

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

DATED THIS THE 11th DAY OF MARCH, 2026

PRESENT

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

AND

**HON'BLE SRI MAHENDRA JAIN,
ADMINISTRATIVE MEMBER**

APPEAL No.(K-REAT)-46 of 2025

BETWEEN:

1. Mr. Vankadari Aniruddha Vaishnav, Major,
S/o. Mr. V. Venkateswarulu.
2. Mrs. Vankadari Sunitha, Major,
W/o. Mr. V.A. Vaishnav,

Both residing at No.203,
Vars Topaz Apartments,
Ashwini Layout, Ejipura,
Bangalore.

Email id: Vaishnav.ani@wipro.com
Phone No.9980157389.

...APPELLANTS

(By Lex Scripta, Advocates)

AND:

1. The Karnataka Real Estate
Regulatory Authority,
#1/14, 2nd floor, Silver Jubilee Block,
Unity Building, CSI Compound 3rd Cross,
Mission Road, Bangalore – 560 027.
Represented by its Secretary.
2. Italix Living Spaces Pvt.Ltd.,
A part of Ozone Group,
No.38, Ulsoor Road,

Bengaluru Urban – 560 042.

Represented by its Director.

...RESPONDENTS

(Respondent No.1 By Sri. I.S. Devaiah, Advocate-RERA
Sri. E. Sushail Ahmed, Trial Base Advocate for
2nd respondent)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 12.02.2025, passed by the 1st respondent-RERA in Complaint No.CMP/220408/0009330.

This appeal coming on for hearing, this day, **Hon'ble Judicial Member** delivered the following:

JUDGMENT

The captioned Appeal emanates from the Common Judgment passed by the Karnataka Real Estate Regulatory Authority (hereinafter referred to as 'the Authority' for short) on 12.02.2025, in Complaint No.CMP/220408/0009330.

2. As averred in the Appeal Memo, initially M/s.Pebblebay Developers Pvt.Ltd., obtained registration from the Authority for the two projects namely Pebblebay Koramangala Phase-1 and Raheja Chambers. That after commencement of Civil works by the above Promoter of the project, several civil cases have been filed before the Civil Court regarding the ownership of the property on which the proposed project is to be put up. However, the said matter was amicably settled before the Civil Court on 15.02.2019.

3. Thereafter, said M/s.Pebblebay Developers Pvt.Ltd. reached an understanding with M/s.Italix Living Spaces Pvt.Ltd., (hereinafter refer to as 'the Promoter' for short) to transfer both the above projects. In this regard, an application dated 16.05.2019 was filed before the Authority seeking approval of the transfer of both the projects from M/s.Pebblebay Developers to the Promoter along with entire rights and liabilities. Subsequently, the Project has been transferred to Ozone Group, through whom the Allottees booked the flat. But, the name of the Promoter remains the same as earlier, i.e., M/s.Italix Living Spaces Pvt.Ltd. However, the project name has been changed from Pebblebay Koramangala Phase-1 to "Green View Koramangala" vide registration dated 09.01.2020, approved by the Authority and the Allottees flat fallen in the project of "Green View Koramangala."

4. That the Allottees have booked a flat bearing No.303 in the project "Ozone Green View Koramangala' and had entered into an Agreement of Sale on 18.11.2019 with the subject project for a total sale consideration of Rs.1,96,50,217/-. The Allottees had made an initial payment of Rs.5,00,000/- to the Promoter on 03.09.2019. The timeline for completion of the project by the Promoter was by the end of 30.09.2021. The Promoter has failed

to adhere to the terms of the said time fixture and even not commenced the project in compliance of the RERA Act and the terms and conditions of the Agreement of Sale. Being aggrieved by the above acts of omission & commission of the Promoter, the Allottees constrained to file a complaint before the Authority seeking reliefs for (i) completed apartment as a first option (ii) Refund of principal amount with adequate interest, in addition compensation of Rs.65/- lakhs.

5. After registration of the complaint, in pursuance of notice, the Promoter has appeared before the Authority and filed written submission on 06.02.2025 stating amongst other grounds that due to COVID-19 Pandemic, non-procuring of TDR's and further since there was a huge borrowing on the project from financial institution, the project became unviable and the Promoter could not take it further civil work. Further, Promoter stated in his Objection that, they have settled the issue with 56 of the 58 Allottees, by refunding the collected amounts with applicable interest as per Rule 16 of the RERA Rules.

6. Further, the Promoter has stated in the Statement of Objection before the Authority that, they have offered an alternative apartment in another project to the Allottees, which also refused by them. Further, due to liquidity issues, the

Promoter could not settle the issue. In 2024, the Promoter offered the RERA applicable interest, which was also turned out by the Allottees. As the project is discontinued, providing an apartment is now not feasible. Accordingly, prayed to dismiss the complaint filed by the Allottees.

7. The Authority, perusing the Complaint, Statement of Objections and on hearing both the parties, dismissed the afore-stated Complaint vide impugned Order dated 12.02.2025. The Authority in its judgment observed that, the Promoter is not continuing the project for reasons of non-feasibility etc. and has refunded, settled all the Allottees in the project except the above said two Allottees. Accordingly, the Authority by directing the Promoter to refund the amount collected along with interest in accordance with RERA, has dismissed the Complaint.

8. Aggrieved by the Impugned Order, the Allottees have preferred the present Appeal *inter alia* on the following grounds:

- i) The Promoter is bound by the terms of the Agreement of Sale between them and the Allottees and therefore, is required to comply with their contractual obligation by completing the project, as agreed and delivering possession of the flat to the Allottees.

- ii) The Authority in its order observed that the possession of the flat was still not been delivered and discovered. Upon inspection, the partially built residential project was dismantled. The Authority observed in para-21 of the Judgment that Promoter has violated the order dated 17.05.2022 of the Authority, which stated: *"Until and unless the issues before the Authority and the complaints are resolved, change of plan to commercial building shall not be initiated by the promoter and accordingly the promoter is restrained from taking any action to transfer and alienate or modifying the project."*
- iii) Even after having made the above observation, Authority failed to hold accountable for their actions and instead proceeded to deny the Allottees of their claim, thereby denying justice by dismissing the Complaint.
- iv) The compensation offered by Promoter was not as per law, and Promoter kept pressurizing the Allottees to accept the same, although Promoter understands the offer is irrational and would be a loss to the Allottees.
- v) The Authority did not consider the purpose with which the Complaint was filed and caused failure of justice with respect to the subject matter of the Appeal.

- vi) The Authority failed to impose penalty on the Promoter for its unlawful actions, instead the Authority resorted to punishing the Allottees by dismissing the Complaint for not accepting an unreasonable offer put forth by Promoter.
- vii) Section 3 of the Act requires the registration of the project to be completed prior to starting the project. Thus, the plan for the project must have been sanctioned prior, which implies that the second sanction plan was invalid if any.
- viii) The Promoter is guilty of suppressing the facts. The Promoter was well-aware for a very long time that they were changing plans for the building. Promoter has applied for a change of action plans accordingly and chose to keep the Allottees and the Authority in the dark intentionally. Promoter did not approach the Authority with clean hands and their claims were mischievous, fraudulent. The said facts were not appreciated and considered by the Authority.
- ix) Further contended that the Authority failed to consider that Promoter has not obtained extension from the RERA Authority since 2021 to till date of filing this Appeal and failed to punish the Promoter for the same.

By defining Section 2(zq) of the RERA Act, Allottees prayed this Tribunal to set aside the Impugned Order dated 12.02.2025 and direct the Promoter to complete the project and deliver the peaceful possession of the flat to the Allottees in terms of Agreements of Sale.

9. Heard the arguments of learned Counsel for Appellants and also the Arguments of learned Counsel for Promoter. Arguments on behalf of Respondent No.1/Authority is taken as heard.

10. In support of their claim, the learned Counsel for the Appellant/Allottees filed Written Argument along with Citations i.e.:

a) Pioneer Urban Land and Infrastructure Limited Vs. Govinda Raghavan reported in **(2019) 5 SCC 725**; and

b) Kranti Associates Private Limited and Another Vs. Masood Ahmed Khan and Others reported in **(2010) 9 SCC 496**.

c) Siemens Engineering & Manufacturing Co. of India Ltd. Vs. Union of India and another reported in **(1976) 2 SCC 981**.

11. Further, in support of his claim, the learned Advocate for Promoter has placed reliance on the decision of **Calcutta High Court** in the case of **Mugneeram Bangore and Co. Vs. Satyabrata Ghosh** reported in **1950 SCC OnLine Cal 208**.

12. In view of the submissions made by the respective parties, the points that would arise for our consideration are:

- i) Whether, the Impugned Judgment dated 12.02.2025 passed by Karnataka Real Estate Regulatory Authority in Complaint No.CMP/220408/0009330 has resulted in a miscarriage of justice and warrants interference in this Appeal?
- ii) What Order?

13. We answer the point No (i) in the **affirmative** for the following:

REASONS

14. Point No.(i): A perusal of the pleadings of the parties, the materials placed on record and the impugned judgment clearly indicate that the Sale Agreement was executed between the Promoter and the Allottees on 18.11.2019. As per the Agreement, the timeline for completion of the project by the Promoter was 30.09.2021, but the Promoter failed to commence the project in compliance of the RERA Act and the terms and conditions of the Agreement for Sale. On 08.04.2022, the Allottees lodged a Complaint before the Authority seeking reliefs (i)completed apartment as a first option (ii)Refund of principal amount with adequate interest, in addition compensation of Rs.65/- lakhs. It appears that, several other Allottees have lodged similar

Complaints before the Authority. In the meantime, the Promoter has applied for a 'modified sanctioned plan' with an intention to change the plan to construct a commercial building. Hence, taking serious note of the same, the Authority, in exercise of the powers conferred under Section 36 of the RERA Act, passed the following Order:

"Until and unless the issues before the Authority and the complaints are resolved, change of plan to commercial building shall not be initiated by the promoter and accordingly the promoter is restrained from taking any action to transfer and alienate or modifying the project."

15. Thereafter, the Promoter settled the claims of about 56 Allottees, except the Allottees herein and one more Allottee in Complaint No.CMP/210930/0008401. The present Allottees and the other Allottee referred to above are steadfast in pursuing their claim for delivery of possession along with interest for the delayed period. Immediately after passing of the afore-mentioned Order dated 17.05.2022, the Authority came to know that, the two floor structure erected by the Promoter in terms of the earlier Agreement was being demolished. Hence, the Authority passed an Order for spot inspection of the project by a team of its Engineers. They have conducted spot inspection on 10.06.2022 and noticed

the fact that, '*the residential building already constructed upto 2 floors have almost been dismantled by the Promoter.*'

16. Now the contentions of the Allottees are that, the present Appeal exposes the glaring miscarriage of justice. The Authority, despite recording undisputed violations committed by the Promoter, dismissed the Complaint ignoring the statutory mandate under RERA. Hence, the Counsel for Allottees made his vehement argument that the builder cannot be permitted to take shelter under his own wrong, failure to deliver possession amounts to deficiency of service and placed reliance on the decision of **Hon'ble Apex Court** in the case of **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** reported in **(2019) 5 SCC 725**. The other contention taken by the Allottees are that impugned order is not a speaking order and it does not disclose any justifiable reason in rejecting their Complaint. In support of said contention, the learned Counsel for Allottees placed reliance on other 2 Citations as referred in preceding paragraph No.10.

17. *Per contra*, refuting each and every contention raised by the Allottees, the learned Counsel for the Promoter reiterated the stand taken in the Statement of Objections. Further, the *Doctrine*

of Frustration has been pressed into service as the solitary defense to substantiate the said contention. He relied on the decision of **Hon'ble Calcutta High Court** in the case of **Mugneeram Bangore and Co. Vs. Satyabrata Ghosh** cited supra. That decision is based on the Principal that 'A contract to do an act, which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void, when the act becomes impossible or unlawful' and thereby, the provisions of Section 56 of Indian Contract Act were taken into consideration.

18. The other contention of the Promoter is that, owing to the non-availability of Transferable Development Rights (TDR) and financial constraints, the project become unviable and consequently, the Promoter settled the disputes with 56 out of 58 Allottees. However, the present Allottees and one more Allottee are insisting upon delivery of the flats, which, in the prevailing circumstances, has been rendered impossible.

19. In this background, we feel it proper to examine the alleged difficulty or inability of the Promoter in procuring TDR. As observed in the impugned judgment, despite an Order restraining the Promoter from altering the Sanctioned Plan to convert the

project into a commercial building and during the pendency of numerous Complaints lodged by various Allottees, the Promoter, without bringing the same to the notice of the Authority, unilaterally dismantled the partially constructed residential structure and proceeded to apply for a modified Sanction Plan. The way in which the building was demolished during the pendency of the Complaints, that too, without informing the Authority or the Allottees clearly indicates a mala fide intention on the part of the Promoter to deviate from the agreed residential project and to convert the same for Commercial exploitation. Hence, it is clear that the plea of difficulty in procuring TDR was merely a calculated attempt to evade the legal consequences. As such, the said contention is not tenable. Further, the doctrine of frustration enshrined under Section 56 of the Indian Contract Act, 1872 applies only when performance of a contract becomes impossible or unlawful by reason of an event beyond the control of the parties. Mere commercial hardship, inconvenience, or difficulty in obtaining regulatory approvals does not amount to frustration of contract. The doctrine cannot be invoked merely because performance has become onerous or less profitable. Therefore, Promoter cannot alter the nature of the project from residential to commercial use on the pretext of non-availability of TDR, nor can such difficulty be invoked to deny relief to the Allottees.

20. The 3 judge bench of Hon'ble Supreme Court in case of ***Satyabrata Ghose Vs. Mugneeram Bagnur & Co.*** reported in ***AIR 1954 SCC 44*** and subsequently in ***Energy Watchdog Vs. Central Electricity Regulatory Commission*** reported in ***2017 (14) SCC 80*** has categorically held that the *doctrine of frustration* must be applied within narrow limits and cannot be used as an escape route from contractual obligations. Hence, in the present case, the alleged difficulty in obtaining TDR does not render performance impossible; at best, it indicates a commercial or administrative impediment. Therefore, the Promoter cannot alter the nature of the project nor deny the statutory relief available to the Allottees under RERA by invoking the *doctrine of frustration*.

21. As stated supra, the other defense put forth by the Promoter is that, 56 out of 58 Allottees have settled their dispute by receiving refund of the amounts paid by them along with interest thereon. In view of discontinuation of the project, the relief sought by the present Allottees cannot be granted. However, it is pertinent to note that the mere withdrawal of Complaints or settlement by other Allottees does not *ipso facto* extinguish the independent contractual and statutory rights of the Allottees herein. The present Allottees are entitled to agitate their claim and

seek appropriate relief in consonance with the terms of the Agreement and the governing statutory provisions.

22. The Promoter has further contended that an alternative flat was offered to the Allottees, but the same was not accepted. It is an admitted fact that the project involved in this appeal is situated in a prime locality of Koramangala. Upon enquiry, it has come to light that the alternative flat offered to the Allottees is located on the outskirts of Bengaluru. While considering the feasibility, viability and convenience from the perspective of the Allottees, neither the Promoter nor this Tribunal can compel the Allottees to accept the alternative offer made by the Promoter.

23. However, while evaluating the factual matrix of this case, it is not in dispute that the partially constructed residential building, raised by the Promoter in terms of the Agreement entered into between the parties was dismantled nearly 4 years ago. It is also evident that, after settling disputes with almost 56 Allottees, the Promoter obtained fresh permission from the Authority to utilise the project land for a different purpose. In the present circumstances, though there exists no legal impediment for the Allottees to pursue the relief sought in the Complaint, securing such relief would entail a wait of more than a decade. Added to

this, securing other prospective buyers would itself be a formidable task. Since such an exercise may not be commercially advantageous for the Promoter, there is a reasonable apprehension that he may resort to dilatory tactics, thereby further delaying the execution of the project. Therefore, bearing in mind the underlying object and spirit of the RERA Act, we consider it appropriate to examine alternative reliefs that are more viable, convenient and equitable in resolving the dispute of the Allottees. Herein it is relevant to mention that, in compelling circumstances, a Court or Tribunal is empowered to mould the relief, provided such relief is not expressly barred by statute. The **Hon'ble Supreme Court of India** in the case of **J. Ganapatha & Ors. vs. M/s. N. Selvarajalou Chetty Trust** reported in **2025 INSC 395** held that Courts have the flexibility to modify or shape the relief sought to ensure justice and prevent further litigation, rather than dismissing a claim due to procedural technicalities regarding the specific relief requested.

24. It is pertinent to note that, although the Authority dismissed the Complaint, it has in Paragraph-14 of the impugned judgment, specifically directed the Promoter to refund the amount paid by the Allottees along with interest in accordance with the provisions of the RERA Act. However, as discussed earlier, mere refund of the

amount paid by the Allottees with interest thereon would not adequately compensate the loss, mental agony and other hardships suffered by the Allottees.

25. As per Section 18(1)(a) of the RERA Act, if the Promoter fails to complete the project or is unable to give possession of the apartment in accordance with the terms of agreement, the Allottees are entitled to claim refund of the amount paid along with interest and compensation as determined under Sections 71 and 72 of the Act. While determining the quantum of compensation, it is necessary to take into consideration the loss suffered by the Allottees, the mental agony endured by them, the loss of the fundamental breach of contract, the deficiency of service and unfair trade practice on the part of the Promoter.

26. In the case on hand, a total sum of Rs.5,00,000/- was paid by the Allottees. As observed by the Authority, the Allottees are entitled to refund of the said amount along with interest at the rate of MCLR plus 2% from the respective date of payment until realization. In view of the ground reality and for the reasons stated above, we deem it proper to award just, fair and reasonable compensation for the total loss sustained by the Allottees. Further, there is no statutory requirement that

compensation must be itemized under distinct heads. As such, the Adjudicating Authority may either quantify compensation under distinct heads or award a consolidated lump-sum amount covering all the consequences arising from the breach committed by the Promoter.

27. It is pertinent to note that the Hon'ble Supreme Court in its recent decision dated 20.02.2026 in ***Parsvanath Developers Ltd. Vs. Mohit Khirbat*** reported in ***2026 Livelaw (SC) 178***, placing reliance on its earlier decisions in ***Lucknow Development Authority, H.U.D.A. and another Vs. Shakuntala Devi*** and ***DLF Homes Panchkula Pvt.Ltd. Vs. D.S. Dhanda etc.*** has reiterated that the compensation must be fair, reasonable and commensurate with the loss or injury suffered. The consumer fora must analyse the factual matrix and cannot mechanically restrict compensation to strict financial calculations alone. We are of the considered view that, the law laid down in the said decision is squarely applicable to the case on hand.

28. In view of the foregoing reasons, we are constrained to hold that the impugned judgment passed by the Authority suffers from non-application of mind and is liable to be interfered with. Accordingly, the Promoter is directed to refund the earnest money

paid by the Allottees along with interest @ MCLR plus 2% from the respective dates of payment till realisation. Besides directing refund of the amount paid by the Allottees along with interest, we deem it appropriate to award consolidated compensation of Rs.2,50,000/- which is equivalent to 50% of the amount paid by the Allottees towards the loss, mental agony and other consequential hardships suffered by them. With these observations, Point No.(i) is answered in the 'affirmative' and proceed to pass the following:

: ORDER :

- (a) The appeal is allowed in part;
- (b) The impugned order dated 12.02.2025 passed by the 1st Respondent-RERA in complaint No. CMP/220408/0009330 is hereby set-aside;
- (c) The 2nd Respondent/Promoter is directed to refund Rs.5,00,000/- to the Allottees with interest at the rate of State Bank of India's Marginal cost of lending rate plus 2% from the respective dates of payment till realisation and further to pay a consolidated compensation of Rs.2,50,000/- within 60 days from the date of this Order, failing which the said amount shall carry interest at the aforesaid rate from the date of filing of this Appeal till realisation;

- (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/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

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