to above.

27. As stated supra, the specific contention of the Promoter is that, in support of their claim, the Allottees are required to confine themselves to the terms and conditions of the Agreement of Sale executed between the parties and cannot be permitted to travel beyond the scope of the written agreement.

28. The aforesaid two decisions, namely, Wg.Cdr, Arifur Rahman Khan and Aleya Sulthana and others Vs. DLF Southern Homes Ltd. and Mangalam Build-Developers Ltd. Vs. Aviral Mathur, relied upon by the Allottees and the learned counsel for the Promoter, respectively, admittedly arose out of disputes adjudicated before the Consumer Forum. It is not in dispute that, prior to the enactment of the RERA Act, aggrieved Allottees were required to seek

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redressal of their grievances primarily through the Consumer Forum. Even after the enactment of the RERA Act, an aggrieved allottee is not precluded from approaching the Consumer Forum for appropriate relief, subject to the law governing the exercise of such remedies.

29. However, the RERA Act is a comprehensive and special legislation enacted with the object of regulating the real estate sector and protecting the interests of Allottees, while also providing a specific statutory framework for adjudication of disputes arising between Promoters and Allottees. The rights and obligations of the parties under the RERA Act are therefore required to be examined in the light of the scheme and provisions of the said enactment.

30. In this factual and legal background, this Tribunal cannot simply brush aside or disregard the principles laid down by the Hon'ble Supreme Court in Arifur Rahman Khan and Ahalya Sultana and Others, referred to supra. The said decision, though rendered in the context of proceedings before the Consumer Forum,

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lays down principles concerning the rights of Allottees and the consequences flowing from the Promoter's failure to fulfill its contractual and statutory obligations. Those principles, to the extent applicable to the facts and circumstances of the present case and consistent with the scheme of the RERA Act, cannot be ignored merely because the proceedings therein arose under the consumer law.

31. Though the sale deed was executed on 24.09.2020, as rightly contended by the Allottees, the series of email correspondence exchanged between the parties, assumes considerable significance. More particularly, in its written synopsis dated 17.07.2026, the promoter has clearly admitted that the Occupancy Certificate for the Juniper Club House was obtained from the concerned Grama Panchayat only on 24.03.2026. This admission, in our considered view, assumes considerable significance in determining whether the promised club house facility had, in fact, been completed and made

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available to the Allottees as on the date of execution of the Sale Deed.

32. However, from the inception, the vehement contention of the Promoter has been that time was not the essence of the contract insofar as the Juniper Clubhouse is concerned and therefore, the delay in completing the said clubhouse cannot constitute a ground for granting any relief to the Allottees. The other explanation offered by the Promoter is that, since the work relating to the Juniper Clubhouse was still in progress, the Allottees and other residents of the project were permitted to make use of the Signature Club, situated about 500 meters away from the Juniper project, on payment of a nominal fee of Rs.1,000/- per month.

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33. However, it is pertinent to note that it is an undisputed fact that the Signature Club was constructed in the civic amenities area. It is also the contention of the Allottees that the Promoter has been permitting the general public to use the said club for monetary consideration and,

on several occasions, has let out the club to third parties for rent. Consequently, the alleged facility extended to the Allottees to make use of the Signature Club has, in several respects, been substantially curtailed. Significantly, these specific contentions urged by the Allottees have not been denied by the Promoter.

34. The aforesaid circumstances give rise to a strong inference that the alternative facility offered by the Promoter was neither equivalent nor readily available to the Allottees. Apart from compelling them to pay a monthly subscription of Rs.1,000/- for availing the facility, the Allottees were also required to contend with overcrowding, and on certain occasions, the club was completely occupied by third parties who had hired the facility. Thus, the mere availability of the Signature Club cannot, in our considered view, be treated as a satisfactory substitute for the Juniper Clubhouse which was contemplated as part of the project and to which the Allottees were entitled.

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35. It is not in dispute that the terms and conditions incorporated in the sale agreement as well as the sale deed executed by the promoter in favour of the allottees contain uniform clauses, ostensibly on the premise that uniformity is required to be maintained among all the allottees. In such circumstances, the fact that the promoter played a dominant role in drafting and incorporating those terms reasonably indicates that certain clauses are one-sided and operate in favour of the promoter. In view of the facts and circumstances of the case, we deem it appropriate to consider the law laid down by the Hon'ble Apex Court in Experion Developers Private Limited Vs. Sushma Ashok Sharma[5], wherein it has been clearly held that terms incorporated in a builder-buyer agreement which are one-sided and favour the promoter may amount to an unfair trade practice. In our considered view, the principle laid down in the said decision is squarely applicable to the facts of the case on hand. Consequently, the plea of estoppel

[5] (2022) Livelaw (SC) 352

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raised by the promoter cannot be accepted and does not operate as a bar against the claim made by the allottees.

36. In such circumstances, having regard to the proviso appended to Section 18(3) of the RERA Act, the Allottees are entitled to compensation for the non-provision of the Juniper Club facility from the date of the sale deed in their favour until the date of procurement of the Occupancy Certificate i.e., 24.03.2026.

37. The other point that arises for consideration is the contention of the promoter that the complaint filed by the allottees is barred by limitation. However, while resisting the claim of the allottees on the ground of limitation, the promoter has simultaneously contended that, insofar as the provision of amenities, including the clubhouse, is concerned, time was not the essence of the contract. These two stands are mutually inconsistent and cannot logically operate in favour of the promoter. Having taken the stand that there was no obligation to provide the amenities within any stipulated time, the promoter cannot,

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at the same time, contend that the allottees' claim became time-barred from the expiry of such period. In such circumstances, the principle laid down by the Hon'ble Supreme Court in Welspun Speciality Solutions Limited v. ONGC has no application to the facts and circumstances of the present case.

38. Having regard to the factual and legal position discussed above, there is no justification to hold that the complaint lodged by the Allottees before the Authority was barred by limitation. Consequently, we are of the considered view that the rejection of the claim of the Allottees by the Authority was erroneous and cannot be sustained.

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39. Since the sale deed was executed on 24.09.2020 and, for the purpose of the present case, possession is presumed to have been delivered to the Allottees on the said date, they would not be entitled to claim delay-period interest for any period subsequent thereto.

40. However, there is a clear admission on the part of the Promoter that the construction of the Juniper Clubhouse had not been completed as on the date of execution of the sale deed and that the work was completed only on 24.03.2026, i.e., the date on which the Occupancy Certificate was obtained from the concerned Grama Panchayat. In the circumstances, it is evident that, notwithstanding the execution of the sale deed and delivery of possession, the Allottees were deprived of the promised clubhouse facility and other amenities forming part of the project.

41. Having regard to the reasons recorded hereinabove, we are of the considered view that the Allottees are entitled to compensation by way of damages for the period during which the promised clubhouse and amenities remained unavailable, commencing from 25.09.2020, being the day immediately following the date of execution of the sale deed and ending on 24.03.2026, being the date of issuance of the Occupancy Certificate, at the rate of Rs.10,000 per month. Accordingly, Point No.1 is

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answered partly in the affirmative. We proceed to pass the following:

: ORDER :

(a) The appeal is allowed in part;

(b) The impugned order dated 06.11.2025 passed by the 1st Respondent-RERA in complaint No.CMP/01753/2023 is hereby set-aside;

(c) The 2nd Respondent / Promoter is directed to pay compensation at the rate of Rs.10,000/- per month commencing from 25.09.2020, being the day immediately following the date of execution of the sale deed and ending on 24.03.2026, being the date of issuance of Occupancy Certificate.

(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.

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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

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