**APPEALS No.K-REAT-81 & 102 of 2025**

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

**DATED THIS THE 04th 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) 81/ 2025**

**C/W**

**APPEAL No. (K-REAT) 102 /2025**

**In APPEAL NO. (K-REAT) 81/2025**

**BETWEEN:**

M/s. Sobha Ltd.,
A Company incorporated under provisions
of the Companies Act, 1956,
Having its registered office at : SOBHA
Devarabisanahalli,
Sarjapur – Marathalli outer ring road,
Bengaluru – 560 103.
Reptd.by its Authorised Signatory
Mr. Rajesh Marathe. **APPELLANT**

(Sri.Vikram Huilgal, Senior counsel for Sri.Vinayaka S. Pandit, Advocate)

**AND:**

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

2. Mr. Vikas Bhusan, Major,
3. Mrs. Samatha M Swamy, Major,

Both are R/at
2081, Sobha Primrose,
Green Glen Layout,
Bellandur, Bengaluru – 560 027.

4. Mr. Jagadish Nangieni
Managing Director,
SOBHA,
Devarabisanahalli,
Sarjapur-Marathalli Outer Ring Road,
Bengaluru – 560 103
(**Dismissed**) **RESPONDENTS**



(Sri.K.V.Girish, Advocate of R.1 – RERA,
Sri. Anil Kalgi, Advocate for R.2 & 3, Respondent No.4 dismissed VOC dated 13.08.2025)

**In <u>APPEAL NO. (K-REAT) 102/2025</u>**

**BETWEEN:**

1. Mr. Vikas Bhusan, 40years,
2. Mrs. Samatha M Swamy, 38years,

Both are R/at :
6052, Sobha Sentosa,
Panathur Main Road,
Balagere, Bengaluru – 560 087. **APPELLANTS**

(Sri. Anil Kalgi, Advocate)

**AND:**

1. The Karnataka Real Estate
Regulatory Authority,
# 1/14, 2nd Floor, Silver Jubilee Block,
Unity Building Backside,
CSI Compound, 3rd Cross Road,
Mission Road, Bengaluru-560027.
Reptd. by its Secretary,

2. Sobha Ltd.,
Sarjapur – Marathalli outer ring road,
Devarabisanahalli, Bellandur,
Bengaluru – 560 103.
Reptd.by its Authorised Signatory ...**RESPONDENTS**

3. Mr. Jagadish Nangieni
Managing Director,
Sarjapur-Marathalli Outer Ring Road,
Devarabisanahalli, Bellandur,
Bengaluru – 560 103 ..**PROPOSED RESPONDENT**

(Sri.K.V.Girish, Advocate of R.1 – RERA, Sri.Vikram Huilgal, Senior counsel for Sri.Vinayaka S. Pandit, Advocate for R.2 & Proposed respondent)

Both these appeals are filed under Section 44(1) of the RERA Act, 2016. The appellant in Appeal No.81/2025 has sought to set aside the direction No.(iii) of the impugned order. The appellant in Appeal No.102/2025 has sought grant of additional reliefs, contending that the Authority failed to adjudicate those claims in Complaint No.00494/2024 while passing its order dated 10.06.2025.

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



## COMMON JUDGMENT

The captioned appeals arise out of the Common Judgment dated 10.06.2025 passed by the Karnataka Real Estate Regulatory Authority (hereinafter referred to as 'the Authority') in Complaint No.00494/2024, whereby the Authority partly allowed the Complaint filed by Respondent No.2 & 3 in Appeal No.81/2025) (hereinafter referred to as 'the Allottees') against the Appellant therein (herein after referred to as 'Promoter').

**2.** Since both the appeals arise out of the same order and involve common question of fact and law, they were clubbed together, heard analogously and are being disposed of by this common Judgment.

**3.** The case of the Allottees is that they booked a flat in the project titled SOBHA SENTOSA, developed by the Promoter, as per the model flat and specifications. The BBMP sanctioned the project on 4.3.2022 on the basis of the approved master plan, sanctioned architectural layouts and specified list of amenities, all of which were also represented in the project brochure and other promotional materials issued at the time of booking. The Allottees submit that after purchase of the units they discovered the Promoter has made several unauthorized and unilateral deviations from the original sanctioned plan, without obtaining the required written consent from them. The said deviations include, among other significant changes to the design of bed rooms 2 & 3, where the French windows that were promised have been replaced with double-partition ventilator windows, resulting in a marked reduction in natural ventilation and light. There have been substantial changes to the landscaping of the project, including removal of key features such as the Super Tree and Gazebo which were part of the originally marketed concept and played a role in the purchase decision of the Allottees. The Promoter also violated the terms of the Agreement of Sale by demanding payments despite failing to secure Occupancy Certificate and not completing the registration of the agreement as mandated under the Act. Despite complaints raised by the Allottees, Promoter has not taken any corrective action. Hence, the Allottees have filed the complaint seeking rectifying deviation of windows, construction of permanent concrete home office wall, registration of agreement to sale, litigation cost, penalty to Promoter and handover First Preference Right to Lease(FPRL) with Occupancy Certificate.



**4**. In response to the notice, the authorized signatory of the Promoter appeared before the Authority through counsel and filed a memo adopting the statement of objections already filed in Complaint No.496/2024 and requested that the same be treated as the statement of objections in the complaint giving rise to the present appeal. The Promoter contended that the complaint had been instituted with an ulterior motive solely to harass them. It is contended that the window design modifications which form the core of the Allottees grievance, were carried out based on feedback from the majority of the apartment purchasers. The changes were implemented after conducting a transparent process, including a survey in which 82% of the purchasers consented to the proposed modifications. There was no coercion or forced consent involved. The changes made to the window designs were in compliance with the approved plan. They were made to enhance the aesthetic appeal and functionality of the apartments while maintaining the structural integrity of the building. There is no any malpractices, misinformation, or failure to provide required documents under RERA. They made every efforts to complete the project within the agreed timelines. Any delays caused were due to unforeseen circumstance and were communicated to the Allottees in advance. The demand for additional rebates or benefits beyond what was agreed in the contractual terms, is unwarranted and is not supported by the terms of Agreement to sell. Hence, the Promoter prayed to dismiss the complaint.

**5.** The Authority, after hearing both sides, partly allowed the Complaint. The operative portion of the Impugned Order read as under:

> *"(i). The Promoter is directed to obtain the Occupancy Certificate for all components of the project on or before 31.12.2026, in strict conformity as per the RERA registration.*
>
> *(ii). The Promoter shall file regular quarterly updates on the progress of the project, including construction status; approvals obtained and anticipated timelines, as required under the Act and applicable rules.*
>
> *(iii). The Promoter is further directed to execute and register the Agreement for sale with all Allottees, within 30days from the date of the order, if not already done, in accordance with Section 13 of the Act.*
>
> *(iv). The Promoter shall also execute and register the sale deeds in favour of the Allottees within 45 days of obtaining Occupancy Certificate, or as per mutually agreed timelines, subject to fulfillment of payment obligations by the Allottees in accordance with the agreement terms.*

> *(v). The Impleadment of the Managing Director in his personal capacity is not found to be legally sustainable, in the absence of specific allegations of individual misconduct. Accordingly he is discharged from the proceedings in his personal capacity."*

**6**. Being aggrieved by this Order, both the Promoter and the Allottees have preferred separate appeals. In the Memorandum of Appeal in Appeal No.81/2025 and in their statement of objection in Appeal No.102/2025, the Promoter has contended that the Agreement to Sell were executed in the year 2022-2023. Thus, more than 2 years had elapsed by the time complaint came to be filed. Hence, registration of such an old Agreement to Sell is not legally permissible and the Authority could have not have directed them to perform the said act which is barred u/s.23 of the Registration Act. Further contended that during the execution of Agreement to Sell, possession of the apartment was not handed over in terms of Sec.53A of Transfer of Property Act, hence it is not compulsorily registerable document u/s.17 of the said Act. The Allottees demanded to register the Agreement to Sell was made after the period of limitation stipulated in the Registration Act, 1908 and therefore, such demand/direction is incapable of being fulfilled as per law. The Authority has failed to consider the legal barriers under Central Legislation, before issuing mechanical direction for registration of Agreement to Sell. The Authority exceeded its jurisdiction by directing the registration of the Agreement to Sell. The Allottees have paid a sum less than 10% of the cost of an apartment, therefore, as per Sec.13(1) of the RERA Act, Agreement to Sell ought not have executed and registered. The Authority failed to note and consider this fact. The Authority erred to consider the fact in the statement of objections. The Authority erroneously passed the order, without affording the Promoter an adequate opportunity to present its case. The registration of Agreement loses its relevance once the sale deed itself is ready for execution and registration, as the agreement to sell merges with the sale deed. Promoter offered to execute and register the sale deed for the apartment unit with undivided share of land in favour of the Allottees, as the Occupancy Certificate dated 3.12.2024 has been issued by BBMP, but the Allottees have refused to execute and register the sale deed in their favour. The Authority without application of mind and ignoring the factual position, has erroneously directed them to register the agreement to sell which could not have directed. The Order of the Authority suffers from non-consideration of case pleaded by the Promoter and suffers from absence of reasons. Hence, the Promoter prayed to set aside the direction No.(iii) passed by the Authority in the impugned order.

**7.** It is further contended by the Promoter that the Allottees cannot state that the Authority has not adjudicated their claims merely because it did not grant such reliefs in their favour. The alleged deviation regarding the measurement / dimension of windows provided in the apartment units cannot be accepted as a deviation, as a considerable number of purchasers had requested such modification. Pursuant to these requests, the Promoter conducted a survey and the majority of the purchasers opted for a modification in the style window frames. Upon considering the elevation requirements and security reasons, Promoter decided to provide sliding window in the central panel. The Promoter took all decisions after detailed discussion with the concerned Apartment purchasers in a series of meeting held and exchange of email communications and obtained written consent of majority of purchasers by email. The Agreement to Sell does not specify the type of window frame. The brochure produced by them does not make any such mention of window specifications. The Authorities, after inspection have issued the Occupancy Certificate. The Occupancy Certificate records that the deviation is within the limits of regularization as per building bye-laws 2003. Upon payment of compounding fee, the deviation was regularized. The Allottees are well informed about these aspects. Hence, the Allottees cannot allege violation of Sec.12 of RERA Act and no penalty can be imposed. It is further contended that, it is settled position of law that the brochures or phamplets do not form part of the contract or agreement. With these contentions, the Promoter has prayed to dismiss the Appeal No.102/2025.

**8.** The Allottees have filed their statement of objections resisting the grounds raised by the Promoter in Appeal No.81/2025. Further they have reiterated the averments made in their Memorandum of Appeal in Appeal No.102/2025.

**9.** In their Appeal No.102/2025, the Allottees have contended that the Authority has erroneously relied upon objections and findings from an unrelated case having no nexus to the Allottees' matter. This constitutes a jurisdictional error and renders the order unsustainable. The Authority in Paragraphs 27, 28 & 31 of the Impugned Order has itself recorded clear deviations from the plan approved by the BBMP, constituting a violation of Sec.14(2)(ii) of the RERA Act. However, no relief has been granted. The failure of the Authority to grant the relief despite these findings amounts to non-application of mind.

The Authority failed to evaluate the documents submitted by them. Such omission constitutes procedural impropriety and deprives the legitimate right of the Allottees. The non-delivery of project features shown in promotional materials amounts to misrepresentation. Delay and refusal to register the Agreement to Sell despite RERA's direction amounts to clear violation of Sec.13(1). Demand of final payment prior to Occupancy Certificate, imposition of maintenance charges and lack of transprency in corpus fund utilization amounts to violation u/s.19(6) & (7) of the Act. On the above grounds, Allottees prayed to set aside the RERA Order dated 10.06.2025 to the extent it failed to adjudicate five of the six reliefs sought by them. The relief sought by the Allottees in their appeal is for a direction to the Promoter to replace / rectify both bedroom window (W2) as per BBMP plan and dimensions; rectify and construct permanent concrete wall for home office as BBMP sanctioned plan, agreement specification and brochure floor plan; deliver amenities as per brochure like

Super Tree and play area. To impose penalties u/s.60 & 61 for established violation and grant such other reliefs.

**10.** Heard the arguments of learned Senior Counsel for the Promoter, the learned counsel for the Allottees and the Proposed Respondent. Arguments on behalf of the Authority were taken as heard. There are other appeals before us involving identical issues and after the conclusion of the arguments, the learned counsel for both the Promoter and the Allottees filed their respective Written Synopsis in one of their appeals. Perused their Written Synopsis, the documents placed before us and the Trial Court Records.



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

1. Whether the Promoter proves that direction No.(iii) in the common judgment dated 10.06.2025 is against the settled principles of law and is liable to be set aside?
2. Whether the Allottees prove that the Impugned Judgment passed by the Authority,

in so far as it refused to grant the other reliefs claimed is arbitrary, illegal and contrary to its own findings and that they are consequently entitled to the reliefs as prayed for?

3. Whether the Allottees further prove that the proposed respondent is just and necessary party for effective adjudication of the dispute?

4. What order?

**12**. Our findings on the above points are as under:

Point No.1 : In the Affirmative
Point No.2 : In the Negative
Point No.3 : In the Negative
Point No.4 : As per final order, for the following:



**<u>REASONS</u>**

**13. <u>Point No.1:-</u>** Before adverting to the controversy involved in the present appeals, it is necessary to recapitulate certain undisputed facts. As stated in paragraph No.5 above, the complaint lodged by the Allottees was partly allowed and the promoter was directed to comply with four directions contained in the operative portion of the impugned judgment. It is evident that the promoter has no objection to complying with all the said directions except the direction at Sl.No.(iii), which pertains to the registration of the Agreement to Sell.

**14.** The Principal contention advanced by the promoter is that the Agreement of Sale in question was executed in the year 2022-23 and that more than 2 years have been elapsed thereafter. Hence, it is time barred as per Sec.23 of the Registration Act, 1908 and the registration of such an old agreement of sale is not legally permissible, so the Authority could not have directed the promoter to perform the said act. The further contention of the Promoter is that, in the case on hand, the possession was not delivered as on the date of the agreement and therefore, in view of Sec.17(2)(v) of the Registration Act and Sec.53A of the Transfer of Property Act, the agreement in question is saved from compulsory registration.



**15.** The other submission advanced by the learned counsel for the Promoter is that Sec.13 of the RERA Act, provides that an Agreement to Sell shall be registered in accordance with the law for the time being in force. Hence, the law governing the registration of an agreement to sell is the Registration Act, 1908 and no other enactment.

**16.** The other contention urged by the learned counsel for the promoter is that, in the present case, Allottees had not even paid 10% of the cost of the apartment. Hence, the demand made by the Allottees for registration of the agreement of sale and the corresponding direction issued by the Authority are beyond the scope of Section 13(1) of the RERA Act. It is contended that the said provision unequivocally casts an obligation upon the Promoter to register an Agreement to Sell only where the Promoter proposes to accept more than 10% of the consideration amount. It is further argued that even this statutory requirement is subject to the law for the time being in force governing such registration. In the present case, all the requisite formalities for the execution of the Sale Deed have already been completed and there exists no legal impediment to the execution and registration of the Sale Deed in favour of the Allottees. Therefore, the direction to register the Agreement to Sell has lost its relevance, as the Agreement to Sell merges into the Sale Deed once the latter is ready for execution and registration. On this ground also the direction No.(iii) issued by the Authority, compelling the promoter to register the time barred agreement of sale is contrary to the statutory provisions and is liable to be set aside.

**17**. In support of the afore said contention the learned counsel for the Promoter has placed reliance on the decision of Hon'ble High Court of Karnataka in Smt. K.S.Chennamma and Others Vs. Sri.K.S.Maharudrappa[1]. In the said decision, it was held as under:

> "The aforesaid section makes it very clear that no document other than the Will shall be accepted for registration unless presented for the purpose to the proper officer within 4 months from the date of its execution. In other words, the limitation provided under Section 23 of the Registration Act is for 4 months for the purpose of presentation of the instrument



1 2025 Supreme (Kar) 207

> from the date of its execution. In the case on hand, the instrument at Ex.D86 is dated 05.09.1982. Though the party may have paid the stamp duty and the penalty as required under the provision of the Stamp Act, that would not confer any right on the party to seek registration of the instrument. ”

**18**. Per contra, reiterating the contentions urged in the statement of objections, the learned counsel for the Allottees vehemently contended that the promoter had collected a substantial sum, far in excess of 10% of the sale consideration, but failed to execute the registered Agreement of Sale. The High Court of Bombay, in Grand Centrum Realty LLP Vs. The State of Maharashtra and others[2], held that “execution and registration of Agreement for Sale is a mandatory statutory requirement and not a mere formality and that delay in the execution or registration does not absolve the builders of its obligation nor extinguish the rights of the Allottees.”



[2] 2025 SCC Online Bom.2579

**19**. It was further argued that the MahaRERA Appellate Tribunal, in Sanjeevani Vyapaar LLP Vs. Snehalata Devram Deokar, placing reliance on the decision of Apex Court in Kusheshwar Prasad Singh Vs. State of Bihar and others[3], has categorically held that registration is a mandatory obligation as per Sec.13 of the RERA Act. Further, placing reliance on several decisions of this Tribunal, it was vehemently argued that compliance with Sec.13 of the RERA Act is mandatory and that no Promoter can accept any deposit or advance exceeding the prescribed limit without first entering into a registered Agreement of Sale. He further argued that the decision relied upon by the learned counsel for the Promoter in Chennamma (supra) is inapplicable to the facts of the present case, as it arise out of a civil dispute and the present proceedings are governed by the provisions of the RERA Act, which is a special enactment. In view of non-obstante clause contained in Section 89 of the Act, the

[3] (2007) 11 SCC 447

principles laid down in the said decision have no application to the case on hand.

**20**. Keeping in view the rival contentions advanced by the parties, we have carefully considered the principles of law laid down in the series of decisions relied upon by the learned counsel for the Allottees. It is not in dispute that Sec.13(1) of the RERA Act makes it abundantly clear that a Promoter shall not accept a sum exceeding 10% of the cost of apartment, plot or building, as the case may be, as an advance payment or application fee, without first entering into a written Agreement for Sale with such person and registering the said Agreement under any law for the time being inforce.

*(Underlined for emphasis)*

**21**. In the present appeal as well as in the connected matters concerning the same Promoter, the foremost contention advanced is that the Allottees had not even paid 10% of the sale consideration. As such, no right accrued in favour of the Allottees to insist upon the execution and registration of the Agreement of Sale. The other contention urged on behalf of the Promoter is that, although they were ready and willing to register the Agreement for Sale, the jurisdictional Sub-Registrar refused to register the same on the ground that it was barred by limitation under Sec.23 of the Registration Act. The further submission on behalf of the Promoter is that, since the Promoter is ready and willing to execute a comprehensive registered Sale Deed incorporating all the terms and covenants proposed to be incorporated in the Agreement for Sale, no useful purpose would be served by directing the Promoter to first execute and register a separate Agreement for Sale.

**22**. Since this constitutes the crux of the controversy, we consider it appropriate to examine the provisions of Section 23 of the Registration Act, 1908. The said provision is reproduced as under:

> "Section 23 : Time for presenting the documents – subject to the provisions contained in Section 24, 25, and 26 no document other than a will shall be accepted

> for registration unless presented for that purpose to the proper office within four months from the date of its execution. Provided that a copy of decree or order may be presented within four months from the day on which the decree or order was made, or where it is appealable, within four months from the day on which it became final."



**23**. It is thus clear that, in view of the statutory bar contained in section 23 of the Registration Act, the Promoter cannot compel the Sub-Registrar to register an Agreement to Sell, if it is presented beyond the period prescribed under the said Act. Added to that, it is not the case of the Allottees that possession was delivered to them on the date of execution of the Agreement for Sale. Hence, the provisions of the Transfer of Property Act also do not come in the way of the Promoter in declining to register the agreement.

**24**. At this juncture, it is relevant to note that an Agreement for Sale is merely an executory contract and by itself, does not create any right, title or interest in the immovable property. It is the registered Sale Deed that constitutes the operative instrument for transfer of title. Therefore, when the Promoter is ready and willing to execute a registered sale deed conveying title, insistence upon prior registration of the agreement to sell serves no substantive purpose. This legal position is evident from Section 54 of the Transfer of Property Act and has been authoritatively affirmed by the Apex Court in the case of Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana[4].

**25**. The averments made in paragraph 6.7 of the Memorandum of Appeal probabilise the fact that the Allottees had paid only 9.81% of the cost of the apartment. On that ground as well the request made by the Allottees and the direction issued by the Authority compelling the Promoter to register the Agreement to Sell cannot be sustained, as the same is contrary to the provisions of Section 13 of the RERA Act and the settled principles of

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[4] AIR 2012 SC 206

law. This being the state of affairs, the law laid down in the case of K.S.Chennamma, relied by the learned counsel for the Promoter squarely applies to the facts of the present case. Although the said decision arose out of a civil dispute, it was categorically held that, in view of the bar contained in Section 23 of the Registration Act, the parties cannot compel the Registering Authority to register a document presented beyond the period prescribed under the Act. Accordingly, we find no merit in the argument advanced on behalf of the Allottees. In the factual and legal matrix of the case, the direction issued by the Authority compelling the Promoter to execute and register the Agreement for Sale before the Sub-Registrar is not sustainable under law. Consequently, the said direction is liable to be set aside. With these observations, point No.1 is answered in the Affirmative.

**26**. **<u>Point No.2:</u>** As discussed in the preceding paragraphs, the Authority by the impugned judgment, granted five of the reliefs sought by the Allottees. However, it declined to grant the remaining reliefs for the reasons assigned therein. Aggrieved by the refusal to grant those reliefs, the Allottees preferred Appeal No.102/2025. In the course of argument, learned counsel for the Allottees reiterated almost all the contentions taken in their Memorandum of Appeal as well as objection filed by them to the other appeal preferred by the Promoter in Appeal No.81/2025.



**27**. The foremost contention advanced by the learned counsel for the Allottees is that the alleged consent procured by the Promoter is subsequent to the Building Sanctioned Plan issued by the BBMP. It is urged that such consent, having been obtained after the sanction of the plan, cannot be relied upon to justify the Promoter's stand or defeat the claims of the Allottees. It is further argued that the Authority itself in Paragraph 28 of the impugned judgment has recorded that there was a fundamental breach by the Promoter. It held that changes in the window design appear to have been made without the required written consent and that the lack of proper consent remains a violation under the Act. Further, in paragraph 31, it recorded that failure to seek due consent reflects procedural irregularity. Further, argued that the alleged consent data furnished by the Promoter in its objection dated 29.11.2025 is quite contrary to the particulars furnished in its affidavit to I.A. dated 20.02.2026 and hence, it pollutes stream of justice, squanders precious judicial time, offends elementary norms of natural justice and fair adjudication. The alleged post-facto consent is unknown to law and is contrary to the provisions of Sec.14(2)(i) of RERA Act. The builder attempted to cure an illegality retrospectively. It was further argued that the copy of the two emails authored by the Allottees by name Sri. Deep Jyotis Deb and Rohit Kumar, which were produced by the Allottees, makes it clear that both of them categorically denied for having given any consent to the changes in the dimensions and design of the windows. It demonstrates that the alleged consent by Allottees through the alleged emails cannot be believed. An illegality once complete cannot be validated by subsequent documentation and the wrong doer cannot profit from its own wrong. In support of the said submission , reliance was placed on the decision of the Apex Court in Kusheshwar Prasad Singh cited supra.

**28**. Further, it was argued that the deviations and changes made in the construction are material deviations and not minor alterations. Hence, the proviso to Sec.14(2)(i) does not come to the rescue of the Promoter, as the construction and alterations were made in contravention of the provisions of Sec.14 of the RERA Act. Such alterations are required to be rectified and modified. In support of the said contention he relied on the decision of Apex Court in Supertech Ltd V. Emerald Court Owner Resident Welfare Association[5]. In the said decision it was held as under:

> "The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised



[5] (2021) 10 SCC 1

> plan of 26.11.2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T-16 and T-17).. This is violative for the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners..”

**29.** With regard to the statutory requirement of obtaining the consent of atleast two-third of the Allottees under Sec.14 of the RERA Act, the learned counsel for the Allottees invited our attention to the decisions of the Apex court in Newtech Promoters & Developers Pvt.Ltd. Vs. State of U.P.[6] and Jayantilal Investments Vs. Madhuvihar CHS[7] as well as the decision of MahaRera in Deepesh S Singh Vs. Neelakant Constructions in support of his submissions.

**30**. Refuting the alleged defence set out by the Promoter on the basis of the disclaimer clause shown in the brochure, the learned counsel for the Allottees has argued that the non-inclusion of certain vital covenants in

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[6] (2021) 18 SCC 1
[7] (2007) 9 SCC 220

the Agreement clearly demonstrate that the document contains one-sided clauses, which is in contravention of the law laid down by the Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghaven[8]. Hence, the Promoter cannot take undue advantage of the disclaimer clause shown in the Brochure.

**31**. It was further argued that the alleged consent obtained through telephonic message or by way of emails cannot be treated as a substitute for the written consent mandated under Sec.14 of the RERA Act. It was contended that a Promoter cannot substitute a statutory requirement of consent with what is, in substance, nothing more than a marketing survey or an informal expression of preference by the Allottees.

**32**. Per contra, refuting each and every contentions urged on behalf of the Allottees, the learned Senior Counsel for the Promoter while reiterating the grounds urged in the statement of objections, vehemently contended that, at the

[8] (2019) 5 SCC 75

time of seeking consent of the Allottees, it was expressly communicated that in the event of their failure to respond would be treated as an indication that they had no objection to the proposed changes. It was accordingly submitted that out of the Allottees, about 345 responded approving proposed changes, whereas 94 did not respond. Considering the totality of the circumstances, it is construed that around 439 purchasers had no objection to the change, which means 82% of the Allottees gave their consent for the modifications. As such, the Promoter cannot cater to the individual preferences of a handful of allottees by altering the overall constructions of the project. It was argued that the windows are required to be uniform throughout the building, as any variation may affect its aesthetic appearance and structural integrity. Therefore, merely because the Allottees herein did not consent to the proposed changes, they would not, by itself, be entitled to maintain a complaint alleging deviations in the construction.

**33**. The learned counsel for the Promoter further argued that the Allottees have alleged that the Promoter solicited one-sided, post facto confirmations through pre-framed surveys. However, the said allegation is devoid of merit and factually incorrect. The material on record discloses that the promoter arrived at the impugned decisions only after holding a series of meetings with the allottees, engaging in detailed deliberations and exchanging email communications with them. The decisions were thus taken after due consultation and with the consent of the requisite number of allottees and not by way of unilateral or post facto ratification through pre-framed surveys, as alleged. In the case on hand, only 14 out of the 71 purchasers in the 6th Wing opted for full sliding windows, and the present allottees were themselves among those 14 purchasers. It is further argued by the learned counsel for the Promoter that the allottees have, for the first time in this appeal, asserted that they booked the apartment on the basis of representations made in the marketing brochures, prospectus, digital promotional videos and presale discussions, which allegedly portrayed the project as a Singapore – themed luxury development featuring full French - style windows. Such a plea was never urged before the Authority nor pleaded in the complaint. In the absence of any foundational pleadings before the Authority, the allottees are precluded from raising these new factual contentions for the first time in the present appeal.

**34**. It was further argued that the Allottees themselves have admitted the exchange of email communications and the said correspondence clearly establishes that they had attended the meeting convened by the Promoter. Such admission demonstrates that the Promoter had, in fact, engaged in consultations with the Allottees and that the decision to modify the window style was taken only after due deliberations. It was further argued that the unit plan annexed to the Agreement for Sale expressly stipulates that the style, shape and position of the windows are subject to change at the stage of finalisation of the elevations. According to the Promoter, the impugned modification to the window design was only a minor design alteration, implemented after obtaining the consent of the requisite two-thirds of the Allottees. Therefore, it was argued that the requirements of Section 14 of the RERA Act, 2016 have been duly complied with and consequently, the Allottees cannot invoke the said provision to challenge the modification.

**35.** The learned Senior Counsel for the Promoter further contended that the Allottees have failed to produce any material to establish that they have suffered any loss or damage on account of the alleged representations contained in the advertisements or prospectus. It was submitted that taking note of the absence of such evidence, the Authority has categorically held that the Allottees had failed to adduce adequate material to prove any quantifiable loss warranting the grant of compensation or the imposition of any penalty. Therefore, it was argued that the Allottees cannot legitimately allege any violation of

Section 12 of the RERA Act, 2016, nor can they claim any relief there under.

**36**. The other contention advanced by the learned counsel for the Promoter is that the alleged deviation in the present case pertains only to the style of the window frames and that such modification was carried out after obtaining the requisite consent of the Allottees. According to the learned Senior Counsel for the Promoter, the said alteration cannot, by any stretch of imagination, be construed as a material or major deviation from the sanctioned plan or the agreed specifications. Consequently, it was argued that the decision relied upon by the learned counsel for the Allottees in Madhu Vihar Co-operative Housing Society has no application to the facts and circumstances of the present case.

**37**. It was further argued that, in the case on hand, the only alteration made was a minor modification relating to the type of window frames and that no structural deviation what so ever was effected, as alleged by the

Allottees. Therefore, it was argued that the principles laid down in the other decisions relied upon by the learned counsel for the Allottees have no application to the present case, as those decisions were rendered on materially different facts and are clearly distinguishable.

**38.** The learned counsel for the Promoter further contended that the Allottees have, for the first time in the present appeal, allege that the Promoter demanded final instalments prior to obtaining the Occupancy Certificate and also sought payment towards BESCOM charges and interest on maintenance. It was argued that no such allegations were raised in the complaint filed before the Authority, for reasons best known to the Allottees. Consequently it was argued that the Allottees are precluded from raising these fresh factual contentions for the first time in the present appeal and that such pleas are legally untenable. Reiterating that there are no deviations in the construction and that the Promoter has not violated any of the provisions of the RERA Act, 2016, the learned counsel prayed for dismissal of the appeal preferred by the Allottees.

**39**. As stated supra, the Principal contentions advanced on behalf of the Allottees is that the Promoter did not file statement of objections in the present case and a copy of statement of objections was never served upon them. In order to arrive at just conclusion, we have carefully perused the records of the Authority. The records disclose that as many as 30 Allottees had instituted complaints before the Authority. Those complaints were grouped in to separate batches, each consisting of five or six cases and common judgments were rendered in each batch on 10.06.2026.

**40**. The records further reveal that the Promoter filed a memo before the Authority adopting the Statement of Objections already filed in Complaint No.496/2024 and requested that the same be treated as statement of objections in the present case. The Authority accepted the said memo and proceeded to consider the adopted statement of objections while adjudicating the complaint.

**41**. In the above circumstances, we find no merit in the contention of the Allottees that the Promoter had not filed any statement of objections in the present proceedings. Once the Authority accepted the memo adopting the earlier statement of objections and the parties proceeded on that basis without objections, it is not open to the Allottees, at the appellate stage, to contend that there was no statement of objections on record. They are, therefore, precluded from raising such a plea in the present appeal. It is also relevant to advert to the contentions advanced on behalf of the Allottees that the alleged consents obtained by the Promoter through email, were created only for the purpose of the present proceedings and that several Allottees, had, in fact never accorded such consent. In support of this contention, the learned counsel has specifically referred to the names of two Allottees who are stated to have denied having given their consent through email.

**42**. However, it is pertinent to note that the batch of 30 Allottees who had instituted complaints challenging the alleged modifications. On the other hand, the project comprised a total of 533 Allottees. The material placed on record indicates that the Promoter had obtained the consent of more than the requisite two-thirds of the Allottees before implementing the impugned modifications.

**43**. In these circumstances, the fact that the few individual allottees, who were already complainants before the Authority, disputed having given their consent does not, by itself, invalidate the consent obtained from the requisite statutory majority. Consequently, the contentions advanced by the Allottees in this regard is devoid of merit and cannot be accepted.

**44**. Since the Allottees have raised a serious challenge to the evidentiary value and legal validity of the consent, allegedly obtained by the Promoter through email communications, we consider it just and necessary to examine the relevant statutory provisions governing such consent before adverting to the merits of the rival contentions. Only upon such an examination can the controversy involved in the present appeal be properly adjudicated.

**45**. "Section 14(2)(ii) of the Act mandates only the previous consent in writing of not less than two-thirds of the Allottees and does not prescribe any particular mode for recording such consent. By virtue of sections 4 & 5 of the Information Technology Act, 2000, electronic records and electronic communications receive statutory recognition. Consequently, where the promoter establishes that the concerned Allottees, through their authenticated email communications, voluntarily accorded their approval to the proposed alterations, such email communications constitute valid written consent for the purposes of Sec.14(2)(ii) of the Act. Neither the RERA Act, 2016 nor the Rules prescribed any particular mode (such as a physical signature) for obtaining the written consent of two- third's of the Allottees under section 14(2)(ii).

**46**. In the light of the foregoing discussions, we are of the considered view that the contentions urged by the Allottees that the consent obtained by the Promoter through email is invalid in the eye of law is devoid of merit and accordingly deserves to the rejected.

**47**. At this juncture, it is relevant to note that the principal defence put forth by the Promoter is that a substantial number of Allottees expressed their preference for dining area and unequivocally rejected the proposed home office. Consequently, the Promoter was constrained to modify the original plan to accommodate the preference of the majority. It was argued that, in such circumstances, it was neither feasible nor practicable to provide a separate home office enclosed by brick or cement masonry for only a handful of Allottees. Accordingly, the Promoter adopted a practical solution by partitioning the home office area with gypsum board instead of constructing a permanent masonry wall.

**48**. It hardly needs to be stated that, in an appeal, neither the Allottee nor the Promoter is entitled to seek additional or altogether new reliefs unless the law expressly permits the same or the Appellate Tribunal grants leave in accordance with law. Upon a careful perusal of the Memorandum of Appeal filed by the Allottees, it is evident that certain reliefs now claimed were neither sought nor found on the pleadings before the Authority. In the absence of any such foundational pleadings or reliefs before the Authority, the Allottees cannot be permitted to raise them for the first time in the present appeal. Consequently, we find considerable force in the objections raised by the learned counsel for the promoter regarding the maintainability of the additional reliefs now sought before this Tribunal.



**49**. The undisputed fact is that the said project consists of 533 units. Among them, only 30 Allottees have lodged their complaint before the Authority. Among them, a few preferred an appeal before this Tribunal, being not satisfied with the additional reliefs granted in their favour. In the course of argument, the learned counsel for the Promoter submitted that subsequent to the institution of these appeals, four other Allottees allegedly at the instigation of a few Allottees herein, lodged their complaints before the Authority. Another important aspect that merits consideration is that, out of 30 Allottees, only 20 have preferred the cross-appeals, which the remaining 10 have not challenged the impugned judgments. It is further pertinent to note that Seven of the Allottees did not appear before this Tribunal to contest appeals preferred by the Promoter and were consequently placed exparte. In all probability, the foregoing circumstances indicate that the number of dissatisfied Allottees is comparatively insignificant, whereas the overwhelming majority of the Allottees appear to have accepted the modifications and have not chosen to challenge the same by preferring any complaint. It also primafacie establish the defence set out by the Promoter that the deviation was made for the welfare of the Allottees and these Allottees lodged a complaint before the Authority with an ulterior motive.

**50**. In view of the foregoing discussion and conclusions, the stray observations made by the Authority in paragraphs 28 and 31 do not come to the aid of these Allottees in contending that the acts of the Promoter are contrary to the settled principles of law. A holistic reading of paragraphs 28 to 31 of the impugned order makes it abundantly clear that the Authority has not recorded any findings inconsistent with the defence put forth by the Promoter. Those observations cannot be read in isolation or divorced from the context in which they were made. Consequently, we find no merit or substance in the contention advanced on behalf of the Allottees on this ground.



**51**. As contended by the Promoter, following a series of deliberations, meetings and representations from the Allottees and with a view to safeguarding the interests and welfare of the majority of the Allottees, the Promoter found it necessary to carryout certain modifications after obtaining the consent of not less than two-third's of the Allottees. In such circumstances, the contention advanced by the Allottees that the consent obtained by the Promoter was merely a post facto consent is factually untenable and cannot be accepted.

**52**. In view of the foregoing discussion and reasons, we are constrained to hold that the Allottees have failed to establish that the order of the Authority, in so far as it refused to grant the other reliefs claimed by them, is contrary to law or otherwise warrants interference by this Tribunal. Accordingly, point No.2 is answered in the Negative.



**53**. **<u>Point No.3:</u>** While answering Points No.1 & 2, this Tribunal has already concluded that the direction issued by the Authority directing the Promoter to register the Agreement for Sale before the jurisdictional Sub-Registrar is contrary to the settled principles of law. This

Tribunal has further held that the impugned judgment of the Authority, in so far as it refused to grant the additional reliefs sought by the Allottees, is neither arbitrary nor contrary to law. In such circumstances, the application filed by the Allottees seeking to implead the proposed respondent does not survive for consideration and serves no useful purpose. Consequently, the said interlocutory application is devoid of merit and is liable to be rejected. Accordingly I.A.No.1 filed by the Allottees for impleadment is hereby rejected. Consequently point No.3 is answered in the Negative and proceed to pass the following:



**ORDER**

(a) The Appeal No.81/2025 preferred by the Promoter is hereby allowed;

(b) Consequently, direction No.(iii) of the Impugned Judgment dated 10.06.2025, passed by the Authority in Complaint No.00494/2024 is hereby set aside.

(c) The Appeal No.102/2025 preferred by Allottees is hereby dismissed.

(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.

(f) The Registry is directed to keep the original of this Judgment in Appeal No.81/2025 and copy thereof in appeal No.102/2025.

There shall be no order as to costs.



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

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

**GRL/-**