IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 27th DAY OF OCTOBER, 2026

PRESENT

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

AND

HON'BLE SRI SANTHOSH KUMAR SHETTY N.

JUDICIAL MEMBER

APPEAL No.(K-REAT)-64 of 2026

BETWEEN:

Amit Garg,
S/o. Sri Ashok Kumar Garg,
Aged about 47 years,
Residing at:
H-173, SJR Palazza City,
Doddakannali,
Bangalore -560 035. **... APPELLANT**

(M/s.Keystone Partners, Advocates)

AND:

1. SJR Prime Corporation Private Limited
Having its registered address at :
' The Hub', No.8/2, Sarjapur Road,
Ambalipura village, Varthur Hobli,
Bangalore East, Bangalore- 560 102.

Also at :
No.1, SJR Primus, 7th Floor,
Koramangala Industrial Layout,

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7th Block, Koramangala,
Bangalore -560 095.
Represented by its Director
Shamanna Jayarama Reddy.

2. The Karnataka Real Estate
Regulatory Authority,
Second Floor, Silver Jubilee Block,
3rd Cross Road, CSI compound,
Mission Road, Sampangirama Nagara,
Bengaluru – 560 027.
Karnataka,
Represented by its Secretary. **...RESPONDENTS**

(Sri.J.P.Darshan, Advocate for R.1
R.2-RERA is placed exparte).

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This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the Common Impugned Judgment and Order dated 13.04.2026, passed by the 2ndRespondent-RERA in Complaint No.00735/2025, 922/2025, 827/2025, 826/2025 and 819/2025.

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

JUDGMENT

The captioned appeal arises out of the common Judgment and Order dated 13.04.2026, in Complaint No.00735/2025, 922/2025, 827/2025, 826/2025 and 819/2025 passed by the 2nd Respondent- Karnataka Real Estate Regulatory Authority (for short 'the Authority'), whereby the Complaints filed by the Appellant and other complainants against the Respondent No.1 (for short 'Promoter') came to be dismissed for want of jurisdiction.

2. Appellant herein is the complainant in complaint No.735/2025. The other complainants have not challenged the impugned judgment and order.

3. Briefly stated, the averments made in the in Complaint are as under:

3.1. The Complainant is the owner of apartment No.H-173 in 17th floor of 'Petronas' Block in Palazza City by SJR Prime Corp (for short 'project') developed by the Promoter. The project was developed in phases and the phase in which the Complainant's apartment was

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developed was registered with RERA. In 2013, when the Promoter approached the Complainant to purchase an apartment in the project, the Promoter showed the Sanction Plan dated 02.04.2013 and format of Sale Deed dated 10.07.2020 approved by BDA and RERA and the project brochure to the Complainant. On the basis of the said representations of the Promoter, the Complainant entered into the Registered Agreement of Sale and Construction Agreement dated 24.06.2013 and Registered Sale Deed dated 10.07.2020. Complainant took possession of the apartment on 10.07.2020 and continued to reside in the apartment. In September 2020, the Promoter began construction works in the project land. Upon enquiry the Complainant came to know that a commercial complex was being constructed in the project land, without any prior notice being given to the Allottees.

3.2. As mentioned in the Agreement to Sell, Construction Agreement and Sale deed, the project was to be developed by the Promoter as per the Original Sanction Plan. It is pertinent to note that the Original Sanction Plan

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does not include any buildings for commercial purposes and Promoter had begun illegal construction on the project land in deviation from the Original Sanction Plan. In the light of the said construction being illegal and in contravention of the Original Sanctioned Plan, the Complainant and other home owners approached the Promoter to stop the illegal construction. Inspite of repeated requests of the Allottees, the Promoter has continued illegal construction work in contravention of the Original Sanctioned Plan.

3.3. The Promoter's fraudulent conduct is evident from the fact that at the time of execution, they annexed a site plan including a commercial building to the Sale Deed which is in violation of the Original Sanction Plan, despite contractually assuring the Allottees that the project would be developed in accordance with the Original Sanction Plan and that construction shall be as per the approved plan. It is only after the Promoter began illegal construction activities on the project land, the Allottees became aware

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that the site plan annexed to his Sale deed by the Promoter was in contravention of the Original Sanction Plan.

3.4. In February 2024, the Complainant became aware of a revised sanction plan dated 22.05.2019 when a copy of the same was circulated amongst the home owners by the Home Owners Association. The Allottees were shocked to see that the Promoter had unilaterally obtained the Revised Sanction Plan from BDA without informing the Allottees of the modifications sought to be made to the Original Sanction Plan or seeking their consent for the same.

3.5. The Revised Sanction Plan has been obtained by the Promoter in blatant violation of Section14 of the Act. The Promoter has failed to obtain any such necessary written consent from the Allottees prior to obtaining the Revised Sanction Plan which altered the Original Sanction Plan. Without having obtained any such written consent under Section 14 of the Act, the Promoter could not have obtained the Revised Sanction Plan nor can proceed with

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any construction in contravention of the Original Sanction Plan, including the construction of the commercial complex in the project land.

3.6. Such illegal construction of the Promoter has also led to obstruction of the driveway from the building Block-A of the project from the northern side. On account of this, the Karnataka State Fire and Emergency Services Department has issued a notice dated 18.03.2024 to the promoter informing that the renewal request of the Promoter for Fire NOC would be cancelled, if the discrepancies were not rectified by him.

3.7. Along with other home owners, the Complainant has issued a letter dated 27.05.2024 to BDA seeking revocation of the revised sanction plan on the ground that it was obtained illegally and fraudulently by the Promoter. Again on 09.07.2024 another letter along with relevant documents was sent to BDA. But BDA failed to take any necessary action in this regard.

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3.8. The Revised Sanction Plan does not permit construction of a commercial complex in the project land but only allows the Promoter to make certain modification to the multi-storied building in the project land and cancels the Original Sanction Plan only to this extent. The Promoter did not obtain the mandatory prior written consent of 2/3rd of the Allottees before obtaining the Revised Sanction Plan. Hence, revised sanction plan is illegal and void. The development of a commercial complex in such close vicinity to the residence of the Complainant and the other home owners in the project will cause severe harm and inconvenience to the Allottees residing in the project. With the above pleadings the Complainant sought the following reliefs:

(i) An order for permanent injunction restraining the Respondent-Promoter, its officers, Servants, Agents and ail other persons claiming through or under them from undertaking any construction activity that is in violation of the Original Sanction Plan bearing No.NAMA/ASA/AA

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No.3/TATA/1/E/01/2013-14 including the development of the commercial complex, on the Project site;

(ii) Direct the Respondent-Promoter to demolish all structures constructed in violation of the Original Sanction Plan bearing No.NAMA/ASA/AA No.3/TATA/1/E/01/2013-14 on the Project site, including any structures constructed for the purposes of the commercial complex;

(iii) Declare the Revised Sanction Plan No. (NAMA/ASA/AA No.3/TASA-4/E/11/2019-20) as being illegal and void ab initio;

(iv) Compensation for the legal costs incurred by the complainant as a result of this litigation; and

(v) Any other reliefs that the Hon'ble Authority thinks fit in the interest of equity and justice.

4. The Promoter had filed statement of objections to the complaint, the gist of which is as under:

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4.1. The Promoter is a reputed property developer alongside being a responsible Promoter, which has created its legacy in the real estate sector by formulating several landmark residential real estate projects spanning across the city of Bengaluru and offering its clients an abode with world-class amenities and facilities and one such project is "SJR Prime Corporation Pvt. Ltd. Plazza PH3", situated at Chikkakanahalli village, VarthurHobli, Bengaluru East Taluk. The project was flagged off by obtaining the sanction plan from the competent Authority namely Bangalore Development Authority on 02.04.2013 for construction of multi-storied residential apartment buildings consisting of 13 wings, each of them having 02 basement floors, a ground and 19 upper floor and a club house.

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4.2. The Promoter commenced the development of the whole project in a phased manner, constructing the buildings one by one. Initially, the Promoter undertook the construction of the residential apartment blocks, prioritizing their completion and delivery to the allottees. However, while doing so, the Promoter expressly reserved

the right to construct a commercial complex at a later stage, as part of the overall project development plan. The intention from the outset was to execute the project in stages, beginning with the residential segment and subsequently proceeding with the construction of the commercial complex as and when deemed appropriate. The project brochure reflecting the different buildings and other developments in the project including commercial complex was already shared to the Allottees at the time of the allotment itself.

4.3. Pursuant to securing of the sanctioned plan and after obtaining statutory NOCs' from various concerned statutory authorities, the Promoter kept on developing the project in accordance with the plan sanctioned by planning authority and started to sell the apartment units in the project to the prospective home buyers. Thereafter, subsequent to the advent of the Real Estate (Regulation and Development) Act, 2016, the Promoter got the aforesaid project registered under the provisions of the Act on 22.11.2018.

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4.4. In the sale agreement, the Allottees have explicitly consented to the Promoter's right to carryout future developments. They have also agreed and confirmed that the Promoter shall be free to develop neighbouring and nearby properties and integrate them to schedule 'A' property and the Allottees of such neighbouring property developed by the Promoter, have the right to enjoy the infrastructure facilities, common roads and utilities developed in 'A' Schedule property.

4.5. In accordance with the original sanctioned plan, the project was completed and the Promoter and Home buyers have executed the Deed of Declaration dated 16.10.2018. As per the JDA terms, the Promoter has reserved certain undeveloped portion for commercial complex consisting of retail and office spaces comprising of basement I and II/Ground and 9 upper floors and terrace floors with proportionate impartible undivided share in the land is exclusively owned by the builder. The said commercial establishment is comprised of 9006.17 Sq. Mtrs built up area in Sy.No.27/2A and 27/2B of A

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schedule with the boundaries East and West by driveway, North by Sarjapur main road and South by Wing A of Palazza City.

4.6. In the project land 175 car parkings are reserved in the basement/surface parking and they are demarcated and segregated as commercial establishment parking. These car parks are retained by the builder. The Allottees have specifically agreed for the aforesaid right of the builder in respect of the commercial establishment.

4.7. There are few minor changes which does not relates to complainants' unit or their specifications required in the original sanction plan, such as marking of the area reserved for commercial establishment as per the Deed of Declaration was done through the Revised Sanction Plan dated 22.05.2019. Accordingly, BDA has issued partial occupancy certificate dated 30.05.2019 and Promoter has executed Sale Deeds in favour of the Allottees and along with Form No.B signed by the complainants confirming to the Deed of Declaration.

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4.8. In the Sale Deed as well as in Form No.B of Deed of Declaration, the Allottees have explicitly consented to the Promoter's right to carryout future development as part of the overall project.

4.9. The careful perusal of clauses in the Agreement to Sell, Sale Deed and Form No.B of Deed of Declaration would undoubtedly demonstrate that the information pertaining to future development in the project land was made known to the Allottees at the earliest point of time. The Allottees have voluntarily agreed for the terms and given declaration. Therefore, they are now estopped from crying foul against the promoter.

4.10. As things stood today, there is no construction of commercial building as evident from the original and revised sanction plan. Therefore, the complaint is mis-conceived and pre-mature. However, the Promoter have reserved right to put up additional construction in the schedule property earmarked for commercial complex. With

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ulterior motive to harass the promoter the complaints are filed.

4.11. As per the Explanation appended to 4(2)(a) of the Karnataka Real Estate (Regulation and Development) Rules, 2017 the prior written consent of atleast 2/3rd of Allottees would not be required. The construction of commercial complex would not attract Section 14(2) so as to seek consent of atleast 2/3rd of the Allottees.

4.12. In the complaint the complainants are seeking demolition of the structures and permanent injunction restraining the Promoter from proceeding with the further construction and also declaration that the revised sanction plan is void. However, the Authority is not having jurisdiction to grant such reliefs.

4.13. There is inordinate and unexplained delay in filing the complaints and on this ground also the Complainants are not entitled for any relief and sought for the dismissal of the complaints.

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5. Vide the Impugned Judgment and Order dated 13.04.2026, the Authority has dismissed the complaint as not maintainable, for want of jurisdiction.

6. Aggrieved by the same, complainant in complaint No.735/2025 has filed this appeal on the following among other

GROUNDS

i) The Authority on an erroneous and misconceived understanding of the complainant's case has held that it is not having jurisdiction to decide validity and legality of sanctioned plans and also to grant injenctive reliefs and that such issues lie exclusively before the Planning Authority (BDA) or Civil Courts.

ii) The complaint was based on a violation of Section 14 of the Act by the Promoter namely by (i) obtaining a Revised Sanction Plan without obtaining the prior written consent of atleast 2/3rd of the Allottees; and (ii) by carrying out construction of a commercial complex in the project land in contravention of the Original Sanction Plan.

iii) The impugned judgment has erroneously disregarded the following while holding that the

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complaint is not maintainable for want of jurisdiction. Since the Original Sanction Plan, Project brochure and contractual documents did not contemplate any commercial complex and that the Revised Sanction Plan was obtained by the Promoter without prior written consent of at least 2/3rd of the Alottees, in blatant violation of Section 14(2)(ii) of the Act, the complaint falls squarely within the jurisdiction of K-RERA under Sections 14,31,36 and 37 of the Act and not within the exclusive domain of the planning authority.

iv) The Authority has failed to appreciate that under Section 31 of the Act, any aggrieved person may file a complaint before the Authority. The Allottee is seeking injunctions against construction activities contrary to the Original Sanction Plan and against implementation of the illegally obtained Revised Sanction Plan and dismissal of the complaint for want of jurisdiction amounts to failure to discharge its statutory duty.

7. The learned Counsel for the Complainant has relied upon the following citations:

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(i) Madhuvihar Co-operative Housing Society and others Vs. Jayantilal Investments and others[1]. (for short 'Madhuvihar').

(ii) Dosti Corporation Vs. Sea Flama Co-operative Housing Society Ltd. and Others[2]. (for short 'Dosti Corporation').

(i) Bajrangalal Eriwal and Others Vs. Sagarmal Chunilal and Others[3]. (for short 'BajrangalalEriwal').

(ii) Dilip J.MehtaVs.Akshar Developers and Others[4]. (for short 'Dilip J.Mehta').

(iii) Vidhi Builders Private Limited Vs. Arenbee Media Consultants Limited[5] (for short 'Vidhi Builders').

(iv) Milaan C.Jhaveri Vs. Jawala Real Estate Pvt. Ltd. and Others[6] (for short 'Milaan C.Jhaveri').

(v) Deepak Mawandia Vs. Shree RSH Projects Pvt. Ltd.[7] (for short 'Deepak Mawandia').

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[1] 2011(1) Mh.L.J.641
[2] 2016(5) Mh.L.J. 102
[3] 2008(5) Mh.L.J. 571
[4] Appeal No.AT006000000041924
[5] 2012 SCC Online Bom.219
[6] Suit (L) No.8472/2022, High Court of Bombay
[7] FMAT 97/2024, High Court of Calcutta

8. The learned Counsel for the Promoter has relied upon the following citations:

(i) Bhagerwal Infraprojects Ltd. Vs. Sunil Namamal Kriplani[8]. (for short 'BhagerwalInfraprojects').

(ii) Metrozone Apartment Owners Association Vs. Ozone Projects Private Limited[9] (for short 'Metrozone').

9. We have heard the arguments of learned Counsel for the Complainant and Promoter and perused the records.

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

Point No.1. Whether the impugned order is arbitrary, perverse and contrary to the evidence placed on record and as such calls for interference?

Point No.2. Whether the Authority erred in holding that it is not having jurisdiction to grant the reliefs sought?

[8] Appeal No.118/2023 Raj-REAT, dated 15.04.2025
[9] C.R.P.No.2124/2024 and C.M.P. No.11284/2024 High Court of Madras

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Point No.3. What order?

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

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No 3 : As per the final order for the following:

REASONS

12. **Point Nos.1 and 2 :** Since these points involve common discussion they are considered together.

13. The undisputed facts are that the Promoter has developed the project in question as a residential project in an extent totally measuring 11 acres 33 Guntas which is throughout, described as 'A' schedule. As evident from the various documents, including the Agreement for Sale, Sale Deed, Deed of Declaration, Approved Plan as well as the Revised plan and in the Advertisement Brochures, the project is described as residential project consisting of 12 towers, which are developed in a phased manner. The Approved Plan was secured on 02.04.2013 for construction of multi-storied residential apartment building consisting of

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13 wings including Club House. After coming into force of the RERA, the project came to be registered under the Act as an ongoing project. The amenities provided are Clubhouse with Gym, Pool, Squash court, Lawn tennis court, Indoor Badminton court, Basketball court, and Cycling track as stated in the schedule 'D' of the Construction Agreement dated 24.06.2013 of the complainant.

14. In the complaint, it is alleged that during February 2024, when the Promoter started putting up unauthorised construction in the project land i.e.,'A' Schedule property, the complainant came to know about the Revised Sanction Plan dated 22.05.2019 and even though the complainants as well as the Association of Homeowners tried to get the Revised Plan cancelled, they were not successful and therefore, several complaints came to be filed. Even the Karnataka State Fire and Emergency Services Department issued notice to the Promoter that the renewal request for Fire NOC would be refused if the discrepancies were not rectified. The Complainant has

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specifically contended that even the Revised Plan dated 22.05.2019 does not authorise construction of commercial complex in the project land, and in fact, the proposed construction is blocking the driveway from block 'A' of the project from the northern side. The grievance of the Complainant is that the Promoter has not secured written consent of at least Two third of the Allottees as required under Section 14 of the RERA Act and therefore the Promoter shall be prevented from continuing with the construction by Injunctive relief.

15. The Promoter has not disputed the fact that it has not secured written consent of two third of the all Allottees. On the other hand, the Promoter has claimed that right from the inception, the Promoter has reserved its right to make further construction not only in the project land i.e., 'A' Schedule, but also in the adjoining properties that it may acquire on a later date and the same is reflected in the Agreement for Sale, Construction Agreement, Sale Deeds as well as in the Deed of Declaration. In all these documents, the Allottees were

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made aware of the said fact, and they have consented for the same and undertook not to raise any objection and therefore the Promoter is justified in not securing written consent from atleast 2/3rd of the Allottees. A Revised Plan was secured on 22.05.2019, and the Allotees as well as the Association of the Homeowners were aware of the same, and at this belated stage, they have chosen to file the Complaint and on the ground of delay also, the complainant is not entitled for the reliefs sought. The Promoter has also contended that under the provisions of RERA, the parties are not entitled for equitable reliefs and only a Civil Court can grant the reliefs sought by the Complainant.

16. In the light of the rival contentions, it is necessary to examine whether in the Agreement for Sale, Sale Deed, and by subscribing to the Deed of Declaration, Allottees have given consent for commercial development in the Project land as well as the adjoining properties.

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17. Before examining the said aspect, it would be appropriate to refer to the provisions of section 14, which mandates that the promoter shall adhere to Sanction plans, Layout plans and Project Specifications. Sub section (2) of section 14 provides that after the Sanction Plans, Layout plans, and Specifications, and the nature of the fixtures, fittings, amenities, and common areas of the apartment/plot, or building as the case maybe, as approved by the competent authority, are disclosed or furnished to the person who agrees to take one or more of the said apartments, plot or building as the case maybe, the Promoter shall not make any additions and alterations(1) without the previous consent of that person or (2) without the previous written consent of at least 2/3rd of the Allottees.

18. Admittedly, in the present case, the Promoter has not taken previous written consent of atleast 2/3rd of the Allottees. On the other hand, he is claiming that all the Allottees are informed about the proposed commercial development in the project land and they have given

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written consent by way of agreeing to the terms of the Agreement for Sale, Sale Deed as well as Subscribing to the Deed of Declaration.

19. Before examining the contents of these documents to decide whether the Promoter has secured previous consent of the Allottee about the proposed commercial development, it is necessary to refer to the decisions which are relevant on the point.

(i) Relying upon the ratio in Jayanti Lal Investments Vs. Madhu Vihar Co-operative Housing Society, (Jayanti Lal Investments[10]), in *Bajranglal* referred to supra, while discussing the scope of section 7(1)(ii) Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, Which is the provision similar to section 14 of RERA, the Hon'ble Bombay High Court held that there is a statutory embargo upon making of alterations either in an individual flat or in respect of structure of the building. In that case, on facts, it was held by the Hon'ble High Court of Bombay

[10] 2007(9)SCC 220

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that carrying out construction of the 18th floor by the developer is in breach of the obligation cast by section 7(1)(ii) and notice of motion for grant of interim relief in terms of prayer in clauses (c), (d) and (e) was made absolute.

It was further held that the consent contemplated by Section 7(1) must be an informed consent. The statutory bar upon the promoter altering structure of a flat agreed to be purchased under Section 7(1)(i) of the Act and making any other alterations or additions in the structure of the building under clause (ii), can be lifted only subject to a disclosure by a developer of the entire project or scheme. The previous consent that is contemplated by section 7(1) must be an informed consent, which is freely given, after a flat purchaser is placed on notice by a complete disclosure of the project or scheme which the builder intends to implement. The consent that is contemplated by Section 7(1) is, therefore, a specific consent which is relatable to the particular project or scheme of the developer which is intended to be implemented.

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(ii) Similarly, in *Madhuvihar r*eferred to supra it was held that a prior consent of flat owner would not be required if the entire project is placed before the flat taker at the time of agreement and that the builder puts an additional construction in accordance with the Layout Plan, Building Rules and Development Control Regulations. If the Promoter wants to make additional construction, which is not a part of the Layout Plan which was placed before the flat taker at the time of agreement, the consent as required under Section 7 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act would be necessary. Once the building shown in the Approved Plan was completed and possession handed over and the time frame prescribed for registration of the Society and conveying land to the Society is over, the Promoter was legally precluded from putting up further construction without consent.

It was further held that blanket consent or authority obtained by the promoter, at the time of entering into agreement of sale or at the time of handing over the

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possession of the flat, is not consent within the meaning of 7(1), in as much as, such a consent would have effect of nullifying the benevolent purpose of beneficial legislation. Consent as contemplated under Section 7(1), has to be an informed consent which is to be obtained upon a full disclosure by the developer of the entire project and that blanket consent or authority obtained by the promoter at the time of entering into agreement of sale would not be a consent contemplated under the provisions of the said Act.

(iii) In *Vidhi Builders* referred to Supra, defendant purchased property, secured permission and constructed commercial building known as 'Mahinder Chambers' consisting of 36 units. Plaintiff purchased 2 units vide separate agreement dated 23.03.2001 and two car parking spaces at the ground level. It was represented to the plaintiff that the building would consist of basement, ground and one upper floor and that a Society of purchasers of the units would also be formed. In 2010 defendant approached the Municipal Authority, surrendered certain garden portion and in lieu of it,

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secured additional FSI. However, without the consent and intimation to the purchasers, defendant put up two more floors which was not sanctioned in the original plan. He also failed to form society and execute conveyance as per Maharashtra Ownership Flats Act (MOFA). In the light of these developments, plaintiff filed suit for permanent injunction and secured interim order of injunction. Defendant took a defense that he has constructed as per available FSI, additional FSI and Transfer of Development Rights (TDR). Society would be formed only after completion of construction. He denied that any specific area was earmarked for car parking of plaintiff and that he can park at any place available in the parking and defendant is not constructing in the parking and therefore, consent of the plaintiff and other unit holders is not required. The Trial Court granted interim order restraining further construction in the additional FSI or TDR or in the parking. Against the said order defendant approached the Hon'ble High Court.

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The Hon'ble Bombay High Court held that in the agreement for sale it was not disclose how much FSI was being utilized and how much is residual. It is also not disclosed how much additional FSI in the form of TDR or DCR could be available. If the same was disclosed in the agreement for sale, the purchaser could have had clear idea as to the potentiality of further construction. At paras 4, 4A and 7 of the Agreement for Sale only general declaration is made and general consent of the purchaser that the builder would be entitled to utilize the residual FSI, additional FSI on the basis of transfer of TDR or DCR, but the quantum of the same was never disclosed nor it was known to the purchaser. Out of the 3 additional floors plaintiff was not informed about two additional floors. In the light of the earlier decisions and the provision of law, it was held that the plaintiff is entitled for injunction and the Hon'ble High Court refused to interfere.

(iv) In *Dosti Corporation,* referred to supra, it was held that the original plan shown to the flat purchasers did not show any construction on any portion of the land other

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than the four wings. The plan shown to the flat purchasers was in respect of the entire plot and not only in respect of those four wings. The entire FSI except 2.5 Sq. Mtrs was already exhausted. The promoter did not disclose that the plot in question was capable of being loaded with additional FSI/ floating FSI/TDR. Merely because there was a clause in the agreement for sale that defendant would be entitled to carryout construction on a portion outside the yellow line boundary in future and had alleged to have obtained blanket consent of the flat purchasers. It was held that as per Section 7(1) of Maharashtra Ownership Flats Act (MOFA), once building is completed and purchasers have put in occupation in terms of the plan filed and time to form society or convey property in terms of the agreement or rules framed under MOFA is over, permission of the flat owners would be required. A blanket consent of the flat purchasers in the absence of disclosure or full disclosure about the proposed construction is not sufficient.

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(v) In *Milaan C. Javeri,* referred to Supra, it was held that as per Section 14 of RERA that there shall be adherence to the sanctioned plan, layout plan and specifications as approved by the Competent Authority and any alteration or additions is subject to prior written consent of atleast 2/3rd of the allottees/flat takers.

(vi) In *Dilip Mehta* referred to Supra the Maharashtra Real Estate Appellate Tribunal, Mumbai held that as per Section 14 of RERA that there shall be adherence to the sanctioned plan, layout plan and specification as approved by the competent authority and any alteration or addition is subject to prior written consent of atleast 2/3rd of the Allottees/Flat takers.

20. In the light of the ratio in the above decisions, it is expedient to examine whether in the present case, before putting up commercial development, the promoter has secured previous consent of the Allottee, and if so, whether it is an informed consent. Of course, if the tribunal comes to the conclusion that there was no previous consent or

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that, the consent was not an informed consent, it is necessary to examine, in the absence of written consent of at least 2/3rd of the Allottees, whether the Promoter is justified in putting up construction of commercial complex in 'A' Schedule property.

21. As already noted, the Promoter has taken a specific contention that in the Agreement for Sale, Sale Deed as well as in the Deed of Declaration to which the allotted are to subscribe, the intention of the Promoter to develop part of a schedule property and adjourning properties is brought to the notice of the Allottees and they have consented and given an undertaking that they would not raise any objection. The Agreement to Sell entered into between the Complainant and the Promoter is dated 24.06.2013.It is pertinent to note that the project developed by the Promoter is in an extent totally measuring 11 acres 33 guntas consisting of seven items in different survey numbers. In all the relevant documents, these properties are described as 'A' schedule. The promoter has described this project as a residential development. He has

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secured Approved Plan dated 02.04.2013 in respect of 'A' Schedule, which also includes a clubhouse.

22. In the site plan, it is noted that the net area considered for development is 95% of site area. The allowable FAR is three, whereas FAR Achieved is 2.996, which is slightly less than the maximum allowable FAR. Similarly, minimum requirement for Park/Open space of 10.75% and for civic amenities to the extent of 5% is reserved. In this approved plan, no portion is demarcated as reserved for commercial development.

23. In the Agreement to Sell dated 24.06.2013 and in the Sale Deed dated 10.07.2020 in respect of the Complainant, the project in question is described as Multistoried residential apartment buildings. In the Construction Agreement, it is stated that the approved plan dated 02.04.2013 is obtained for construction of multi residential apartment buildings as per the approved or/ revised plan. In these documents, it is stated that the Promoter intends to make further construction in the 'A'

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Schedule property or in the adjacent properties which it may procure on a later date and in that event, the purchasers of those developments would also use the roads and other amenities, including the clubhouse, and that the purchaser would not object for the same. As already noted in none of these documents, there is any reference to commercial development in the 'A' Schedule Property. In fact, in the approved plan dated 02.04.2013, no area is demarcated for future commercial development. Of course, if the promoter acquired any other property, adjoining the project land in question, the Allottees of the Residential units developed in 'A' Schedule may not have any objection.

24. It is pertinent to note that the Deed of Declaration dated 16.10.2018 was executed in between the Land owners and the Promoter by submitting the property to the provisions of the Karnataka Apartment ownership act, 1972, as provided under section 2 of the said Act. In this document also, it is stated that the land in question is converted for non-agricultural residential purposes. It refers to construction of 12 residential Apartment

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building/Towers and also a clubhouse. The clubhouse in question is also for the use of buyers of the apartments, which would be constructed outside 'A' Schedule property. The Deed of Declaration also refers to reserving 106 numbers of car parking for the use of clubhouse. In this document, at Page 48 para 20, there is a reference to the builder i.e., Promoter developing a commercial establishment consisting of retail and office space, comprising of Basement, I & II, ground floor and nine upper floors and Terrace floors. It is stated that the promoter intends to establish a commercial establishment measuring 9006.17 Sq. Mtrs built-up area in 'A' Schedule property in survey number 27/2A and 27/2B towards Northern side of Wing 'A' of 'Palazza City'. It is also stated that for this commercial establishment, 175 numbers of car park is reserved, which would be situated in the basement/surface parking of the project and they are demarcated and segregated as commercial establishment parking. However, in the Sale Deed dated 10.7.2020 pertaining to the complainant, there is no reference to the

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development of commercial establishment referred in the Deed of Declaration. Since the Agreement for Sale and Construction agreements were earlier to the Deed of Declaration, at least the Sale Deed, which is subsequent ought to have contained the proposal for establishing a commercial complex in 'A' Schedule.

25. Learned Counsel for the Promoter submitted that the fact that 175 numbers of car parking were reserved for commercial Establishment would indicate the intention of the Promoter for construction of commercial complex. However, in the approved plan, the total number of car parking requirement is 1097, consisting of 988 for residential units, 10 for clubhouse, 19 nine for visitors parking and the total car parking provided is 1098. In the approved plan, no car parking is there for commercial establishment. Eventhough in the Revised plan, the total number of car parking required is 1023, and the total number provided is 1217, which is 194 units in excess, the Revised plan is also described as a residential plan, and there is no reference that the earlier plan is being

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modified for the purpose of including commercial establishment. Though in the Deed of Declaration, it is stated that the commercial establishment is on the Southern side of Residential unit wing A, in the Said Revised plan, the commercial establishment is shown in the area which was marked as a park in the plan dated 02.04.2013. In other words, while in the Approved Plan, the place where park was supposed to be developed, in the Revised plan, it is shown to be the place for commercial establishment. Certainly, it is violation of the rights of the Allottee to enjoy the amenities provided to them as per the sanction plan, layout, plans and specifications as approved by the competent authority, disclosed or furnished to them at the time of Agreement for Sale and Sale Deed.

26. So far as, developing a commercial establishment is concerned, a statement in the Agreement for Sale, Construction Agreement and Sale Deed that the promoter is intending to develop commercial establishment in 'A' Schedule and that the Allottees have consented for the same cannot be at any stretch of imagination, be

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accepted as an informed consent. If at all the Promoter wanted the Allottees to consent for promoting commercial establishment, he ought to have brought it to the notice of the Allottees by inserting specific averment in the Sale Deed and also referring to the exact location where such future construction would be made. Having regard to the fact that in the Approved Plan, almost entire extent of the land was exhausted, as held in *Vidhi Builders* referred to supra, it was also desirable on the part of the Promoter to disclose how much FSI was being utilised and how much is residual. It was also desirable on the part of the promoter to disclose how much additional FSI in the form of TDR or DCR could be available to him so as to make additional construction in 'A' Schedule. Since the Revised Plan was secured on 22.5.2019, which is prior to the Sale Deed executed in favour of the complainant and some other Allotees, the Promoter ought to have referred to the Revised Plan, apart from enclosing copy of it to the Sale Deed. From the material placed on record, it is evident that the Allottees were never informed about the intended

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commercial development and the consent taken from them is not an informed consent as required under section 14. Mere enclosing of copy of the Revised Plan to the Sale Deed cannot be taken as informed consent. Therefore, at the least the Promoter ought to have taken prior written consent of at least 2/3rd of the Allottees before venturing into commercial development in 'A' Schedule.

27. One more important aspect that is noteworthy is that even though the Revised Plan is secured on 22.05.2019, admittedly, the construction is not completed, rather commenced. In fact, in the statement of objections, the Promoter has pleaded that there is no construction of commercial building as evident from the Original and Revised Sanction Plan and therefore, the Complaint is misconceived and premature. However, the photographs produced by the Complainant clearly indicates that of late attempts were made to put up construction in the area which is reserved for park and civic communities, at which juncture some of the Allottees, including the Complainants started objecting and this explains the delay in filing the

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Complaint in the year 2025, although the Revised Plan was secured in 2019 itself.

28. The commercial complex sought to be constructed is not the one promised in the brochures. Though, during the course of arguments, learned council for the Promoter made a submission that Allottees were promised commercial development, as indicated in the Brochure, the commercial activities promised in them are only Daycare centre, Food Court with coffee shop, Beauty Parlour, Laundry and dry cleaners, Specialist centre to consult visiting doctors, Business Centre and cyber Cafe with travel desk, Meeting lounges, Car rental, couriers, and ATMs, which would be conveniently expected to be provided in a 40,000 sq ft. clubhouse with the 12 guest rooms. The nature of proposed commercial construction attempted to be made in an extent measuring 9006.17 Square Meters consisting of basement I and II, Ground floor, 9 upper floors and Terrace floors is not the commercial facility offered in the brochure which appears

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to have been taken care of in the clubhouse which has spread in an extent measuring 40,000 Sq. Ft.

29. The learned counsel appearing for the Promoter placed reliance in Rule 4 (2) (i) Explanation, which states that prior written consent of at least two third of the Allottees would not be required, if improvement of the proposed plan has already been disclosed to the Allottees under the Agreement prior to registration. This is similar to the provisions of Section 14. As already discussed, the consent of the Allottees in the Agreement for Sale, Construction Agreement and Sale Deed in as much as the fact that they are required to subscribe to the Dead of declaration cannot be at any stretch of imagination accepted as an informed consent. Therefore, the Promoter cannot place reliance upon the said provision also.

30. Certainly, the Promoter has not secured informed consent from the Allottees and he has also not secured written consent of at least two third of the Allotees.

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Consequently, there is violation of section 14 of RERA, giving rise to the cause of action to the Allottee.

31. Having regard to the fact that the promoter was hurrying to construct the commercial complex in the area, earmarked as park and civic amenities, the Complainant have sought for injunctive relief. The Promoter has also taken a defence that under the provisions of RERA, equitable relief cannot be granted and only the Civil Court is competent to grant such relief. Accepting the same, the Authority has dismissed the complaints by holding that it lacks jurisdiction to grant such relief. In this regard, the following decisions are relevant.

(i) In *Milaan C. Javeri*, referred to supra, discussing with regard to bar of Civil Court jurisdiction as provided under Section 79 of RERA, it was held that as per Section 79 no Civil Court shall have jurisdiction to entertain any Suit or proceedings in respect of the matter which the Authority or Adjudicating Officer or the Appellate Tribunal is empowered by or under the Act to determine and no

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injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under such Act. From Reading of these provisions of RERA, where the addition and alteration have been done as in the present case in the sanctioned plan, the issue as to whether consent of 2/3rd of the flat purchasers has to be taken in order for it to be valid is within the jurisdiction of the Authority or Adjudicating Officer under RERA. The Civil Courts are expressly barred from entertaining and/ or granting any injunction in respect such matters.

(ii) In *Deepak Mowandia* an important question arose before the Hon'ble Division Bench of Calcutta as whether a Civil Court has jurisdiction to entertain a dispute the redressal whereof is provided in a special Act. The said appeal was directed against Exparte interim order of injunction passed by the Civil Court at the instance of the Promoter, who filed a suit for Specific Performance to direct the Allottee to pay balance amount and execute the sale deed.

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In that case out of the sale consideration of Rs.6,21,37,000/- the Allottee made substantial payment except Rs.1,55,34,250/- plus GST. Instead, the Allottee filed a complaint before RERA. However, the promoter approached the Civil Court for the above reliefs. Allottee claimed ouster of Civil Court jurisdiction. While deciding the said issue, the Hon'ble Division Bench of the Calcutta High Court, after examining the various provisions of RERA held that under Section 34 an obligation is cast on the Authority to ensure compliance of the obligations cast upon the promoter, allottee and real estate agent under the Act, Rules and Regulations, including any orders or directions made in exercise of powers conferred under the Act and clause (f) and (g).

It was further held that the Authority is empowered to pass orders or directions under Section 36 and 37 without restrictions and/or specifications of the registrations having imposed in this regard and therefore, it can be safely inferred that in the event it is found that any act, thing or deed done in contravention of the said Act,

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Rules or Regulations made therein the Authority has power in this regard. The cumulative effect of Section 36, 37 and 34 (f) and (g) of the RERA leads to an inescapable conclusion that not only power to pass such order is vested upon the authority, but also a power to ensure the strict compliance thereof is also conferred upon it. By section 38, the power have been vested upon the authority to impose penalty or interest in regard to any contravention or obligation cast upon the promoters, allottees and real estate agent under the Act and to be guided by the principles of natural justice. Similarly, Section 67 contemplates the liability to pay penalty in the event the Allottee fails to comply with or contravene any of the orders, directions or decisions of the Authority for the period during which such default continues. Section 68 relatable to punishment with imprisonment for a term which may extend to one year or with fine in the event such default continues. Section 71 and 72 provides that the Regulatory Authority may appoint an Adjudicating

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Officer to hold enquiry for adjudging compensation under Section 12,14,18 and 19.

It was further held that Section 79 bars jurisdiction of the Civil Court, according to which no Civil court shall have jurisdiction to entertain any Suit or proceedings in respect of any matter which the Authority or the Adjudicating Officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

After examining the various provisions of the RERA, the Hon'ble Division Bench of the Calcutta High Court held that the cumulative effect of Section 36,37 and 34(f) and (g) leads to an inescapable conclusion that the Authority is not only having power to pass such orders vested upon it, but also a power to ensure strict compliance thereof. Under Section 57(1) the orders passed by the Appellate Tribunal are to be executable as decree and under Section 57(2) the

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Appellate Tribunal may transmit any order made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the same as if it were to be a decree made by the said Court.

It was further held that the exclusion of jurisdiction of a Civil court should not be inferred readily, except when it is so excluded explicitly or by necessary implication and/or the statute in question provides adequate and satisfactory alternative remedy to a party; in other words, the ouster of Civil Courts can only be assumed if the authority under the statute can exercise all powers vested upon the Civil court. In the event the statute provides that the Authority is vested with the power not only to adjudicate the dispute which is capable to be adjudicated by the Civil Court but also to execute the same in the manner as is done by the Civil Court, the exclusion can be inferred by necessary implication in the absence of any express provision.

Referring to Rule 26 of the West Bengal Real Estate (Regulation and development) Rules, 2021 which is similar

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to Rule 26 of the K-RERA Rules, which deals with manner of implementation of order, direction or decision of the Adjudicating Officer, the Authority or the Appellate Tribunal, it was held that every order made by the Authority, Adjudicating Officer, Appellate Tribunal shall be enforced by it in the same manner as if it were a decree of a Civil Court and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, shall be, as far as may be applicable. As per sub-Rule (2) any such order shall be executable by the Principal Civil Court of the District having jurisdiction to execute the same. Since Order XXI of the C.P.C is self-contained code comprising of an exhaustive provision relating to the execution of a decree or the order including the Specific Performance of an agreement for Sale. By virtue of sub-Rule (2) of Rule 26 the order can also be executable by a Principal Civil court of a District having jurisdiction to execute the same.

It was further held that the conjoint reading of the various provisions in the Act as well as the rules mentioned herein above leaves no ambiguity that the power of

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Regulatory Authority is not restricted to a penalty or compensation but the orders or the directions can be executable as a decree under Order XXI of C.P.C either by itself or Principal Civil Court and therefore, it cannot be said that the said Act does not contain a provision relating to a complete redressal of the dispute involved therein. The Regulatory Authority is vested with the power to ensure the compliance not only of the Act, Rules or Regulations, but also the obligations contained therein and also to have such orders or directions to be executed so as to bring quietus to the lis. In view of the discussions made in the judgment, the Hon'ble Division Bench held that the Act being a complete code providing for exhaustive mechanism not only for the adjudication of the disputes, adherence of the obligation of the respective parties, but also to execute the same as if it is decree passed by the Civil Court and therefore, it excludes the jurisdiction of the Civil court. By necessary implication it held that the Authority and the Tribunal are having jurisdiction to pass all such orders which could be granted by a Civil Court.

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32. So far as decisions relied upon by the Promoter are concerned, *Bagherwal Infraprojects* referred to supra, was an appeal before the tribunal, against the order passed by the Authority. The allegations were that the promoter constructed 14 extra shops, encroached parking space and converted 50% of the area for commercial purpose. It blocked various basic amenities. On the complaint made by the Allottee the Authority ordered for demolition of construction in the basement or stilt floor, made beyond approved maps and also imposed penalty of Rs.10 lacks. On appeal to the Tribunal, it was held that before getting the revised plan the promoter had secured written consent of 2/3rd of the Allottees and set aside the order of the Authority. However, without examining the scope of the entire Act, as a passing remark, the Tribunal held that the authority cannot grant relief of demolition which could be granted only by the local authorities governed by their respective Acts.

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33. In Metrozone, the Single Judge of the Hon'ble High Court of Madras held that a Suit for bare injunction which is distinct from mandatory direction or statutory obligations covered by specific RERA provisions is maintainable before the Civil Court. However, it does not state that the Authority and Tribunal are not having jurisdiction to grant the reliefs which could be granted by Civil Court in furtherance of the aims and objects of the RERA.

34. Therefore, these decisions are not helpful to the case of the promoter.

35. From the above discussions, we are at the considered opinion that the Authority ought to have examined the allegations made against the Promoter that he is attempting to construct the commercial complex in the residential development made in 'A'Schedule unauthorisedly and without consent of the Allottees of the residential complex and in the event of accepting the case of the complainant to grant an order, prohibiting the Promoter from continuing with such construction and also

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to remove the unauthorized construction. Of course, in the absence of having any mechanism to execute such order, there is always recourse open to the Authority to take the assistance of the concerned local bodies to execute the order. Without examining all these aspects, the Authority has erred in simply dismissing the Complaints by holding that it is not having the Jurisdiction to grant Equitable reliefs.

36. Having regard to the fact that the Promoter attempted to construct a commercial complex in the area reserved for Park and civic amenities without taking prior written consent of 2/3rd of the Allottees, the Complainant is entitled for an order, prohibiting the Promoter from proceeding with the construction and to remove the construction if any already made and restore the said land to its earlier position. In the result, the appeal succeeds and accordingly, Point Nos.1 and 2 are answered in the Affirmative.

37. **Point No.3:** In view of findings on Point Nos.1 and 2, we proceed to pass the following:

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ORDER

(a) The appeal is allowed in part.

(b) The impugned order dated 13.04.2026 passed by the 2nd Respondent –Authority in Complaint No.00735/2025 is hereby set aside.

(c) Consequently, complaint No.00735/2025 filed by the Appellant before the Authority, is partly allowed. The First Respondent –Promoter is hereby directed to obtain the consent of atleast 2/3rd of the Allottees within 60 days from the date of this Order before proceeding with the construction in accordance with the Revised Sanctioned Plan.

(d) Until the first Respondent –Promoter obtain the written consent of atleast 2/3rd of Allottees and submits the same to the sanctioning Authority, the first Respondent-Promoter is hereby restrained from proceeding with any further construction in deviation from the original sanction Plan dated 02.04.2013.

(e) In the event the first Respondent-Promoter fails to obtain the consent of atleast 2/3rd of the Allottees within the stipulated period, the first Respondent-Promoter shall complete the

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construction in accordance with the original Sanctioned Plan dated 02.04.2013. In such an event, the sanctioning Authority, namely, the B.D.A. shall be at liberty to cancel the Revised Sanctioned Plan dated 22.05.2019.

(f) In view of disposal of the main appeal, pending I.As., if any, shall stand disposed of, as they do not survive for consideration.

(g) 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

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