



CNR: KAHC010084622023

NC: 2026:KHC:56446
WP No. 3640 of 2023



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 3640 OF 2023 (LB-RES)

BETWEEN

RAFFLES RESIDENCY PRIVATE LIMITED
RAFFLES PARK, SOUKYA ROAD,
SAMETHANAHALLI VILLAGE,
ANUGONDANAHALLI HOBLI,
HOSKOTE TALUK,
BANGALORE RURAL DISTRICT-560067
MR. HUSSAIN SOMJEE

... PETITIONER

(BY SRI. JOSHUA HUDSON SAMUEL., ADVOCATE)

AND

1. THE STATE OF KARNATAKA
DEPARTMENT OF RURAL DEVELOPMENT AND PANCHAYAT RAJ,
VIDHANA SOUDHA,
BANGALORE-560001
REPRESENTED BY ITS SECRETARY
2. SAMETHANAHALLI GRAM PANCHAYAT
SAMETHANAHALLI VILLAGE,
ANUGONDANAHALLI HOBLI,
HOSKOTE TALUK,
BANGALORE RURAL DISTRICT-560067
REPRESENTED BY ITS PRESIDENT
3. THE PANCHAYAT DEVELOPMENT OFFICER
SAMETHANAHALLI GRAM PANCHAYAT,
SAMETHANAHALLI VILLAGE,
ANUGONDANAHALLI HOBLI,
HOSKOTE TALUK,
BANGALORE RURAL DISTRICT-560067
4. THE HOSKOTE TOWN PLANNING AUTHORITY



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NO. 2221, SRI. JAYACHAMARAJENDRA CIRCLE,
K.R. ROAD, HOSKOTE-562114
(R4 CAUSE TITLE AMENDED AS PER COURT
ORDER DATED 16.02.2023)

5. THE SATELLITE TOWN RING ROAD PLANNING AUTHORITY,
BMRDA OFFICE, NO.01, ALI ASKER ROAD,
VASANTHA NAGAR,
BENGALURU-560052
(R5 CAUSE TITLE AMENDED AS PER COURT
ORDER DATED 12.10.2023)

6. MR. KOSHY KURUVILLA
S/O LATE PETER KURUVILLA
AGED ABOUT 75 YEARS
R/AT VILLA NO.8, RAFFLES PARK,
SOUKYA ROAD, SAMETHANAHALLI,
BANGALORE-560067.

(IMPLEADING APPLICANT 1)

7. MR. ANAND KRISHNAMOORTHY,
S/O LATE A.N. KRISHNAMURTHY,
AGED ABOUT 59 YEARS,
R/AT VILLA NO.8, RAFFLES PARK,
SOUKYA ROAD, SAMETHANAHALLI,
BANGALORE-560067.

(IMPLEADING APPLICATION 2)

8. THE GREATER BANGALORE AUTHORITY,
EAST CITY CORPORATION,
N.R. SQUARE,
BENGALURU-560002
REPRESENTED BY ITS
CHIEF COMMISSIONER.

9. THE GREATER BANGALORE AUTHORITY
EAST ZONE OFFICE-MAHADEVAPURA
GROUND FLOOR, CORPORATION BUILDING,
OPPOSITE PHOENIX MALL,
ITPL MAIN ROAD,

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MAHADEVAPURA,
BANGALORE-560018
REP BY THE JOINT COMMISSIONER.

.... RESPONDENTS

(BY SRI. BOPPANNA BELLIAIYAPPA., AGA FOR R1;
SRI. M.S. DEVRAJU., ADVOCATE FOR R2 & R3;
SRI. A.V. GANGADHARAPPA., ADVOCATE FOR R4;
SRI. YOGESH D. NAIK., ADVOCATE FOR R5;
SRI. SURAJ SAMPATH ON IA 2/24 IMPEADING APPLICANT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR ORDER IN THE NATURE OF CERTIORARI AND QUASH THE IMPUGNED NOTICE/ORDER NO. PDO/SGR/ / 2022-23 DATED 10.01.2023 VIDE ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 13.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. Petitioner is before this court seeking for the following reliefs:

1. Issue a Writ or Order in the nature of Certiorari and quash the impugned Notice / Order No. PDO/SGR/ / 2022-23 dated 10.01.2023 vide ANNEXURE:A; and

ii. Issue a Writ / Order / Direction in the nature of a Mandamus directing the Respondent Nos. 2 and 3 to grant sufficient opportunity to the Petitioner before taking any action with regard to withdrawal of the Occupancy Certificate.

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iii. Pass any other order or direction as this Hon'ble Court deems fit under the facts and circumstances of the case.

2. The above matter had been disposed of vide order dated 11.12.2023 quashing the impugned order dated 10.1.2023 and restoring the Occupancy Certificates issued from 19.09.2016 to 05.05.2017, more particularly on 19.09.2016 for Villa Nos. 42 and 45, on 14.12.2016 for Villa Nos. 55, on 15.03.2017 for Villa Nos. 51, on 10.04.2017 for Villa Nos. 1, 2, 3, 4, 5, 6, 10, 12, 14, 15, 16, 17, 18 and 19, on 05.05.2017 for Villa Nos. 24, 26, 32, 40, 46, 48, 49, 50, 52, 54, 56, 58, 59, 60 and 61 subject to the premises being put back in a fit condition for occupancy within three months. If the same were not to be done by 15.03.2024, Respondents No.2 and 3 were at liberty to issue fresh notice to show cause as to why the Occupancy Certificate could not be cancelled after hearing the petitioner and passing necessary orders. The due taxes were also directed to be cleared within a period of 90 days from the date of receipt of a copy of the order.
3. Post the disposal, application IA-1/2024 was filed by two persons, claiming to be purchasers of the villas in the project of the petitioner, to implead

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themselves as party respondents. IA-2/2024 was filed by them, seeking recall of the order dated 11.12.2023 and restoration of the matter for fresh hearing.

IA-1/2024

4. The present application has been filed by two persons claiming to be victims of the fraud allegedly perpetrated by the petitioner in collusion with the official respondents. It is contended that the project is yet to be completed and that the petitioner, in concert with respondents No.2 to 5, has misled this Court. According to the impleading applicants, no proper verification or inspection was undertaken before the earlier Occupancy Certificates came to be issued to ascertain whether the construction had been completed in all respects. It is further contended that none of the villas had been occupied at the relevant point in time. Though it is now asserted by the petitioner that the doors and windows have subsequently been removed, the specific allegation of the impleading applicants is that such doors and windows were, in fact, never installed in the first instance.

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5. It is, therefore, contended that the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were procured by practising fraud upon the authorities and were issued at the behest of the petitioner solely with a view to prevent the project from being treated as an "ongoing project" within the meaning of the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short, "RERA").
6. The impleading applicants further submit that they, along with several other purchasers, have already instituted proceedings before the Real Estate Regulatory Authority (RERA), which are presently pending consideration. According to them, relying upon the order passed by this Court, the petitioner has taken a specific stand before the RERA that, since Occupancy Certificates had been issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 the project falls outside the purview of an "ongoing project" under RERA and, consequently, the Authority lacks jurisdiction to entertain the complaints.
7. It is submitted that the observations made in the order passed by this Court are being relied upon by

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the petitioner to the prejudice of the impleading applicants in the proceedings pending before the RERA. Since the outcome of the present proceedings is likely to have a direct bearing upon their rights and remedies, the impleading applicants contend that they are necessary and proper parties to the present proceedings and therefore seek to be impleaded.

IA-2/2024

8. By way of I.A. No.2/2024, the proposed respondents seek recall of the order dated 11.12.2023. The application substantially reiterates the allegations made in the impleading application. In addition thereto, it is contended that the sale deed in respect of Villa No.38 was executed only on 19.09.2018 and possession thereof was delivered on 08.11.2018. According to the applicants, these facts belie the petitioner's assertion that Occupancy Certificates had been issued as early as between September 2016 and May 2017 specifically on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017. It is submitted that, had a valid Occupancy Certificates been issued during the said period, there would have been no occasion for the petitioner to defer the execution of the sale deed and

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delivery of possession for more than a year thereafter. The delay in execution of the sale deed and handing over possession, it is contended, unmistakably demonstrates that neither the project nor the villas were complete and fit for occupation at the relevant point of time.

9. The impleading applicants further contend that even the requisite electricity connections had not been obtained, thereby reinforcing their contention that the construction was incomplete. It is alleged that the petitioner approached this Court by suppressing these material facts and succeeded in obtaining the order dated 11.12.2023. According to them, the petitioner is now relying upon the said order before the Real Estate Regulatory Authority (RERA) to contend that the project stood completed in the year 2017 by virtue of the issuance of the Occupancy Certificates on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 consequently, does not fall within the ambit of an "ongoing project" under the section 3 of the Real Estate (Regulation and Development) Act, 2016. It is therefore submitted that this Court, in exercise of its inherent and extraordinary jurisdiction, ought to recall the order dated 11.12.2023 so as to prevent its process from

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being abused and to ensure that no party derives an advantage from an order allegedly obtained by suppression of material facts.

Objections to IA 1 and 2/2024

10. The petitioner has filed a common statement of objections opposing both the applications. It is contended that neither application is maintainable either in law or on facts and that the proposed respondents have no locus standi to seek either impleadment or recall of the order dated 11.12.2023. It is submitted that the notices impugned in the writ petition pertain only to 33 residential villas, namely Villa Nos.1 to 6, 10, 12, 14 to 19, 24, 26, 32, 40, 42, 45, 46, 48 to 52, 54 to 56 and 58 to 61.
11. The proposed respondents admittedly claim rights only in respect of Villa Nos.8 and 53, which do not form part of the subject matter of the impugned notices or the proceedings culminating in the order dated 11.12.2023. Hence, it is contended that the proposed respondents are complete strangers to the subject matter of the writ petition and have no legal right or interest which would entitle them to seek impleadment or recall of the order passed by this Court.

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12. It is further contended that the allegation of fraud is wholly unfounded and devoid of material particulars. The petitioner denies having committed any fraud, either independently or in collusion with the official respondents, and submits that the burden of establishing such serious allegations squarely rests upon the applicants. It is further submitted that valid Occupancy Certificates have been issued in respect of Villa Nos.8 and 53. Since those Occupancy Certificates continue to remain valid and subsisting and have never been challenged before any competent forum, the applicants cannot contend that their rights have been adversely affected by the order passed in the present writ petition. On these grounds, the petitioner prays for dismissal of both the applications.
13. The petitioner has also filed an application seeking extension of the time granted by this Court under its order dated 12.03.2023. By the subsequent order dated 11.12.2023, this Court extended the time for restoring the villas to a condition fit for occupation by directing the petitioner to complete the restoration of 15 villas within three months and the remaining 18 villas within a further period of three months, besides

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directing payment of all property taxes from the date of issuance of the Occupancy Certificate.

14. In support of the application for extension, it is contended that, insofar as the villas already sold are concerned, the petitioner had discharged the property tax liability until the respective dates of sale, whereafter the liability was borne by the purchasers. In respect of the unsold villas, though the petitioner remained liable to pay the taxes, it could not do so owing to financial constraints occasioned by the villas remaining unsold and the intervening COVID-19 pandemic. It is on these grounds that extension of time was sought even for payment of the outstanding taxes.
15. The petitioner further submits that Villa Nos.4, 26, 32 and 59 have either already been sold or are under agreements of sale. Since the prospective purchasers are residing abroad and have not finalised or executed the interior works according to their individual preferences, those villas could not be restored to a condition fit for occupation within the time stipulated by this Court.
16. It is further submitted that Villa Nos.1, 2, 3, 5, 6, 10, 12, 14 to 19, 24, 40, 42, 45, 46, 48 to 52, 54, 56,

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58, 60 and 61 continue to remain unsold. According to the petitioner, the interior works and finishing of these villas are intentionally deferred until a prospective purchaser is identified, so that the interiors may be customised in accordance with the individual preferences of the purchaser. It is also submitted that the glass facades and window panels had to be removed on account of cracks that developed due to temperature variations and that certain doors were removed to facilitate such customisation.

17. The petitioner further states that a substantial quantity of the materials required for completion of the interior and finishing works forms the subject matter of Commercial Appeal No.1021/2021 and, therefore, could not be utilised pending adjudication of the said proceedings. It is also submitted that enquiries are continuously being received from prospective purchasers and that the petitioner is making earnest efforts to liquidate the unsold inventory in order to reduce the substantial maintenance costs being incurred. The petitioner is stated to be in constant communication with its financial creditor for obtaining the necessary No Objection Certificates to effect such sales, a process

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that has taken considerable time. It is in these circumstances that the petitioner undertook, by way of the affidavit dated 12.03.2024, to restore all the unsold villas which form the subject matter of the writ petition to a condition fit for occupation within a period of six months from the date of the affidavit, irrespective of whether they are sold during the said period.

18. The petitioner has also addressed the issue regarding the competency of the authority which issued the Occupancy Certificate. Referring to the contention of the respondents that respondent Nos.2 and 3 lacked the authority to issue the Occupancy Certificate, it is submitted that the said contention is misconceived. According to the petitioner, under the provisions of the **Karnataka Panchayat Raj (Zilla Panchayat, Taluka Panchayat and Gram Panchayat Control for Erection of Buildings) Model Bye-laws, 2015** (for short, "the 2015 Bye-laws"), the expression "Authority" has been specifically defined to mean the authority authorised by the Gram Panchayat to grant licences and discharge the functions of the Authority under the Bye-laws. It is, therefore, contended that respondent Nos.2 and 3 were fully competent to

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issue the Occupancy Certificate and that the challenge to their authority is legally untenable.

19. Hence, this Court recorded the same on 16.04.2024 as under:

ORDER

- 1. The submission made by the counsel for the petitioner is that in terms of the Karnataka Panchayat Raj (Zilla Panchayats, Taluk Panchayats and Grama Panchayat Control Over erection of buildings) Model Bye-laws, 2015, the authority is defined as an authority authorized by Grama Panchayat to grant licenses and perform the function of the authority under the Bye-laws.*
- 2. A perusal of the said model Bye-laws indicates that the building license is sanctioned by the authority, the applications for erection, re-erection, material alteration and demolition of building have to be made to the authority. The applications for construction of commercial and business buildings, education, religious, charitable as also industrial buildings would have to be made to the authority. The authority could cancel the license and it is the authority which has to issue the Completion Certificate as also the Occupancy Certificate. The above would only indicate that anyone authorized by Grama Panchayat would be an authority.*
- 3. It is not clear from these Bye-laws whether the Bye-laws would apply even to the Town Planning Authority having jurisdiction over that particular area or would this apply only as regards Panchayat coming outside the jurisdiction of the Town Planning Authority. It is also not clear as to what are the competencies available with the Grama Panchayat including the human qualifications as also the infrastructural requirements to carry out the above activities and sanction/issue permissions. In the event of Panchayat not having any human resource or infrastructure resource to carry out the above activity which are available with the Planning Authority which remains to be explained by the Principal Secretary, Urban Development Department as to how the Grama Panchayat would have jurisdiction to issue the Occupancy Certificate, plan sanction etc., as regards the area which falls within the jurisdiction of Planning Authority*

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formulated for that purpose, since the model Bye-laws have been issued under the Karnataka Panchayat Raj Act, 1993 as also be the Principal Secretary, Rural Development and Panchayat Raj Department to file its affidavit in this regard.

4. Affidavit to be filed on or before 22.04.2024.

5. Re-list on 23.04.2024.

20. On 24.04.2024, an affidavit of the Under Secretary of the Government Urban Development Department dated 22.04.2024 was filed, which reads as under:

AFFIDAVIT

I, Rajesh Sulikeri, S/o Sangappa Sulikeri, aged about 46 years, working as Under Secretary to Government, Urban Development Department (BDA & B-1), Vikasa Soudha, Bengaluru-560 001, do hereby solemnly affirm and state on oath as follows:-

1. *I state that I am working as Under Secretary to Government, Urban Development Department(BDA & B-1), Vikasa Soudha, Bengaluru and I am aware of the facts of the case as borne out from the records. Hence, I am swearing to this Affidavit.*

2. *This Hon'ble High Court, vide its daily order dated 16.04.2024 has directed as below:.*

"It is not clear from these Bye-laws whether the Bye-laws would apply even to the Town Planning Authority having jurisdiction over that particular area or would this apply only as regards Panchayat coming outside the jurisdiction of the Town Planning Authority. It is also not clear as to what are the competencies available with the Grama Panchayat including the human qualifications as also the infrastructural requirements to carry out the above activities and sanction/issue permissions. In the event of Panchayat not having any human resource or infrastructure resource to carry out the above activity which are available with the Planning Authority which remains to be explained by the Principal Secretary, Urban Development Department as to how the Grama Panchayat would have jurisdiction to issue the Occupancy Certificate, plan sanction etc., as regards the area which falls within the jurisdiction of

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Planning Authority formulated for that purpose, since the model Bye-laws have been issued under the Karnataka Panchayat Raj Act, 1993 as also be the Principal Secretary, Rural Development and Panchayat Raj Department to file its affidavit in this regard".

3. I state that Local Planning areas are declared under section 4-A of the Karnataka Town and Country Planning Act and Planning Authorities are constituted for such areas and the Planning Authority carries out the functions specified in the Act which includes the preparation and implementation of the Master Plans approved by the Government along with the Zonal regulations for the Local Planning Area.

4. I state that Under section-15 of the Karnataka Town and Country Planning Act, 1961 the Planning authority is to issue permission for development of buildings in the commencement certificate prescribed in the Karnataka Planning Authorities Rules, 1965. That with respect to Urban Local Bodies in the State powers to issue commencement certificates for development of buildings is delegated to the Urban Local Bodies under section 81 of the Karnataka Town and Country Planning Act. However, in the Gram Panchayat limits within the Local Planning Areas, the Commencement certificates are issued by the Planning Authorities for permission for development of buildings in accordance with master plan; layout plan approved under section 17 of the KTCP Act, 1961 and the provisions in the applicable Zonal regulations. The copy of the commencement certificate is produced herewith. as ANNEXURE-R1.

5. I state that Provisions with regards to permission for building development in The Karnataka Gram Swaraj and Panchayat raj Act, 1993 is enumerated as under:

Section-64:Regulation of the erection of the building.

(1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or erect advertisement hoarding or set up mobile towers atop or alongside or in any vacant space within the premises or reconstruct any building without the written permission of the Grama Panchayat. The permission may be granted on payment of such fees as may be specified by bye-laws.

(2) If the Grama Panchayat does not, within sixty days from the receipt of the application determine whether such permission should be given or not and communicate its

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decision to the applicant, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

(5A) Gram Panchayats shall strictly comply with the provisions of the Town and Country Planning Act, 1961 in the matter of issue of building license or approvals of housing or residential layouts. Any approval in violation of any of the provisions of the town and country planning Act, 1961 shall be construed as "misconduct" for which the concerned officer or official shall be liable for disciplinary action.

(ii) That RDPR has issued notification No. RDP 788 GPA 2014 dated: 08.05.2015 as the Karnataka Panchayat Raj (Zilla Panchayats, Taluk Panchayats and Grama Panchayat Control over erection of Buildings) Model Byelaws, 2015. The provisions in the Bye-laws to the extent that is not specified in the Zonal Regulations of the approved Master plan under section 13(3) of the KTCP Act, 1961 is applicable in the Jurisdiction of the Gram Panchayat within the limits of the Local Planning Authority. The building license is to be considered under section 64 of the Karnataka Gram Swaraj and Panchayat raj Act, 1993 to be read with clause-9 of the notified Model Byelaws-2015 and completion certificate from the qualified Architect/ Qualified empanelled engineer/supervisor (Civil Diplomaholder) regarding completion of work under clause-12 and permission to occupy the building is to be issued by the Gram Panchayat under clause-13 of the said Byelaws.

6. I respectfully submit that with respect to the provisions related to open space, area, height limitations, parking spaces, exemption to open spaces there are overlapping provisions in the approved Zonal Regulations and Model Building byelaws. However as specified under sub section (5A) of Section 64 of The Karnataka Gram Swaraj and Panchayat raj Act, 1993 the provisions Town and Country Planning Act, 1961 in the matter of issue of building license is applicable and hence the provisions in the Zonal Regulations are applicable mutatis-mutandis in the Gram Panchayat limits within the Local Planning Areas.

7. I respectfully submit that as explained above it is to be noted that within the Gram panchayat limits in the Local Planning Areas the gram Panchayat has to obtain the Commencement certificate issued under section-15 of the

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KTCP Act, 1961 from the concerned Planning Authority and subsequently grant the permission for erection of building under section-64 of the Karnataka Gram Swaraj and Panchayat raj Act, 1993 read with clause-9 of the Notified model byelaws-2015. There is no provision in the KTCP Act, 1961 to issue Occupancy Certificates and hence the Planning Authorities do not issue Occupancy Certificates. On completion of construction of the building, the completion certificate regarding completion of the construction of building is submitted by the applicant through the qualified Architect/Qualified empanelled engineer/supervisor (Civil Diploma holder) to the gram panchayat in Form-V specified _ in the Notified model Byelaws-2015. Thereafter permission to occupy the building is issued by the Gram Panchayat under clause-13 in Form-VI specified in the notified model Byelaws-2015.

8. I respectfully submit that in areas other than Local Planning Areas Building license and Occupancy certificates are to be issued under the provisions of The Karnataka Gram Swaraj and Panchayat raj Act, 1993 and the notified byelaws-2015. The copy of the Model Bye-laws is produced herewith as ANNEXURE-R2.

Provisions in Bengaluru Metropolitan Region:

9. I respectfully submit that in case of areas within the Bengaluru Metropolitan Region the Government has notified the Bengaluru Metropolitan Region Development Authorities Rules, 2022 vide Notification No: UDD 234 BMR 2020(e) dated: 20.11.2023, in sub rule-(5) of the Rule 18 the following provision is made:

"18. Power to inspect and Review.- (5) The Metropolitan Commissioner shall call for his prior concurrence to any proposals and activities including Single Site Approvals, Provisional/ Final Layout Approvals, Orders of Release of Sites, Approval of Development Plans, Allowing developments in Agriculture Zone within specified distance from the Gramatana during land conversion and Development Plan approval, Proposals of Technical Opinion before issuing building plans, Commencement Certificate and Occupancy Certificate for Multistorey Projects by Local bodies/ Planning Authorities/ Urban Development Authorities and any other Authority executing Town and Country Planning functions in the Local Planning Areas within Bengaluru Metropolitan

10. I respectfully submit that in accordance with the provisions made in the Rule above in case of Multistoried

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buildings the Commencement Certificate and Occupancy Certificate for Multistorey Projects by Local bodies shall be issued in concurrence with the Metropolitan Commissioner of BMRDA. The copy of the Notification is produced herewith as ANNEXURE-R3.

WHEREFORE, I respectfully pray that this Hon'ble Court may kindly be pleased to accept the Affidavit, in the interest of justice and equity.

21. A perusal of the affidavit filed by the Under Secretary of the Government Urban Development Department indicates that reliance has been placed upon the provisions of the Karnataka Panchayat Raj (Zilla Panchayat, Taluka Panchayat and Gram Panchayat Control for Erection of Buildings) Model Bye-laws, 2015. It is contended that rule 2(b) of the said Bye-laws defines the expression "Authority" to mean the authority authorised by the Gram Panchayat to grant licences and discharge the functions of the Authority under the Bye-laws. Reference is also made to Rule 5, which provides that, while the building plan is required to be signed by a qualified architect, engineer or supervisor, it is the Gram Panchayat, being the competent authority, that examines the proposal and accords approval to the building plan in accordance with the provisions of the model Bye-laws.

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22. The petitioner further relies upon Rules 9 and 10 of the Bye-laws read with Section 111(1) and (2) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, to contend that every Gram Panchayat is required to have a full-time Panchayat Development Officer (PDO) and a Secretary, who are Government officers, besides such other officers as may be appointed. On the strength of these provisions, it is contended that the Panchayat Development Officer is the competent authority to exercise powers under the Bye-laws, including the power to cancel a licence and to issue the requisite clearance or Occupancy Certificate. Consequently, it is submitted that the Occupancy Certificate issued by the Panchayat Development Officer is by a competent authority and cannot be faulted on the ground of lack of jurisdiction.
23. By relying on Rule 13, it was contended that the Gram Panchayat is the authority to issue Occupancy Certificates. It is in that background, the following order was passed on 24.04.2024:

ORDER

1. An affidavit of the Under Secretary to the Government, Urban Development Department has been

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filed. Much arguments have been advanced by all the counsel on the said affidavit. Despite the said affidavit having been filed and the arguments being advanced, there is no clarity as to whether the Model Bye-laws would apply to an area where the Town Planning Authority has jurisdiction i.e., could both the Gram Panchayath and the Town Planning Authority have the jurisdiction in the same area and if so, to what extent. If not, who will have the jurisdiction whether it is the Gram Panchayath or the Town Planning Authority

2.The learned counsel for respondents No.2 and 3 is also directed to place on record if the Model Bye-laws have been adopted/drafted by respondent No.2

3.Re-list on 25.04.2024 at 2.30 p.m.

24. On 25.04.2024 no categorical submission having been made as regards who is the authority, the following order was passed:

ORDER

1. Though the matter was taken up today once again for determining who is the authority who could issue the Occupancy Certificate, the affidavit which has been filed by the Under Secretary, Urban Development Department and Under Secretary, Panchayath Raj Department, have not stated categorically as to who has got authority to issue plan sanction, commencement certificate and Occupancy Certificate. The model bye-laws indicate as if it is the Panchayath who has to grant Occupancy Certificate.

2. However, the Panchayath Development Officer who is present before this Court submits that the model bye-laws have not been adopted by Respondent No.2. In such a situation, it would be required for the Urban Development Department, Panchayath Raj Department as also the Director, Town and Country Planning Department to categorically state as to who is the authority he has to approach for grant of Occupancy

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Certificate. The consequence of not adopting the model bye-laws also to be made clear.

3. Re-list on 03.06.2023 at 2.30 p.m.

25. Pursuant to the directions issued by this Court, an affidavit came to be filed by the Under Secretary to Government, Urban Development Department. In the said affidavit, it is stated that Local Planning Areas are declared under Section 4A of the Karnataka Town and Country Planning Act, 1961 (for short, "the KTCP Act"), and Planning Authorities are constituted for such areas. It is further stated that the Planning Authorities discharge the functions entrusted to them under the KTCP Act, including the preparation, approval and implementation of the Master Plan and the regulation of planned development within their respective jurisdictions.
26. It is further stated that, under Section 15 of the KTCP Act, the Planning Authority is the competent authority to grant permission for development and to issue the commencement certificate in accordance with the provisions of the Karnataka Planning Authority Rules, 1965. Referring to Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, it is stated that the Model Bye-laws framed

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thereunder would apply to areas falling within the jurisdiction of a Gram Panchayat only to the extent the subject matter is not governed by the Zonal Regulations forming part of the approved Master Plan.

27. It is therefore stated that an application for grant of a building licence is required to be considered under Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, read with Rule 9 of the notified Model Bye-laws, and that the permission to erect a building is to be granted by the Gram Panchayat. However, where the property is situated within a notified Local Planning Area, the provisions of the KTCP Act and the applicable Zonal Regulations would also govern the development. In such cases, before granting permission for erection of a building under Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, the Gram Panchayat is required to obtain or ensure the existence of a commencement certificate issued by the jurisdictional Planning Authority under Section 15 of the KTCP Act.
28. The affidavit further clarifies that the KTCP Act does not contain any provision empowering the Planning

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Authority to issue an Occupancy Certificate upon completion of the construction. Consequently, the Planning Authorities do not issue Occupancy Certificates. Upon completion of the building, it is the Gram Panchayat which is competent to issue the Occupancy Certificate in Form VI prescribed under the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015.

29. Insofar as developments situated within the Bengaluru Metropolitan Region are concerned, it is stated that the matter is governed by sub-rule (5) of Rule 18 of the Bengaluru Metropolitan Region Development Authority Rules, 2022, which specifically regulates the issuance of occupancy-related permissions in respect of developments falling within the jurisdiction of the Bengaluru Metropolitan Region Development Authority.
30. It is in that background that this court passed the order dated 3.06.2024 as under:

ORDER

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1. *An affidavit of Sri Rajesh S. Sulikeri, the Under Secretary to Government, Urban Development Department has been filed. The same is taken on record.*
 2. *A memo has been filed on behalf of respondents No.2 and 3 enclosing the Model Bye-laws. The same is taken on record.*
 3. *Since the learned Advocate General was present before this Court, the issue in the above matter was brought to the notice of the learned Advocate General requesting him to look into the matter and make a submission on behalf of all the departments concerned to bring a quietus to the issue as also a transparency for the owners, developers, purchasers, etc., to be clear on which is the concerned authority for grant of development plan, plan sanction, building licence, commencement certificate, Occupancy Certificate, etc., in relation to a property which falls within the jurisdiction of a Planning Authority as also a Gram Panchayath.*
 4. *Re-list on **20.06.2024 at 02:30 p.m.***
31. On 6.08.2024, a submission was made that out of 61 villas, taxes were paid in respect of 46 villas and the clubhouse and in respect of two villas, the taxes are yet to be paid.
32. In the meanwhile, a committee had been constituted comprising representatives of various departments. A memo was filed on 28.08.2024 enclosing a Circular dated 5.08.2024 issued by both the Urban Development Department and Rural Development Department. The said Circular reads as under:

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ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: NAE 136 BMR 2024 ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ
ಬಹುಮಹಡಿ ಕಟ್ಟಡ
ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 05-08-2024

ಸುತ್ತೋಲೆ

ವಿಷಯ: : ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿನ ಕಟ್ಟಡಗಳ ನಿರ್ಮಾಣಗಳಿಗೆ
ಸ್ವಾಧೀನ ಪ್ರಮಾಣ ಪತ್ರ (Occupancy Certificate) ವಿತರಣೆ
ಮಾಡುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: 1. ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ ಆಯುಕ್ತಾಲಯದ ಸುತ್ತೋಲೆ

ಸಂಖ್ಯೆ: ಕಪಂರಾಜಿ/ ಅಭಿವೃದ್ಧಿ/131/2024 ದಿನಾಂಕ: 12.03.2024.

2. ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ಗ್ರಾಅಪ 788 ಗ್ರಾಪಂಅ 2014
ದಿ:08.05.2015.

3. ದಿನಾಂಕ 24.06.2024 ರಂದು ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ,
ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ ರವರ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ನಡೆದ ಸಭೆಯ ನಡವಳಿ.

ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ:26194/2023 ರಲ್ಲಿ ನೀಡಿರುವ
ನಿರ್ದೇಶನದನ್ವಯ ಉಲ್ಲೇಖ(2) ರಲ್ಲಿ ಹೊರಡಿಸಲಾಗಿರುವ ಸುತ್ತೋಲೆಯಲ್ಲಿನ ಅಂಶಗಳನ್ನು
ಪುನರುಚ್ಚರಿಸಿ ಮುಂದುವರಿಸುತ್ತಾ, ರಾಜ್ಯದ ಎಲ್ಲಾ ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ವ್ಯಾಪ್ತಿಗಳಲ್ಲಿ
ನಿರ್ಮಿಸಲಾಗುವ ಕಟ್ಟಡಗಳಿಗೆ ಅಥವಾ ಅಸ್ತಿತ್ವದಲ್ಲಿನ ಕಟ್ಟಡಗಳ ಬದಲಾವಣೆಗಳಿಗೆ
ಸಂಬಂಧಿಸಿದಂತೆ ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಅಧಿನಿಯಮ,
1993 ರ ಪ್ರಕರಣ 64 ರನ್ವಯ ಅನುಮತಿ ಪಡೆಯುವುದು ಕಡ್ಡಾಯವಾಗಿದ್ದು ಇದನ್ನು
ಉಲ್ಲಂಘಿಸಿದಲ್ಲಿ ಅಧಿನಿಯಮದ ಪ್ರಕರಣ 298 ರನ್ವಯ ಕ್ರಮ ವಹಿಸಲು ಸೂಚಿಸಲಾಗಿರುತ್ತದೆ.

ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ (ಕಟ್ಟಡಗಳ ನಿರ್ಮಾಣದ ಮೇಲೆ
ಜಿಲ್ಲಾ ಪಂಚಾಯತ್‌ಗಳ, ತಾಲ್ಲೂಕು ಪಂಚಾಯತ್‌ಗಳ ಮತ್ತು ಗ್ರಾಮ ಪಂಚಾಯತ್‌ಗಳ
ನಿಯಂತ್ರಣ) ಮಾದರಿ ಉಪವಿಧಿಗಳು, 2015 ರ 13 ನೇ ಉಪವಿಧಿಯಲ್ಲಿ ಅಧಿಭೋಗದಾರಿಕೆ
ಪ್ರಮಾಣ ಪತ್ರ ವಿತರಣೆಯ ಬಗ್ಗೆ ತಿಳಿಸಲಾಗಿದ್ದು ಉಪವಿಧಿಗಳನ್ನು ಉಲ್ಲಂಘಿಸುವ ಸಂಬಂಧ
14 ರ ಉಪವಿಧಿಯಲ್ಲಿ ಕ್ರಮವಹಿಸುವ ಬಗ್ಗೆ ತಿಳಿಸಲಾಗಿರುತ್ತದೆ.

ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಅಧಿನಿಯಮ, 1993 ರ ಪ್ರಕರಣ
64 (5-ಎ) ರಲ್ಲಿ ಗ್ರಾಮ ಪಂಚಾಯತ್‌ಗಳು ಕಟ್ಟಡದ ಲೈಸೆನ್ಸ್ ನೀಡುವ ವಿಷಯದಲ್ಲಿ ನಗರ
ಮತ್ತು ಗ್ರಾಮಾಂತರ ಯೋಜನೆ ಅಧಿನಿಯಮ, 1961 ರ ಉಪಬಂಧಗಳನ್ನು ಕಡ್ಡಾಯವಾಗಿ

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ಪಾಲಿಸತಕ್ಕದ್ದು. ಸದರಿ ಉಪಬಂಧಗಳ ಉಲ್ಲಂಘನೆಯನ್ನು 'ದುರ್ನಡತ್' ಯೆಂದು ಅರ್ಥೈಸಿ ಸಂಬಂಧಪಟ್ಟ ಅಧಿಕಾರಿ ಅಥವಾ ಸಿಬ್ಬಂದಿಯನ್ನು ಶಿಸ್ತು ಕ್ರಮಕ್ಕೆ ಹೊಣೆಗಾರರಾಗುವ ಬಗ್ಗೆ ತಿಳಿಸಲಾಗಿರುತ್ತದೆ.

ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗಳು, ಯೋಜನಾ ಪ್ರದೇಶದ ವ್ಯಾಪ್ತಿಯೊಳಗೆ ಕರ್ನಾಟಕ ನಗರ ಮತ್ತು ಗ್ರಾಮಾಂತರ ಯೋಜನಾ ಅಧಿನಿಯಮ, 1961 ರ ಪ್ರಕರಣ 15 (1) ರಂತೆ ಯೋಜನಾ ಪ್ರಾಧಿಕಾರಗಳಿಂದ ಕಟ್ಟಡಗಳ ನಿರ್ಮಾಣಕ್ಕೆ ಪ್ರಾರಂಭಿಕ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಕಡ್ಡಾಯವಾಗಿ ಪಡೆಯತಕ್ಕದ್ದು ಸದರಿ ಪ್ರಮಾಣ ಪತ್ರ ಪಡೆಯದ ಯಾವುದೇ ಕಾಮಗಾರಿಯನ್ನು ಮಾಡಿದರೆ ಅಥವಾ ಅದರ ಯಾವುದೇ ಬಳಕೆಯನ್ನು ಮಾಡಿದರೆ ತೆಗೆದುಕೊಳ್ಳಬೇಕಾದ ಕ್ರಮಗಳ ಬಗ್ಗೆ ತಿಳಿಸಲಾಗಿರುತ್ತದೆ.

ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಪೂರ್ಣಗೊಂಡ ನಂತರ ಅರ್ಜಿದಾರರು ಒಂದು ತಿಂಗಳೊಳಗೆ ಕಟ್ಟಡ ಮೂಲಕ ಸ್ವಾಧೀನ/ ಅಧಿಭೋಗದಾರಿಕೆ ಪ್ರಮಾಣ ಪತ್ರ (Occupancy Certificate) ವನ್ನು ಗ್ರಾಮ ಪೂರ್ಣಗೊಂಡ ಬಗ್ಗೆ ನಿಗದಿತ ನಮೂನೆಯಲ್ಲಿ ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗೆ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸುವ ಪಂಚಾಯಿತಿಯಿಂದ ಪಡೆಯಬೇಕಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಾಯ್ದೆಗಳು ಮತ್ತು ಉಪ ವಿಧಿಗಳ ಅನ್ವಯ ರಾಜ್ಯದ ಎಲ್ಲಾ ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ವ್ಯಾಪ್ತಿಗಳಲ್ಲಿ ನಿರ್ಮಿಸಲಾಗುವ ಕಟ್ಟಡಗಳಿಗೆ ಅಥವಾ ಅಸ್ತಿತ್ವದಲ್ಲಿನ ಕಟ್ಟಡಗಳ ಬದಲಾವಣೆಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕಾಮಗಾರಿಯು ಪೂರ್ಣಗೊಂಡ ನಂತರ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಅರ್ಹನಾದ ವಾಸುಶಿಲ್ಪಿ /ಪಟ್ಟಿಯಲ್ಲಿನ (Empanelled) ಇಂಜಿನಿಯರ್/ ಮೇಲಿ ಚಾರಕರಿಂದ ಕಟ್ಟಡ ಪೂರ್ಣಗೊಂಡ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಪಡೆದ ನಂತರ ಪಂಚಾಯಿತಿ ಅಭಿವೃದ್ಧಿ ಅಧಿಕಾರಿಯು ಸ್ವಾಧೀನ/ಅಧಿಭೋಗದಾರಿಕೆ ಪ್ರಮಾಣ ಪತ್ರ ವಿತರಣೆಗೆ ಪೂರ್ವದಲ್ಲಿ ಪ್ರಾರಂಭಿಕ ಪ್ರಮಾಣ ಪತ್ರ ಮತ್ತು ಗ್ರಾಮ ಪಂಚಾಯಿತಿಯಿಂದ ವಿತರಣೆ ಮಾಡಲಾದ ಲೈಸೆನ್ಸ್, ಅನುಮೋದಿಸಲಾದ ಕಟ ನಕ್ಷೆ ಹಾಗೂ ಅಂದಾಜು ಪಟ್ಟಿಗಳಂತೆ ಕಟ್ಟಡ ನಿರ್ಮಾಣವಾಗಿರುವ ಬಗ್ಗೆ ಸಂಬಂಧಿಸಿದ ಪ್ರಾಧಿಕಾರಗಳೊಂದಿಗೆ ಜಂಟಿಯಾಗಿ ಪರಿಶೀಲಿಸಿ, ಸಂಬಂಧಿಸಿದ ಯೋಜನಾ ಪ್ರಾಧಿಕಾರದಿಂದ ಅನುಮೋದಿತ ನಕ್ಷೆಯನುಸಾರ ಕಾಮಗಾರಿ/ಕಟ್ಟಡ ಪೂರ್ಣವಾಗಿರುವ ಬಗ್ಗೆ, ಕಡ್ಡಾಯವಾಗಿ ತಾಂತ್ರಿಕ ಅಭಿಪ್ರಾಯವನ್ನು ಪಡೆದು, ಸದರಿ ನಿರ್ಮಾಣವು ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ (ಕಟ್ಟಡಗಳ ನಿರ್ಮಾಣದ ಮೇಲೆ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್‌ಗಳ, ತಾಲ್ಲೂಕು ಪಂಚಾಯತ್‌ಗಳ ಮತ್ತು ಗ್ರಾಮ ಪಂಚಾಯತ್‌ಗಳ ನಿಯಂತ್ರಣ) ಮಾದರಿ ಉಪ ವಿಧಿಗಳು, 2015 ಹಾಗೂ ಕರ್ನಾಟಕ ಗ್ರಾಮ ಸ್ವರಾಜ್ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಅಧಿನಿಯಮ, 1993 ರ ಪ್ರಕರಣ 64 (5-ಎ) ರಲ್ಲಿನ ಷರತ್ತುಗಳನ್ವಯ ದೃಢೀಕರಿಸಿಕೊಂಡ ನಂತರವಷ್ಟೇ ಸ್ವಾಧೀನ/ಅಧಿಭೋಗದಾರಿಕೆ

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ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ನಿಗದಿತ ನಮೂನೆಯಲ್ಲಿ ಪೂರ್ಣ ವಿವರಗಳೊಂದಿಗೆ ಸಂಬಂಧಿಸಿದ
ಅಧಿಭೋಗದಾರಿನಿಗೆ ವಿತರಿಸಲು ಕ್ರಮವಹಿಸತಕ್ಕದ್ದು.

ಮೇಲ್ಕಂಡ ಸುತ್ತೋಲೆಯಲ್ಲಿನ ನಿರ್ದೇಶನಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿ ಗ್ರಾಮ ಪಂಚಾಯಿತಿಗಳು
ಸ್ವಾಧೀನ/ವಾಸಯೋಗ್ಯ/ಅಧಿಭೋಗದಾರಿಕೆ ಪ್ರಮಾಣ ಪತ್ರ ವಿತರಣೆ ಮಾಡಿದ್ದಲ್ಲಿ
ಸಂಬಂಧಿಸಿದವರ ವಿರುದ್ಧ ನಿಯಮಾನುಸಾರ ಕ್ರಮಕೈಗೊಳ್ಳಲಾಗುವುದೆಂದು ಸಹ ತಿಳಿಸಿದೆ.

Sd/- Sd/-

(ಎಸ್.ಆರ್. ಉಮಾಶಂಕರ್) (ಅಂಜುಮ್ ಪರ್ವೇಜ್)

ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ (ಪಂ.ರಾಜ್)
ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ. ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂ. ರಾಜ್ ಇಲಾಖೆ,

33. Learned HCGP submitted that it is the procedure prescribed under this Circular which would be applicable. In that background, the following order was passed on 28.08.2024 as under:

Order

1. Learned HCGP has filed a memo dated 28.08.2024 enclosing a circular dated 05.08.2024 issued by both, the Urban Development and the Rural Development Departments.

2. She further submits that, it is this procedure which would be applicable in respect of any action to be taken under the Karnataka Gram Samraj and Panchayat Raj (Control of Zilla Panchayats, Taluk Panchayats and Gram Panchayats on constructions of building), 2015. By placing reliance on the same, she submits that, it is for the Gram Panchayats to get mandatory technical opinion about the completion of the work from the planning authority and thereafter take necessary action.

3. In this regard, I am of the considered opinion that the technical wing attached to the Zilla Panchayats comprising of the Executive Engineer, the Assistant Executive Engineer at the Taluka Panchayat level and the Assistant

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Engineer or the Junior Engineer at the Gram Panchayat level, could be included to conduct periodical inspections, take measurements, ascertain if the same is in compliance or there is any deviation, submit necessary reports and thereafter obtain technical opinion in association with the planning authority.

4. It is stated that, the circular has been circulated to all the concerned authorities for implementation as also web hosted on the respective websites. Her submission is taken on record.

5. Sri. Suraj Sampath, learned counsel appearing for the proposed respondents, submits that the Occupancy Certificate was issued in 2016 without the inspection of the petitioner's property.

6. Sri. Joshua Hudson Samuel, learned counsel appearing for the petitioner would however submit that, there was an inspection conducted and the inspection report is considered by the Panchayat before issuing of Occupancy Certificate.

7. Sri. M.S.Devaraju, learned counsel appearing for the Gram Panchayats, is directed to verify and make his submissions as to whether the inspection was carried out and if an inspection has been carried out to place the inspection report on record in the present proceedings.

8. If inspection has not been carried out, he is directed to offer an explanation as to how without inspection an Occupancy Certificate has been issued.

9. Sri.M.S.Devaraju, learned counsel for the respondent Nos.2 and 3 submits that, notices have ben issued to the petitioner. In reply, learned counsel for the petitioner submits that, no notices have been issued. Hence, Sri. M.S.Devaraju, learned counsel is directed to place the notices issued with due acknowledgement, on record.

10. Re-list on 18.09.2024 at 2.30 p.m.

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34. Since a specific contention had been urged that certain Occupancy Certificates were issued in 2016, this Court directed the learned counsel appearing for the Gram Panchayat to obtain instructions and make a specific submission as to whether any inspection had in fact been carried out prior to issuance of the Occupancy Certificate. It was further directed that, if any such inspection had been conducted, the inspection report and all connected records be placed before the Court.
35. On 23.10.2024, learned counsel appearing for the Gram Panchayat submitted that a site inspection had been conducted and that an inspection report dated 20.08.2016 had been submitted. The said report was produced along with a memo dated 13.09.2024. A perusal of the inspection report, however, revealed that it merely contained the numbers of the villas and the extent of construction in each of them. The report did not disclose the nature or scope of the inspection undertaken, nor did it indicate whether the inspecting authority had verified the structural completion of the villas, the availability of civic and other mandatory amenities, or compliance with the sanctioned plan and the applicable statutory requirements. There was also no material to indicate

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that any inspection had been carried out in respect of the project as a whole before issuance of the Occupancy Certificate.

36. In view thereof, the learned counsel for the Gram Panchayat was directed to verify and clarify whether the Occupancy Certificate had been issued in respect of the entire project or only in respect of individual villas. Simultaneously, the learned counsel appearing for the Planning Authority was directed to place on record the procedure adopted by the Planning Authority while inspecting a development for considering grant of an Occupancy Certificate or any analogous permission. He was also directed to produce the Standard Operating Procedure, inspection protocol, checklist or any other guidelines governing such inspections, if available.
37. On 27.11.2024, it was submitted that a Standard Operating Procedure had been prepared in relation to inspections under Section 17 of the Karnataka Town and Country Planning Act, 1961, and the same was directed to be placed on record. Upon consideration of the material produced, this Court, by order dated 02.12.2024, observed that while the approval of the layout plan is granted by the jurisdictional Planning



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Authority under the Karnataka Town and Country Planning Act, 1961, after the coming into force of the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015, the power to issue Occupancy Certificates in respect of such developments had been vested in the Gram Panchayats.

38. The Court also noticed that the Gram Panchayat had no role in sanctioning the layout or development plan and that there existed no comprehensive statutory guidelines, Standard Operating Procedure or inspection protocol governing the manner in which Occupancy Certificates were to be issued by the Gram Panchayats. It was further noticed that several Gram Panchayats did not even have qualified engineers on their establishment to technically verify whether a building or project satisfied the statutory requirements before issuance of an Occupancy Certificate. The absence of any uniform mechanism for inspection and certification gave rise to serious concerns regarding the manner in which Occupancy Certificates were being issued.

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39. It was in the aforesaid background, and having regard to the larger ramifications of the issues arising for consideration extending beyond the facts of the present case, that the learned Advocate General sought permission to assist the Court. Permission was accordingly granted.
40. The learned Advocate General submitted that the deficiencies and lacunae noticed by the Court in the existing regulatory framework had been taken note of by the State Government and that appropriate corrective measures were under consideration. It was further submitted that amendments to the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015 were proposed with a view to streamlining the procedure governing the issuance of Occupancy Certificates and removing the ambiguities that presently existed.
41. It was also brought to the notice of the Court that the Model Bye-laws had not yet been adopted by several Zilla Panchayats, Taluk Panchayats and Gram Panchayats across the State, resulting in a lack of uniformity in the regulatory regime governing building permissions and Occupancy Certificates.

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42. The learned Advocate General further pointed out that several proceedings relating to the very same project were pending before the Real Estate Regulatory Authority (RERA). This Court clarified that the scope of the present proceedings was confined to examining the legal framework governing the issuance of Occupancy Certificates and the procedure required to be followed by the competent authorities. All issues arising in the proceedings pending before the RERA, including the rights and liabilities of the parties under the Real Estate (Regulation and Development) Act, 2016, were left open to be adjudicated independently by the Authority on their own merits and in accordance with law.
43. During the course of the proceedings, a memo was also filed placing on record the communication dated 26.09.2024 issued by the Director, Panchayat Raj Department, as well as a Circular issued by the Principal Secretary, Urban Development Department. The said documents were taken on record and considered for the purpose of examining the existing statutory and administrative framework governing the issuance of Occupancy Certificates.



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44. The same were recorded vide order dated 4.03.2025
which reads as under:

ORAL ORDER

1. Learned AGA has placed on record a memo enclosing the letter dated 26.9.2024 issued by the Director, Karnataka Panchayat Raj, Bengaluru. The same reads as under:

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ ಆಯುಕ್ತಾಲಯ
ಕಾಳಿದಾಸ ರಸ್ತೆ, ಗಾಂಧಿನಗರ ಬೆಂಗಳೂರು - 560 009.

ಸಂಖ್ಯೆ. ಕಪಂರಾಅ/ಅಭಿವೃದ್ಧಿ/575/2024 ದಿನಾಂಕ: 26.09.2024

ರವರಿಗೆ.

ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿ,
ಜಿಲ್ಲಾ ಪಂಚಾಯಿತಿ, ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಪೂರ್ಣಗೊಳ್ಳದ ವಿಲ್ಲಾಗಳಿಗೆ ವಾಸಯೋಗ್ಯ ಪ್ರಮಾಣ
ಪತ್ರಗಳನ್ನು ವಿತರಣೆ
ಮಾಡಿರುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: 1. ಘನ ಉಚ್ಚನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ: WP
No. 3640/2023

2. ಅವರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ, ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ
ರವರ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ

ದಿನಾಂಕ: 24.06.2024 ರ ಸಭಾ ನಡಾವಳಿ

3. ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿ, ತಾಲ್ಲೂಕು ಪಂಚಾಯಿತಿ,

ಹೊಸಕೋಟೆ ಹಾಗೂ

ಪಂಚಾಯಿತಿ ಅಭಿವೃದ್ಧಿ ಅಧಿಕಾರಿ, ಸಮೀತನಹಳ್ಳಿ ಗ್ರಾಮ ಪಂಚಾಯಿತಿ,
ಹೊಸಕೋಟೆ

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ತಾಲ್ಲೂಕು ರವರ ವರದಿ: ದಿನಾಂಕ :27.06.2024,

ವಿಷಯ ಸಂಬಂಧಿಸಿದಂತೆ. ಉಲ್ಲೇಖ-1 ರ ಪತ್ರದಲ್ಲಿ ಘನ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣದಲ್ಲಿ ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ ಜಿಲ್ಲೆ, ಹೊಸಕೋಟೆ ತಾಲ್ಲೂಕು, ಸಮೇತನಹಳ್ಳಿ ಗ್ರಾಮ ಪಂಚಾಯಿತಿಯಿಂದ ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಮ. ರಾಫಲ್ಸ್ ರೆಸಿಡೆನ್ಸಿ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ ಪೂರ್ಣಗೊಳ್ಳದ ವಿಲ್ಲಾಗಳಿಗೆ ಪೂರ್ಣಗೊಂಡ ಹಾಗೂ ಸ್ವಾಧೀನ ಪತ್ರವನ್ನು ನೀಡಿರುವ ಬಗ್ಗೆ ಉಲ್ಲೇಖಿಸಲಾಗಿರುತ್ತದೆ. ಇದರ ಸಂಬಂಧ ಉಲ್ಲೇಖ-2 ರ ಸಭೆಯಲ್ಲಿ ಸದರಿ ಪ್ರಕರಣದ ಬಗ್ಗೆ, ಪರಿಶೀಲಿಸಲು ಸೂಚಿಸಲಾಗಿದ್ದು, ಉಲ್ಲೇಖ-3ರ ವರದಿಗಳನ್ನಯ ಮ. ರಾಫಲ್ಸ್ ರೆಸಿಡೆನ್ಸಿ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ ಪೂರ್ಣಗೊಳ್ಳದ ವಿಲ್ಲಾಗಳಿಗೆ ಪೂರ್ಣಗೊಂಡ ಹಾಗೂ ಸ್ವಾಧೀನಪತ್ರವನ್ನು ನಿಯಮಬಾಹಿರವಾಗಿ ವಿತರಣೆ ಮಾಡಿರುವ ಬಗ್ಗೆ, ಉಲ್ಲೇಖಿಸಿ ಈ ಕಾರ್ಯಾಲಯಕ್ಕೆ ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಆದ್ದರಿಂದ, ಉಲ್ಲೇಖಿತ ಪತ್ರಗಳಲ್ಲಿ ಉಲ್ಲೇಖಿಸಿರುವಂತೆ ಮತ್ತು ಪೂರ್ಣಗೊಳ್ಳದ ವಿಲ್ಲಾಗಳಿಗೆ ಪೂರ್ಣಗೊಂಡ ಹಾಗೂ ಸ್ವಾಧೀನಪತ್ರವನ್ನು ನೀಡಿರುವ ಸಂಬಂಧ ತನಿಖೆ ನಡೆಸಿ ನಿಯಮಾನುಸಾರ ಸೂಕ್ತ ಕ್ರಮವಹಿಸಿ ನ್ಯಾಯಾಲಯದ ವಿಷಯವಾಗಿರುವುದರಿಂದ ಕ್ರಮವಹಿಸಿದ ಬಗ್ಗೆ ತುರ್ತಾಗಿ ಈ ಕಛೇರಿಗೆ ವರದಿ ಸಲ್ಲಿಸಲು ಹಾಗೂ ಘನ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿನ ಪ್ರಕರಣದ ಬಗ್ಗೆ ವೈಯಕ್ತಿಕ ಗಮನ ಹರಿಸಲು ಕೋರಿದೆ.

(ಆಯುಕ್ತರು, ಕ.ಪಂ.ರಾ.ಆಯುಕ್ತಾಲಯ. ರವರಿಂದ ಅನುಮೋದಿಸಿದೆ)

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

Sd/-

ನಿರ್ದೇಶಕರು (ಅಭಿವೃದ್ಧಿ.)

ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ ಆಯುಕ್ತಾಲಯ,

ಬೆಂಗಳೂರು.

2. She also relies upon the Circular dated 5.8.2024 issued by the Principal Secretary, Urban Development Department and Principal Secretary, Rural Development and Panchayath Raj Department, which reads as under:-

KARNATAKA GOVERNMENT

No. Na.Aa.E 136 BMR 2024 Karnataka Government Secretariat,
Vikas Soudha,

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Bengaluru, dated: 05.08.2024.

CIRCULAR

*Sub: Regarding issuance of Occupancy Certificate
for the construction of buildings in
Gram Panchayat limits.*

*Ref: 1. Circular No. Ka.pam.ra.aa/
Development/131/2024.
Dated: 12.03.2024 issued by the
Commissionerate of Karnataka Panchayat Raj.*

*2. Government Notification No: Gra.Aa.Pa 788 Gra.
Pam. Aa 2014, Dated: 08.05.2015.*

*3. Proceedings of the meeting held on 24.06.2024 under
the chairmanship of Additional Chief Secretary to
Government, Urban Development Department.*

*Pursuant to the direction given by the Hon'ble High Court in Writ
Petition No:26194/2023, in continuation of the points contained in
the circular issued under reference (2) is reiterated and further
directed that as per Section 64 of the Karnataka Grama Swaraj
and Panchayat Raj Act, 1993, it is mandatory to obtain the
approval for the buildings to be constructed or with regard to the
alterations to the existing buildings in all Gram Panchayat areas
of the State. if it is violated, instructions are given to take action
under Section 298 of the Act.*

*As per the Model Bye-laws, 2015 of the Karnataka Gram Samraj
and Panchayat Raj (Control of Zilla Panchayats, Taluk Panchayats
and Gram Panchayats on constructions of buildings), in sub-
section 13 stipulates regarding issuance of Occupancy Certificate
and action in respect of violation of sub-section 14.*

*The Gram Panchayats should mandatorily comply with the
provisions of the Town and Country Planning Act, 1961 in the
matter of grant of building licences as per Section 64(5-A) of the
Karnataka Gram Swaraj and Panchayat Raj Act, 1993. It is
informed that the violation of the said provisions is construed to
be "misconduct" making the officer or staff concerned liable to
disciplinary action.*

*The Gram Panchayats within the limits of the planning area, shall
obtain compulsorily the Commencement Certificate for
construction of buildings from Planning Authorities as per Section
15(1) of Karnataka Town and Rural Planning Act, 1961. The
actions to be taken if any work is done without obtaining the said
certificate or any use is made has been informed.*

*The applicant should obtain an Occupancy Certificate from the
Gram Panchayat by submitting an application to the Gram
Panchayat in the prescribed form regarding the completion of the*

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building within one month after the construction of the building is completed.

Therefore, with regard to the buildings to be constructed or alterations to existing buildings in all Gram Panchayat areas of the State in accordance with the above Acts and sub-rules, the Panchayat Development Officer shall, after obtaining the Building Completion Certificate from the Architect/Empanelled Engineer/Superintendent qualified by the Authority, before issuing the Possession/Occupancy Certificate, jointly verify with the concerned authorities about the construction of the building as per the approved building plan and estimates, Commencement Certificate and license issued by the Gram Panchayat and get mandatory technical opinion about the completion of the work/building as per the approved map from the concerned Planning Authority, and take action for issue of Possession/Occupancy Certificate to the concerned occupier with full particulars in the prescribed form only after it is confirmed that the said construction is in accordance with the Karnataka Gram Swaraj and Panchayat Raj (Regulation of Zilla Panchayats, Taluk Panchayats and Gram Panchayats on Construction of Buildings) Model Bye-laws, 2015 and as per the conditions of section 64 (5-A) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993.

It is also informed that action will be taken as per rules against those concerned if Gram Panchayats issue Possession/Occupancy/ Occupancy Certificate in violation of the directions in the above circular.

Sd/-
(S.R. UMASHANKAR)
Additional Chief
Secretary to Government
Urban Development
Urban Development

Sd/-
(ANJUM PARVEZ)
Additional Chief
Secretary to Government
Department. (Panchayath Raj)
Department

3. *She submits that insofar as Panchayaths who have adopted the Karnataka Panchayath Raj (Zilla panchayaths, Taluka Panchayaths and Grama Panchayaths control over Erection of Buildings) Model Bye-Laws 2015, there will be a joint inspection, measurement and certification done by the Panchayath along with the Planning Authority and thereafter, necessary certificate, Occupancy Certificate and/or any other certificate required to be issued by the concerned Panchayath and Planning Authority.*

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4. *In the present case, Panchayath has not adopted the Model Byelaws of 2015. On enquiry, as to what could be the situation insofar as respondents No.2 and 3 are concerned, she seeks for and is granted a weeks' time to obtain instructions and make her submission. She also seeks for a week's time to comply with Para 3 of the order dated 9.1.2025 to place on record the list of Taluks Panchayaths and Zilla Panchayaths, who have adopted the Model Byelaws or not.*
 5. *Further more, learned AGA would have to make the stand of the State clear as regards the status of the matters prior to the circular being issued since the present matter falls within that grey area where there was no such circular in force.*
 6. *Re-list on **17.3.2025 at 2.30 p.m.***
45. These circulars and orders being applicable post the issuance thereof, learned AGA was directed to make a submission as regards the projects taken up prior to the issuance of the circular, and it was further noticed that there being 5950 Gram Panchayats, 239 Taluk Panchayats and 31 Zilla Panchayats, the methodology of verification of the adoption of the model Bye-laws was not available. In furtherance of this, an affidavit of the Principal Secretary to Government, Department of Personnel and Administrative Reforms, e-Governance, was filed, which is taken on record. It was considered vide order dated 4.04.2025, which reads as under:

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SGRJ:

4.04.2025

ORAL ORDER

1. *Learned AGA has filed the affidavit of the Principal Secretary to Government, Department of Personal Administrative Reforms (e-Governance). The same reads as under:*

AFFIDAVIT

I. Pankaj Kumar Pandey S/o. Deo Mani Pandey, aged about 48 years, working as Principal Secretary to Government, Department of Personal Administrative Reforms (e-Governance), Bengaluru do hereby solemnly affirm and state on oath as follows:-

1. I submit that I am swearing this Affidavit on behalf of me in the above writ petition as directed by the Hon'ble High Court on 21.03.2025 the same is reproduced as under:-

"1. Learned AGA submits that the order dated 4.3.2025 has not been uploaded. The further submission made by counsel for the petitioner is that after the order of 9.1.2025, no order has been uploaded.

2. Registry is directed to look into the same and upload all the orders.

3. Learned AGA seeks for and is granted two weeks time to make a submission as regards the order dated 4.3.2025.

4. An affidavit of the Desk Officers, Department of Rural Development has been filed. On the basis of the said affidavit, it is submitted by the learned AGA that it was the duty on part of the grama panchayats to have adopted the model by laws. The adoption or otherwise was not kept track of, since it was presumed that the panchayats would have adopted the model by laws. There have been 5,950 ground panchayats, 239 Taluk panchayat and 31 Zilla Panchayat in the State

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of Karnataka. It is stated that there is no particular system in place to verify the adoption of the model by laws by the said panchayats.

5. In that view of the matter, I am of the considered opinion that there would have to be a system at least now implemented to keep track of these kind of issues as regards the adoptions of model by laws, dissemination of circulars, notifications, etc.

6. The Principal Secretary of e-governance Department is directed to look into this matter and come up with a viable solution. He is also directed to onboard all the grama panchayats, Taluk panchayats and Zilla panchayats onto the Court Case Monitoring System (CCMS), so that at least the dissemination could be made using the CCMS of any Circular, Notification or the like.

7 .An affidavit of the Principal Secretary, e-governance Department to be filed on or before 4.4.2025.

8. Re list on 4.4.2025."

2. I submit that, the State Government of Karnataka is Implementing a Unified Land Management System (ULMS), which will provide a single platform for use across departments that participate in transactions related to land and property. One of the key modules in ULMS is SITE (LAYOUT) and BUILDING PLAN APPROVAL SYSTEM. Under ULMS, the Site & Building Plan Approval System (SBPAS) in accordance to the provision of the Byelaws for the Urban Areas has been developed and rolled out for the Urban Areas is under Pilot Mode. DPAR (e-Governance) in consultation with RDPR will deliberate the usage of the ULMS SBPAS system for adoption of model bylaws by the Grama Panchayats in rural areas.

3. I submit that, the Court Case Monitoring System (CCMS) is a comprehensive, web-based, end-to-end solution to monitor Government litigations where Government Departments are petitioners or respondents. Its primary objective is to ensure timely action and strict compliance with court

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orders. Cases handled by the Advocate scanned by the CCMS Cell within the AG Office and subsequently forwarded to the relevant Government Departments for necessary action. Currently, 48 Government Departments and their affiliated Offices along with 79 Boards and Corporations have been successfully on boarded on to the CCMS Platform. The Rural Development and Panchayath Raj Department (RDPR) has already been onboarded into CCMS platform. As of now, 44 Admin logins and 183 user logins have been created at the Zilla Panchayat, Taluk Panchayath levels. As of now, within RDPR Department 31 Zilla Panchayaths and 8 Taluk Panchayats are already onboarded into CCMS. Necessary steps will be taken to onboard all the remaining Taluk Panchayaths and Gram Panchayaths in coordination with RDPR Department. (Annexure 1 & 2).

4. I submit that, the Centre for e-Governance manages the websites of all the State Government Departments. As part of the web portal facility has been provided to the Department nodal officer(s) for uploading the Acts/ Rule/ Circular/Notifications/Government Orders. As per the Government Policy dissemination of the Circulars/Notifications are done through the websites of the respective Departments/Boards/Corporations for making available to both the officials and the general public. In this regard, Govt. orders and Circulars have been already issued by DPAR (e-Governance) laying down the process for content preparation by the Department (Annexure-3 to 6).

WHEREFORE, I most respectfully pray that this Hon'ble Court may kindly pleased to accept this Affidavit in the Writ Petition, in compliance with the directions issued by this Court in the interest of the justice and equity.

- 2. Based on the above affidavit, she submits that the Government of Karnataka is implementing a Unified Land Management System (ULMS), which will provide a single platform for use across all departments that participate in transactions relating to land and property, including plan approval, the plan*

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sanction, commencement certificate,
Occupancy Certificate, etc.

3. *The ULMS being a software which has been set up by the e-Governance Department, it will be required for all the concerned departments to be onboarded. She submits that 31 Zilla Panchayats and 8 Taluk Panchayats have been onboarded on application being made by them. Insofar as the other Taluka Panchayats and Gram Panchayats, it would be for the Principal Secretary of Rural Development and Panchayat Raj to issue necessary instruction for their onboarding on to the ULMS. Once the same is done, the monitoring as regards adoption of model byelaws, the implementation of various rules could be monitored. In that view of the matter, the Principal Secretary of Rural Development and Panchayat Raj Department is directed to coordinate with the Principal Secretary, e-Governance Department and issue necessary directions, guidelines and Standard Operating Procedure to enable all the Zilla Panchayats, Taluk Panchayats and Gram Panchayats to be onboarded on to the ULMS with clear direction as to what actions are to be taken by each Zilla Panchayat, Taluk Panchayat and Gram Panchayat.*
4. *She submits that the Court Case Monitoring System has also been implemented for monitoring government litigations including litigation of these kinds. 48 Government Departments along with 79 Boards and Corporations have been successfully onboarded on to the CCMS.*
5. *Insofar as the Rural Development and Panchayat Raj Department is concerned, she submits that 44 admin logins and 183 user logins have been created. If the details of the other users at the Zilla Panchayats, Taluk Panchayats and Gram Panchayats are provided*

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to the e-Governance Department, necessary logins would be created to onboard them. Hence, the Principal Secretary of Rural Development and Panchayat Raj Department is directed to get prepared and furnish a list of all users who need to be onboarded on to the CCMS at the Zilla Panchayats, Taluk Panchayats and Gram Panchayats level to the Principal Secretary, e-Governance Department within a period of 15 days from today.

6. *Lastly, she submits that the Centre for e-Governance has set up a website for all State Government Departments where a facility has been provided to the Department Nodal Officer for uploading the Acts, Rules, Circulars, Notification, Government Orders, etc. User logins have been created. It would be for the Nodal Officer to upload all these on to the respective website of the concerned departments. Her submission is that the website having been set up, the e-Governance Department does not take care of the uploading of the concerned Acts, Rules, Circulars, Notification, Government Orders, etc. It is for each department to do so. Hence, the concerned departments would have to upload it on their respective website.*
7. *There being numerous departments who would have to upload the Act, Rules, Circulars, Notification, Government Orders, etc., the Chief Secretary, Government of Karnataka is directed to issue necessary instructions and or directions to all the departments to upload their respective Act, Rules, Circulars, Notification, Government Orders (i.e., all primary, sub-ordinate, delegate and executive legislation) on to their respective website. The same would also have to be directed to be uploaded on India Code maintained by the NIC, so that there is a single repository available for all concerned instead of going to different websites.*

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8. *Learned counsel for the Petitioner has filed a memo with certain documents. His submission is that all the requirements of development plan and building plans have been complied with by the Petitioner and as such the Occupancy Certificate ought to be issued in their favour. He submits that it is the Gram Panchayat who had issued the Occupancy Certificate earlier and believing the Gram Panchayat to be the concerned and authorised entity, the Petitioner had approached the Gram Panchayat, which was so done pursuant to the refusal of the Planning Authority to issue Occupancy Certificate.*
9. *Learned counsel for impleading applicant has also filed certain documents enclosing certain photographs and submits that the works have not been carried out, many of the buildings are incomplete and the development works were not as per the development plan approved by the Planning Authority.*
10. *On the earlier occasion, Learned AGA was called upon to make a submission as to which authority would now be the concerned authority to inspect, verify and certify the works carried out by the Petitioner as regard the development plan sanctioned by the Planning Authority.*
11. *Today, she submits that the joint circular issued by the Principal Secretary of Urban Development Department, Principal Secretary, Rural Development Panchayat Raj Department dated 5-8-2024, though being prospective, taking into consideration the peculiar fact situation in the present matter, both the representative of the Gram Panchayat and the representative of the Planning Authority will cause a joint inspection of the subject project of the Petitioner, verify if all the works have been carried out in accordance with the*

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development plan and building plan sanctions and submit a joint report.

12. *The same is acceptable to the Petitioner and the impleading applicant, so long as they are part of the inspection and survey to be carried out. In that view of the matter, the representative of respondent No.2 -Panchayat and the representative of respondent No.5, shall carry out an inspection of the subject property on 21.4.2025, commencing from 10.30 am, to ascertain if the project has been completed in all respects as per the development plan and the building plan. Photographs of each of the villas, as also the clubhouse and any other common facilities as indicated in the development plan and the building plan sanction would have to be taken. The cost of the same is for now quantified at Rs.20,000, which would be required to be paid by the petitioner. If the inspection is not completed on 21.4.2025, the same would continue on the next day and thereafter till completion. The report to be filed by 9.5.2025.*

*Relist on **4.6.2025**.*

46. At this stage, learned counsel for the Petitioner submitted that the Petitioner, being under the belief that the Gram Panchayat had adopted the model Bye-laws, had made an application for issuance of an Occupancy Certificate to the Gram Panchayat, which had issued the Occupancy Certificate. This was done since the planning authority had refused to issue the Occupancy Certificate.

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47. It was then stated by the Learned AGA that a joint inspection of the subject project would be carried out to verify if the works had been carried out in accordance with the development plan and building plan sanction and a joint report would be submitted. A brief report was filed, along with memo dated 4.06.2025, which was recorded in the order sheet, dated 4.06.2025 as under:

SGRJ:

4.06.2025

ORAL ORDER

1. Memo dated 04.06.2025 has been filed enclosing the note bearing No.RDPR/10/GPA/2024 dated 03.06.2025.

2. Learned AGA submits that along with the said note, a list of Town Panchayaths and Grama Panchayaths which are yet to be onboarded is eventual. On instructions she submits that necessary correspondence with the e-Governance Department to onboard the Grama Panchayaths and Town Panchayaths has been taken up and the process would be completed given two weeks time.

3. Her submission is placed on record.

4. Memo dated 04.06.2025 has been filed enclosing a brief report as regards uploading of primary, sub-ordinate, delegated and executive legislation, the same reads as under:

In its orders dated: 04.04.2025, in W.P. 3640/2023, the Hon'ble High Court has instructed the Chief Secretary, Government of Karnataka, as,-

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"6..... the centre for e-Governance has set up websites for all the State Government Departments for uploading Acts, Rules, Circulars, Notifications, Govt. Orders etc., User logins have been created. It would be for the Nodal officer to upload all these on to the respective websites of the concerned departments. Hence, the concerned departments would have to upload it on their respective website.

There being numerous departments who would have to upload the Act, Rules, Circulars, Notification, Government Orders etc., the Chief Secretary, Government of Karnataka is directed to issue necessary instructions and or directions to all the departments to upload their respective Act, Rules, Circulars, Notifications, Government Orders (i.e. all primary, sub-ordinate, delegate and executive legislation) on their respective website. The same would also have to be directed to be uploaded on India Code maintained by the NIC, so that there is a single repository available for all concerned instead of going to different websites."

In view of the above orders, it is submitted that with regard to uploading of Act, Rules, Circulars, Notifications, Government Orders (i.e. all primary, sub-ordinate, delegate and executive legislation) on their respective websites, the departments have already filed affidavits with respect to their updated websites, as per the orders of the Hon'ble High Court in the W.P. 22941/2023 and directions of the Chief Secretary. The updation of website is an ongoing process, as it has to be updated as and when any new Act, Rule, Circular etc., is notified. Hence, all the departments were instructed to maintain their websites up to date.

As per the Karnataka Government (Transaction of Business) Rules, 1977, the allocation of work of issuing statutory Rules, Notifications or Orders etc. is with the respective administrative department. The department of parliamentary affairs and

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Legislation is only having the duty of vetting and to give opinion and revise the drafts sent by the administrative departments. Therefore, as per the above referred Rules framing of the Rules, Regulations, By-laws or issuing Notifications in respect of State Laws or Central Laws is in the absolute domain of the respective administrative department and the department of parliamentary affairs and Legislation is not having any control in the process of framing or publishing of Rules, Regulations, By-laws, Notifications etc.

Currently, the department of Parliamentary affairs and Legislation is updating all the Codified Acts in the department website and India Code portal, in both English and Kannada languages. But, with respect to the sub-ordinate legislation i.e. Rules, regulations, Circulars, notifications etc., Nodal officers of the respective departments, who are in-charge of the departmental websites, have to upload the same on the India Code Portal, which is maintained by NIC. Hence, directions may be issued to the departments to upload all the sub-ordinate legislations to the India Code Portal and keep it updated whenever they update their respective websites."

5. Learned AGA is directed to secure instructions and place on record the total number of primary, secondary delegated, sub-ordinate at executive legislation department wise. The respective departments are directed to furnish the same to Secretary, Department of Parliamentary affairs within 15 days from today. The concerned nodal officer of each of the departments are directed to upload all the primary, sub-ordinate, delegated and executive legislation on India Code. The National Informatics Centre is directed to create necessary login for each of the Departments in the State of Karnataka to enable them to upload the above on to India Code.

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6. Learned counsel for respondents 2 and 3 has filed inspection report along with photographs. Same is taken on record. Copy thereof is furnished to the learned counsel for petitioner and the impleading applicant who seek for and are granted a week's time to make their submissions.

7. Re-list on 10.06.2025 at 2.30 P.M.

48. The inspection report was filed and taken on record. Along with the inspection report, assessment orders in respect of each of the villas were also produced. A perusal of the assessment report indicated that the photographs of each of the assessed villas had been uploaded in the software of the panchayat. However, the said photographs indicated that they are as available in the brochure issued by the Petitioner and not as per the actual site conditions. It is on that basis that the inquiry was made as regards the manner of uploading the photographs. As regards which, it was submitted that a draft user manual for online generation of Form-9 had been prepared and it is the procedure under the said draft user manual that is required to be followed. There being several inadequacies in the uploading, the same were recorded in order dated 7.07.2025, which reads as under:

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ORDER

1. *Learned counsel for respondents No.2 and 3 has filed memo enclosing the resolution uploading the issuance of Khata to the petitioner as also the Draft User Manual for online generation of the Form No.9 under letter dated 05.07.2025 addressed by the Panchayat Development Officer to learned counsel for respondents No.2 and 3 indicated the manner in which the Khata had been issued as regards the properties of the petitioner.*
2. *A perusal of the Draft User Manual indicates that the SDA (Second Division Assistant) has to identify the property that has been entered into the system in the existing register for further reference. The SDAA should scan and keep all the documents required in a folder which he would be asked to upload during the data entry, may be the sketch received from the Tahsildar, layout conversion copy, layout approval order, layout plan, release order of the sites, etc.,*
3. *In the present case, his submission by reference to the letter dated 05.07.2022 is that then PDO Sri.C.Muniraju had on 18.11.2015 received the applications and data entry was made by him and sent to the Secretary Sri.S.Prasad for approval, which was so approved by the Secretary and thereafter placed before the Panchayat for approval which was so approved by way of the aforesaid resolution dated 18.11.2015.*
4. *A perusal of the said documents clearly indicates the manner in which action has been taken in as much as the application has been submitted on 18.11.2015, everything has been processed on the same date and the resolution has also been passed by the panchayat on 18.11.2015.*
5. *The perusal of the photographs which have been furnished on the last occasion would indicate that these photographs are of typical villas and not the actual photograph of each and every villa indicating the nature of construction and the state of construction. In fact, all the photographs are identical to each other depending on the type of*

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villa and as seen there are six types of villas, which has also been confirmed by the counsel for the petitioner.

- 6. If that be so, it is clear that the PDO concerned namely Sri.C.Muniraju had never visited the property, never verified the status of construction and without doing so caused an entry into the software by uploading photographs which are not the actual photographs at site.*
- 7. In that view of the matter, I am of the considered opinion that necessary action would have to be taken against the said PDO by the Principal Secretary, Rural Development and Panchayat Raj Department under whose Administrative Supervision the PDO comes under. Hence, the Principal Secretary, Rural Development and Panchayat Raj Department is directed to initiate such action as may be necessary in accordance with law.*
- 8. If the Principal Secretary were to be of the opinion that issuance of Khata in respect of the present property has been improperly done and the procedure has not been followed properly, the Principal Secretary would be entitled to get the same redone by issuing proper direction as to the manner in which it is to be done, in accordance with appropriate law.*
- 9. A details Standard Operating Procedure is directed to be circulated to all concerned in all Gram Panchayats to enable the said procedure to be followed, especially as regards on-site inspection and uploading on actual on-site photography.*
- 10. For arguments on merits, re-list on 23.7.2025 at 2.30 p.m.*
- 11. The synopsis of dates and events filed by learned counsel for impleading applicants is taken on record.*

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12. All the counsels are directed to exchange their respective synopsis of dates and events, list of authorities and authorities by next date of hearing.

49. In the meanwhile, it was indicated that the property came within the jurisdiction of Greater Bengaluru Authority and the Greater Bengaluru Authority was brought on record as a party respondent. Learned counsel who appeared for the Greater Bangalore Authority submitted that this particular property comes under the jurisdiction of Samethanahalli Gram Panchayat, which is not within the jurisdiction of Greater Bangalore Authority. As such, it was the said Gram Panchayat that was the concerned authority. It is in that background that the above matter was taken up for arguments.

50. In view of the Circulars, Standard Operating Procedure and various communications issued by the State Government during the pendency of these proceedings, considerable clarity has now been brought about with regard to the procedure governing the issuance of Occupancy Certificates. What, however, remains to be considered is the legal position governing projects in respect of which the building plans had been sanctioned prior to the

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issuance of the said Circulars, Standard Operating Procedure and other executive instructions.

51. The questions that therefore arise for consideration are:

(i) what is the legal regime applicable to such projects;

(ii) which authority was competent in law to issue the Occupancy Certificate in respect of such developments;

(iii) whether, in the facts of the present case, the Gram Panchayat was the competent authority to issue the Occupancy Certificate;

(iv) if so, whether the Gram Panchayat complied with the applicable statutory provisions and followed the prescribed procedure before issuing the Occupancy Certificate; and

(v) whether the subsequent cancellation of the Occupancy Certificate was in accordance with law.

52. Sri. Suraj Sampath, learned counsel appearing for the impleading applicants 6 & 7, submits as under:

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52.1. There is no verification which has been made by the concerned authorities regarding the issuance of the Occupancy Certificates. The status of the villas would clearly establish that the said villas have not been occupied. The doors and windows of many of the villas have been removed. The finishing works have not been completed. No maintenance of the villas has been done by the developer. Though the petitioner had on 11.12.2023 indicated that the doors and windows would be put back and maintenance activities would be taken up given three months' time as recorded in the final order on 11.12.2023, the said doors and windows are yet to be put back. The petitioner has subsequently sought an extension of time. Despite the period for which extension was sought for has elapsed, none of the above activities have been performed by the petitioner. He negates the submission of the counsel for the petitioner that it is due to the non-occupation of the villas that maintenance has not been done resulting in deterioration of the villas.

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52.2. His submission is that the villas were never completed in the first place. Certificate issued by the architect is a false certificate, which is borne out by the inspection which has been carried out as per the directions of this Court. Though the petitioner claims that 31 villas have been sold and all are occupied, his submission is that only 7 villas, namely V07, V08, V09, V11, V38, V53 and V62 are occupied. 12 villas namely V3, 21, 22, 24, 26, 27, 30, 34, 39, 46, 55, 59 still do not have BESCOM connection and 4 villas namely V24, V46, V55, V59, as regard which, Occupancy Certificate had been received by the petitioner has been withdrawn.

52.3. His submission is that the first sale deed for any villa in the project was executed by the petitioner on 19.09.2018 i.e. Villa No.38 and was handed over on 08.11.2018, which is more than 18 months after the receipt of the alleged Occupancy Certificates were obtained on 05.05.2017 and more than 28 months after the promised delivery date of 26.02.2016. His submission in this regard is that if the Occupancy Certificate was a valid one, obtained on 05.05.2017 after the completion of the

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construction, then the petitioner would have handed over possession on that date or year about, as also executed necessary sale deeds, the fact that no such sale deeds having been executed negates the contention of the petitioner that the villas were ready on which basis the Occupancy certificate was issued.

52.4. His submission in this regard is that the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were fraudulently obtained, so as to evade the registration required under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter referred to as 'RERA'), which came into force on 01.05.2017. He relies on the letter of the petitioner addressed to the BESCOM on 12.05.2017, which was sent after the receipt of the fraudulent certificates, stating that the works in respect of 41 villas were incomplete and requesting the respondent not to grant permission for connection of electricity to those villas, viz., on Exhibit-R39. The contents are reproduced hereunder for easy reference:

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RPK/AFE/LTR-49/17-18

*To
The Assistant Executive Engineer (Ele),
Hosakote Sub division,
BESCOM, Bangalore.*

Dear Sir,

*Sub: Servicing of villas project for Raffles
Residency Pvt Ltd, Sy.No. 250, 251,
252, 264/4, 264/5, 264/6, 264/7,
264/8 & 264/9, Soukya road,
Samethanahally village,
Anugondanahally Hobli, Hosakote taluk
Reg: Partial villas servicing.*

*Ref: 1) BESCOM work order no. 23 dated
14/06/2016*

*2) Deputy chief electrical inspector approval
Of electrical installation letter no.
ACEI/BN/DCEI/DCW/252-56/2017-18
dated 10/04/2017*

*We refer to the above service connections to 61 villas +
common area with sanction load of 799.2KW. In this
connection we request you to grant permission to install 20
nos villas Kwh meters with RR nos + common area load
(67.2KW) instead of total 61 villas + common area.*

*The delay in completing the remaining 41 villas is taking
time, due to market bad conditions & the balance Kwh
meters will be connected in due course.*

*We request you to grant permissions for partial villas
servicing.*

With regards,

For RAFFLES RESIDENCY PVT. LTD.

52.5. On that basis he submits that the petitioner has misled this court that the construction is completed and the withdrawal of the Occupancy

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Certificates by the authorities is not proper and on that basis obtained an order for restoration of the Occupancy Certificates on the condition that the entire finishing works will be completed in three months' time and the due taxes will be paid within 90 days.

52.6. His submission is that none of the works were carried out by the petitioner. The petitioner has abandoned the project and left it incomplete years ago. Even the application for extension in IA-3/2024 filed on 5.03.2024 was not pressed by the petitioner. Even otherwise, he submits that the time period of extension sought for in the said application has also lapsed. His submission is that in terms of clause (2) of the operative portion of the final order dated 11.12.2023, the second and third respondents have not cancelled the Occupancy Certificates, even though the petitioner has not completed the project and the petitioner has sought an extension. It is only on account of the fraudulent Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 being produced before the RERA on 20.12.2023 to evade the

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liability of the petitioner that the proposed respondents came to know of the fraud played by the petitioner on this court, and it is in that background that the impugned applications were filed.

52.7. His submission is also that the third respondent never visited the property, never verified the status of construction and without doing so, entries were made in the software by uploading photographs from the brochure in pursuance of which e-Khata were issued on 18.11.2015, which indicates not only fraud on the part of the petitioner, but a collusion between the petitioner and respondent No.3. The claim that the villas had been completed is negated by the spot inspection report submitted on 20.08.2016 which discloses certain pending works, which would necessarily indicate that no Occupancy Certificates could have been issued to the petitioner for 23 villas. He submits that if the recent of the Occupancy Certificates had been issued on 05.05.2017, when the project was complete, there was no need for the petitioner to have obtained a loan of Rs. 100 crores from M/s. Indiabulls Housing Finance Ltd., as per the

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sanction letter 20.03.2018, produced at Annexure-R3 to IA-2/2024. The contents of the sanction letter dated 20.03.2018 are reproduced hereunder for easy reference:

*Indiabulls
HOUSING FINANCE*

Sanction Letter

Date: March 20, 2018

To

*Raffles Residency Private Limited
No:54, The Planet', 11 Floor,
Whitefield Main Road,
Opp: HUL Research Centre,
Bangalore-560 066*

Dear Sir/Madam,

Subject: Sanction of loan

With reference to your application for the loan and the subsequent discussions, we are pleased to advise that we have sanctioned you a loan of Rs. 100,00,00,000/- (Rupees One Hundred Crores only). The detailed terms and conditions of the sanction are as under:

<i>Borrower(s)</i>	<i>Raffles Residency Private Limited (RRPL)</i>
<i>Co-Borrower</i>	<i>NA</i>
<i>Personal Guarantee</i>	<i>Joint and Several Personal Guarantee of: a) Mr. Iqbal Jumabhoy b) Mr Hussain Somjee Counter Indemnity of: a) Mr. Asad Jumabhoy b) Mrs. Naseem Jumabhoy</i>
<i>Mortgagor(s)</i>	<i>RRPL and any other Landowners/Proposed</i>

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		<i>security owners as per Title Search Report</i>
<i>Amount Sanction</i>	<i>of</i>	<i>Upto Rs 100,00,00,000 (Rs. One Hundred Crore Only)</i>
<i>Tenor</i>		<i>Not exceeding 60 months from the date of first of disbursement</i>
<i>Rate Interest</i>	<i>of</i>	<i>Variable and linked to IHFL ICLR as plus 500 bps (IHFL ICLR is currently 12% p.a. and the current applicable Interest Rate shall be 17.00% p.a.p.m.) Interest rate reduction milestones; A)Reduction by 50 bps Upon sale of additional 25,000 34 ft (currently the area sold being approx. 2.10 lacs sq. 11 (31 villas) out of total salable area of 4.15 lacs sq. ft) and minimum collection milestone to be maintained at 20 er B)Reduction by additional 50 bps -Upon cumulative sale of 50,000 sq. ft. and minimum collection milestone in be maintained at Rs. 40 Cr C) Reduction by additional 100 bps upon cumulative sale of 1,50,000 sqft</i>
<i>Processing Fees</i>		<i>Rs 500,000/- (Rupees Five Lacs only) plus applicable taxes payable upfront and non- refundable</i>
<i>Repayment Terms</i>		<i>• Interest on the outstanding principal to be paid monthly throughout the loan tenor</i> <i>• Principal Moratorium of 12 months from the date of first disbursement</i> <i>• Principal Repayment to be done in 16 quarterly Installments as per the repayment schedule as below</i>

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	<i>End of</i>	<i>Amount (Rs. In Crs)</i>
	<i>Quarter 1</i>	-
	<i>Quarter 2</i>	-
	<i>Quarter 3</i>	-
	<i>Quarter 4</i>	-
	<i>Quarter 5</i>	15 Cr
	<i>Quarter 6</i>	15 Cr
	<i>Quarter 7</i>	15 Cr
	<i>Quarter 8</i>	15 Cr
	<i>Quarter 9</i>	15 Cr
	<i>Quarter 10</i>	15 Cr
	<i>Quarter 11</i>	1 Cr
	<i>Quarter 12</i>	1 Cr
	<i>Quarter 13</i>	1 Cr
	<i>Quarter 14</i>	1 Cr
	<i>Quarter 15</i>	1 Cr
	<i>Quarter 16</i>	1 Cr
	<i>Quarter 17</i>	1 Cr
	<i>Quarter 18</i>	1 Cr
	<i>Quarter 19</i>	1 Cr
	<i>Quarter 20</i>	1 Cr
	<i>Total</i>	100 Cr
<i>Security</i>	<i>Registered Equitable Mortgage of Contiguous/Accessible Non-Agricultural land</i>	

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	<i>admeasuring 14 Acres 06 guntas along with any present and future construction thereon for the Project "Raffles Park of Villas with total saleable area of approx. 4.15 lakh sq ft and Club House and common area/ amenities, at Survey Nos 250, 251, 252 etc Soukya Road, Samthenahalli, Anugondanahalli (Hobli), Hoskote Taluk, Bangalore District.</i>
	<i>the satisfaction of the lender</i> <i>g) Sales/Leasing Step-in rights for the projects mortgaged to the Lender shall be assigned to the Lender</i> <i>h) Construction step-in rights for the projects mortgaged to the Lender shall be assigned to the Lender</i> <i>i) All the collections to be routed through the escrow account and the funds shall be first utilised towards due /overdue interest/principal/ pre-payment of facility or any other charges of the lender thereafter to be released for construction activities to the satisfaction of the lender. The same to be monitored on monthly basis.</i> <i>j) Any equity brought by the promoters in any form (Equity/Unsecured loans including SBLC from DBS) shall not be taken out of the company during the tenor of the facility</i> <i>k) The borrower should sell minimum 6 units (villas) in a block of 9 months each. The 1st block of 9 months to start from the date of 1st disbursement and next blocks thereafter. In case the same is not achieved it shall be treated as event of default and penal interest of 2% per month payable monthly shall be charged till the same is regularised</i> Insurance <i>l) Insurance of all Mortgaged mortgaged/charged in favour of, the Lender against loss Properties, or damage for risks</i>

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	<i>and contingencies as the Lender deems fit, with an insurer acceptable to the Lender, for not less than the full replaceable value of the Mortgaged Properties (mortgaged/charged in favour of the Lender)/Contractors All risk policy/Project Insurance.</i> <i>m) Life/Critical Illness/Accident/Disability /policies (to be taken from insurer acceptable to the Insurance lender) for the Promoter(s) with cumulative sum assured equal to at least 2 years of interest payable on the outstanding principal of all the loans sanctioned by the Lender or its affiliates (including the interest payable on the sanctioned facility)</i> <i>All the insurance policies shall be assigned to the Lender within 15 days of the sanctioned facility</i>
<i>Pre-disbursement Conditions</i>	<i>Letter from current lenders State Bank of India stating outstanding facility amount, additionally also committing to hand over original documents and charge of existing mortgaged property to the proposed new Lender (in the format of the lender)</i> <i>Submit Engineer's/ Architect's Certificate certifying that all requisite permissions/approvals from the competent authorities to successfully undertake the Project have been obtained including opinion on sufficiency of the same</i> <i>Hypothecation of receivables from sold and unsold area tooth present and future) from sale/lease/transfer of mortgaged properties and escrow of such receivables with POA in favor of the lender</i> <i>Hypothecation of receivables from service/sale/roceipt of any additional interior/ customised work done on behalf of the customer and escrow of such receivables with POA in favor of the lender</i> <i>Any other security as acceptable to the</i>

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		Lender			
Pledge of Share	of	Pledge of shares of the following shareholders of the borrower (100%):			
		Name of the shareholder	% share	No. of shares	
		Mr. Iqbal Jumabhoy	33.33%	130,089	
		Mrs. Nassem Somjee Jumabhoy	33.33%	130,089	
		Mr. Asad Jumabhoy	33.33%	130,089	
		Total	100%	390.267	
Other Conditions		a) The Borrower/Obligor undertake to obtain a written No Objection Certificate ("NOC") from the Lender prior to, inter alia, any agreement(s)/contract(s) for/of sale, transfer, allotment, lease and/or assignment of the Security (or any part thereof). Indicative minimum price per sq. feet for any sale for the Project "Raffles Residency" as mentioned above shall be Rs. 8,000/- per sq. ft. (of saleable area)			
		b) The Borrower shall maintain a Debt Service Reserve (DSR) of Rs. 5 crores with Lender throughout the tenor of the loan by way of undisbursed amount from the total sanctioned amount. The amount in the DSR would be utilized only in case of a shortfall in cash flows for meeting debt service requirement from time to time. However, if any amount from the DSR is utilized to meet such a shortfall, then the DSR will be replenished by the Borrower to the extent of the utilized amount within 15 working days.			
		c) First Disbursement shall be up to the takeover of all the facilities of the existing lender SBI			

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	d) Disbursement shall be construction linked and directly to the vendors or to the satisfaction of the lenders e) Undertaking that within 15 days from the date of 1st disbursement, or prior to such date(s) as specified/agreed by the Lender, the Obligor(s) shall create or shall cause to be created and perfected adequate security as required by the Lender f) Balance disbursement shall be done upon perfection of security, filing of form CHG 1 and other conditions to loan/facility offered by IHFL to the Borrower(s) and/or Co-Borrower(s)/Guarantor(s)
--	---

e) the legal/technical report on the property or any other verification report on the borrower co-applicant/guarantor is not to the satisfaction of HFL in its sole & absolute discretion

f) if IHFL in its sole & absolute discretion considers that the Loan should be revoked for whatever reason it may so deem fit and proper.

24. The loan and interest shall be paid as stated above. However, IHFL may in its sole discretion alter the rate of interest suitably and prospectively if unforeseen or extraordinary changes in the money market conditions take place.

25. IHFL is entitled to add to, delete or modify all or any of the aforesaid terms and conditions.

26. IHFL reserves the right, in its sole discretion and on such terms as to pre-payment charges, etc., as it may prescribe permit prepayment / acceleration in payment of installments at the request of the Borrower.

27. Further, kindly note that the Lender reserves its right to appropriate the amounts received from you towards payment/repayment of the amounts due under the Loan Documents in the following order of priority

a. Firstly, towards costs and expenses, if any, incurred to be incurred by the Lender,

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a. Secondly, towards additional interest, default interest, interest and/or other amounts (other than outstanding Loan Amount) payable by you under the Loan Documents; and

c. Thirdly, towards the outstanding Loan Amount payable by you under the Loan Documents.

28. This sanction letter is valid for 30 days for acceptance from the date of its issuance.

Please sign the duplicate copy of this sanction letter as a token of your acceptance of the terms and conditions mentioned, duly signed by all the Borrower's and Co- Borrower /s.

For M/s. Indiabulls Housing Finance Limited

Sd/-
Authorized Signatory

We accept the Sanction of Loan Facility of Rs. 100,00,00,000/- (Rupees One Hundred Crores only) on the terms and conditions as prescribed above.

Borrower

For M/s. Raffles Residency Private Limited

Sd/-
Authorized Signatory

52.8. By referring to the above letter of M/s. Indiabulls Housing Finance Ltd., his submission is that the disbursal of the monies was linked to the construction, which would establish that even as on that date, that is 20.03.2018, large amount of construction was pending, requiring an investment of Rs. 100 crores. The petitioner had also written to the proposed respondent on 26.04.2018, indicating that the loan had been

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obtained and the works would be completed which has been produced at Annexure-R4 to IA-2/2024. On that basis, he submits that even on 26.04.2018 the petitioner had communicated to the proposed respondents that the construction was not complete and would be taken up in terms of the loan sanctioned by M/s. Indiabulls Housing Finance Ltd. His submission is that the nefarious activities of the petitioner did not cease and continued. The amounts advanced were misused by the petitioner. The petitioner defaulted in repayment of the loan amount, resulting in proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI') being initiated culminating in an e-auction sale notice dated 24.08.2023 in respect of 23 villas, including to be constructed villas in the project. The notice categorically indicated that the outstanding loan amount was Rs. 222,08,88,390/- and has been produced at Annexure-R5 to IA-2/2024.

52.9. The e-Auction having been held, 23 villas were sold for around Rs. 3 crores per villa to another builder, whereas the petitioner sold the villas in

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the project to unsuspecting persons like the proposed respondents between Rs. 6.00 to Rs. 7.20 crore during the years 2014 to 2017. His submission is that the fact that the villas were sold for Rs. 3 crores in e-auction indicate that the construction was not completed, several works were remaining. He submits that the action taken by respondent No.2 and respondent No.3 is in pursuance of the email issued by the proposed respondent on 12.12.2022, bringing to their notice that the villas are not complete, which came to be challenged by the petitioner in the present petition. His submission is also that later on, the proposed respondents came to know that respondents No.2 and 3 did not have any power to issue Occupancy Certificates dated 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 and the very Occupancy Certificates are *non est* and, when *non est*, could not have been restored at the request of the petitioner. The second and third respondents issued a notice dated 26.12.2022 to the petitioner and architect of the project.

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The contents of which are reproduced
hereunder for easy reference:

SAMETHANAHALLI GRAMA PANCHAYAT OFFICE

*Samethyanahalli Village, Anugondanahalli Hobli,
Hosakote taluk, Bengaluru Rural Dist*

SL.No. PDO/SGP/08/2072-23 Date: 26-12-2022

Notice

*Sub-Completion Certificates issued by you for
villas at Raffles Park, situated at survey
Nos. 250, 251, 252 & 264(P), Soukya Road,
Samethanahalli Village, Hoskote Taluk,
Bangalore Rural District.*

*Upon conducting our site inspection on 22-12-2022 we have
established that several villas are incomplete even today as
follows and as per photographs attached:*

- 1. No electricity connection service given for 41 villas.*
- 2. No main doors and windows for several villas.*
- 3. No plumbing works completed for several villas.*
- 4. No electrical works completed for several villas,*
- 5. No flooring completed for several villas.*
- 6. Several other works Incomplete.*

Therefore these villas are not fit for Occupancy

*You are instructed to visit the site within 7 days of this Notice
and report for a Joint Inspection with the undersigned.
Falling which, you will be held responsible for the
consequences of further action that we will take against you,
Raffles Residency Pvt. Ltd., and the promoters of the project.*

*You have issued Completion Certificates on several dates for
several villas when they were still incomplete and not fit for*

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Occupancy. You and the promoter of the project will be held liable for this Offence.

*Sd/-
Samethanahalli Grama Panchayat,
Hoskote Taluk*

*To
Karan Grover & Associates
Kirti Tower, Tilak Road, Vadodara 390 001*

52.10. He submitted that for 41 villas, there were no main doors, windows, plumbing works, electrical works, flooring, etc., which were completed, rendering the said villas uninhabitable. This, he submits, is borne out by photographs taken during inspection ordered by this court. Though in terms of notice dated 26.12.2022, the petitioner and the architect were called upon to visit the project site within 7 days and report for joint inspection, the petitioner and the architect failed to comply with the notice and in that background, the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were withdrawn on 10.01.2023.

52.11. His submission is that the petitioner approached the respondent No.4- Town

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Planning Authority for sanction of a group housing development plan in terms of Sections 15 and 17 of the Karnataka Town and Country Planning Act, 1961, which was so approved by the planning authority, subsequently, the same came to be modified on 11.02.2015 in terms of which at Sl. No.3, there is an obligation for completion of the construction work and to obtain occupancy/completion certificate from the respondent No.4. Subsequently, a modified commencement order/ sanction for development dated 2.03.2015 was issued by the Planning Authority in respect of the Club House, which also required to obtain completion certificate from the respondent No.4.

52.12. The respondent relies upon the decision of the Hon'ble High Court of Madras in ***P. Anandasundaresan -v- Akshaya Pvt. Ltd.***¹ more particularly paragraphs 6 ,7(a), 7(b), 8 & 9, which are reproduced hereunder for easy reference:

6. Perusal of records would reveal that the learned Adjudicating officer, TNRERA, Chennai, vide order dated 30.03.2021 has directed the respondent/ Promoter to deposit a sum of Rs.7,90,000/- to the credit of Appeal

¹ LAWS (MAD) 2025(1) 59 (DB)



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No.103 of 2021 on the file of Tamil Nadu Real Estate Appellate Tribunal, Chennai. When this matter was taken up for hearing, this Court had granted an interim order of Status Quo, dated 15.06.2022, in C.M.P.No.9256 of 2022 with an observation that the respondent/ Promoter shall not withdraw the aforesaid amount which was earlier deposited to the credit of Appeal No.103 of 2021 on the file of Tamil Nadu Real Estate Appellate Tribunal, Chennai till the disposal of this Appeal and framed the following substantial questions of law.

(i) Whether a letter issued by President of Panchayat will be equivalent to a Completion Certificate as contemplated under Sec.2(h)(ii) of TN RERA Act?

(ii) Whether a certificate issued by an incompetent person other than CMDA will amount to a completion certificate as defined under Sec.2(h)(ii) of TN RERA Act?

(iii) Whether the Tribunal is correct in holding that the TN RERA Act is not applicable to the appellant's case, when the building and the amenities of the gated community were not completed by the builder, even after TN RERA Act came into force and therefore the Act was applicable?

(iv) Whether the statutory mandate of getting completion certificate be waived by the issuance of a mere letter by Panchayat, especially when the actual project completion was delayed by more than 4 years after 2014 and the entire gated community with amenities were not handed over by the Builder until 2018 as per the project plan?

(v) Whether the Appellate Tribunal, in the absence of material evidence hold that an ongoing project as completed and thereby take away a builder from the purview of the RERA Act, which is applicable to ongoing projects on the date of the introduction of the Act and also deprive the compensation to an affected buyer for the delayed handover?

7(a) *First and foremost, it can be inferred that the completion certificate obtained by the respondent/ Promoter from Thaiyur Panchayat on 26.02.2014 cannot be considered as a valid completion certificate, since at that point of time, the construction of the subject building was not completed and the respondent/ Promoter himself has requested the buyers through an email, dated 26.10.2015 stating that they would regret*

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for the inconvenience caused to the buyers with regard to the delay incurred in completing the Project and has rescheduled the dates of completion and also vide the same email, has revised the compensation amount for 1 BHK, 2BHK & 3BHK as Rs.5,000/-, Rs.7,500/- & Rs/10,000/- per month post the revised timeline.

7(b) Obviously, this would suffice answering the issues in favour of the appellant, since the handing over of the building was made only on 24.02.2018 and handing over of the amenities mentioned by the respondent/Promoter was made only on 26.01.2021 with a long delay of nearly 4 years and 7 years respectively from 30.04.2014, which is the actual date of handing over as stated by the respondent/ Promoter.

8. Question no.(iv): When Section 2(h) (ii) of the TN RERA Act is read in consonance with Section 11 (4)(b) of the RERA Act, which states that it is the duty of the promoter to obtain the completion certificate or the Occupancy Certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be. In the present case on hand, as obtaining completion certificate is not a discretionary but a mandatory one as per the provisions mandated under the TN RERA Act, the same cannot be waived by any other similar letter issued by the Panchayat under the guise of alleged completion. Hence, Question (iv) is answered in favour of the appellant.

9. Question no.(v): From the submissions made by the learned counsel appearing on either side as well as the perusal of the material evidences submitted before this Court, this Court is of the considered opinion that the project 'January' of the respondent/ promoter is an ongoing project and it definitely falls under the provisions of the TN RERA Act. Therefore, the respondent/ Promoter cannot evade from paying compensation to the appellant for delayed handover as ordered by the learned Adjudicating Officer, TN RERA, Chennai vide order dated 30.03.2020 passed in CCP No.30 of 2020. Accordingly, the Question no.(v) is also answered in favour of the appellant.

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52.13. By relying on ***P. Anandasundaresan***, he submitted that the mere issuance of a certificate or communication by a Gram Panchayat cannot, by itself, establish that a project stood completed in accordance with law. It is contended that the nomenclature of the document is not determinative; what is relevant is whether the certificate has been issued by the competent authority after due verification of the completion of the project and in conformity with the statutory requirements governing the grant of an Occupancy Certificate or Completion Certificate.

52.14. It is further submitted that the High Court of Madras, while interpreting the provisions of the Real Estate (Regulation and Development) Act, 2016, held that a completion or Occupancy Certificate cannot be treated as conclusive merely because such a document has been issued, if the factual position demonstrates that the construction remained incomplete, possession had not been handed over, or the promised amenities had not been provided. The Court emphasised that the requirement of obtaining a valid completion or Occupancy

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Certificate from the competent authority is mandatory and cannot be diluted or substituted by any other communication or certificate issued without complying with the statutory requirements.

52.15. Learned counsel submits that the ratio of the said decision squarely applies to the facts of the present case. According to him, notwithstanding the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, the material placed on record would indicate that the project was not complete in all respects, several villas were not fit for occupation, basic amenities had not been provided and possession had not been delivered to the purchasers. These circumstances, it is contended, clearly demonstrate that the project continued to remain an ongoing project notwithstanding the issuance of the Occupancy Certificate.

52.16. It is therefore submitted that the petitioner cannot rely solely upon the Occupancy Certificate to contend that the project stood

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completed or that it falls outside the ambit of the Real Estate (Regulation and Development) Act, 2016. According to the respondents, the actual state of completion of the project, the availability of the requisite infrastructure and amenities, and compliance with the applicable statutory requirements are the determinative factors, and not the mere existence of an Occupancy Certificate. On this basis, it is contended that the impugned action cannot be faulted.

52.17. The respondent relies upon the decision of Hon'ble Allahabad High Court in ***Paramount Prop. Build. Pvt. Ltd-v-State of U.P. and Ors.***², more particularly paragraphs 6, 8, 18, 19 & 20 which are reproduced hereunder for easy reference:

6. Briefly stated facts of the present case are that the petitioner is promoter of 'Paramount Golf Foreste' project for construction of apartments. The respondent nos. 4 to 50 booked the apartments with the petitioner. The petitioner issued allotment letters dated 10.08.2011 to them. However, the petitioner could not complete the project within the given time and could not handover possession of the apartments to the allottees. Consequently, the respondent allottees filed complaint before the Real Estate Regulatory Authority, Gautam Budh Nagar alleging that the completion of project is delayed by more than four years and they

² Writ Civil No.12574/2020



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claimed interest and possession of the apartments. Before the authority, the petitioner raised objection as to the jurisdiction on the ground that the project in question does not fall within the definition of 'ongoing project' as defined in Rule 2 (h) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (in short 'the Rules, 2016). The authority considered the evidence on record and also the facts noticed in the inspection made by the technical team on 24.07.2019 and recorded a finding of fact that the project is still incomplete and some No Objection Certificates (for short 'NOC') including NOC of fire fighting etc. relating to some technical work had not been obtained. The authority recorded findings of fact and passed the impugned orders dated 18.10.2019.

8. *Learned counsel for the petitioner submits that the project of the petitioner is not 'ongoing project' inasmuch as the petitioner had applied for completion certificate with the Uttar Pradesh State Industrial Development Corporation on 13.10.2016 and therefore in terms of the provisions of Rule 2 (h) of the Rules, 2016, the project in question is not 'ongoing project' and consequently, the project was not required to be registered under Section 3 (1) of the Act, 2016, and the RERA Authority did not have the jurisdiction to look into the complaint made by the allottees.*

18. *It therefore follows that in the case of a project where all development works have not been completed, the mere filing of an application with the competent authority for issuance of completion certificate would not bring it out from the purview of an 'ongoing project', as defined under Rule 2 (h) of the Rules, 2016. Such projects would accordingly be held to be 'ongoing projects' and in terms of the proviso to Section 3 (1) of the Act, 2016, the promoter would be liable to make an application to the authority for registration of the said project within the stipulated time period.*

19. *In the instant case, the findings recorded by the RERA Authority which are based on a consideration of the material evidence on record are to the effect that the development works in respect of the project were not completed. Accordingly, the project cannot be said to be excluded under Rule 2 (h). The project has therefore rightly been held to be an 'ongoing project' within the meaning of Rule 2 (h) and it would require*

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registration under the proviso to Section 3 (1) of the Act, 2016. Accordingly the matters pertaining thereto would fall within the jurisdiction of the RERA Authority.

20. *The impugned orders passed by the RERA Authority, therefore, cannot be held to be without jurisdiction.*

52.18. By relying on ***Paramount Prop. Build. Pvt. Ltd-v-State of U.P. and Ors.*** he submits that the decisive factor in determining whether a project is an "ongoing project" under the Real Estate (Regulation and Development) Act, 2016 is not the mere filing of an application for issuance of a Completion Certificate or Occupancy Certificate, nor the existence of such a certificate in isolation, but the actual factual completion of the development in accordance with the sanctioned plan and the applicable statutory requirements.

52.19. It is submitted that the Hon'ble Allahabad High Court has categorically held that where the development works remain incomplete, mandatory approvals and No Objection Certificates have not been obtained, or the project is otherwise not complete in all material respects, the project would continue to remain

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an "ongoing project" notwithstanding any application made for grant of a Completion Certificate. In such circumstances, the promoter continues to be under an obligation to register the project under the provisions of the Real Estate (Regulation and Development) Act, 2016, and the jurisdiction of the Real Estate Regulatory Authority to entertain complaints relating to such project remains unaffected.

52.20. Learned counsel submits that the principle emerging from the said judgment is that the question whether a project is complete is essentially one of fact, to be determined on the basis of the actual status of the project and not merely on the basis of documents relied upon by the promoter. Where the competent authority, upon consideration of the material on record, arrives at a finding that the project remains incomplete, such finding cannot be displaced merely because the promoter relies upon an application or a certificate said to have been issued.

52.21. Applying the aforesaid principle to the present case, it is submitted that the respondents have

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consistently contended that the project was not complete in all respects, several villas were not fit for occupation, and the necessary infrastructure and amenities had not been completed. According to the respondents, the mere issuance of an Occupancy Certificate by the Gram Panchayat would not, by itself, take the project outside the ambit of the Real Estate (Regulation and Development) Act, 2016, if, in fact, the project continued to remain incomplete. It is therefore submitted that the question whether the project constitutes an "ongoing project" is one which falls squarely within the jurisdiction of the Real Estate Regulatory Authority to examine on the basis of the evidence placed before it, and the petitioner cannot rely solely upon the Occupancy Certificate to contend otherwise.

52.22. The respondent relies upon the decision of the Hon'ble High Court of Madras in ***M/s Sare Shelters Project Pvt. Ltd-v-Sare Squires***³ more particularly paragraphs 24, 27, 28, 32, 33, 34, 35 & 36 which are reproduced hereunder for easy reference:

³ CMSA No.27/2020



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24. *The question arise, whether the completion certificate contemplated under Section 3(2)(b) of the RERA Act can be construed as a valid completion certificate within the meaning of the provisions of the RERA Act. Undoubtedly, the Executive Officer/Thiruporur Town Panchayat in the present case issued a completion certificate within the meaning of Town and Country Planning Act. Thus, such a completion certificate issued without fulfilling the requirements and conditions stipulated in the Town and Country Planning Act cannot be considered as a valid completion certificate for the purpose of grant of exclusion for registration under Section 3(ii) of the RERA Act. The question arise, whether the completion certificate issued in the year 2014 admittedly can be a completion certificate for the purpose of granting exclusion.*

27. *Let us now consider the orders passed by the competent authority under the RERA Act. The Regulatory Authority has simply relied upon Section 3(2)(b) of the RERA Act and held that the building completion certificate was already issued by the Executive Officer, Thiruporur Town Panchayat. Therefore, the registration is not required under the provisions of the Act. Thus, the application submitted by the apartment owner's Association is not maintainable. The Regulatory Authority has not considered the scope of the Act. The constructive interpretation of the Act has not been dealt with by the Regulatory Authority. The purpose and object of the Act, which is a welfare legislation has not been discussed at all. The very idea of the legislation to protect the interest of the purchasers by flats and villas etc., has not gone into by the Regulatory Authority.*

28. *As far as the welfare legislations are concerned, the Courts are bound to adopt pragmatic approach and ensure that the purpose and object of the Act is dealt with in its real spirit so as to extend the fruits and benefits of the legislation in favour of the public in general and in consonance with the constitutional requirements. The very legislation is to be read in consonance with the constitutional philosophy and ethos. It is not as if the language employed alone would be sufficient to decide the issues. The language is meant to reflect the purpose and object and it is not as if the word should be defined with a dictionary meaning. The words "employed" in such welfare*

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legislations are required to be interpreted by adopting the principles of "progressive interpretation", which is mandatory. In view of the fact that our great nation is able to sustain the Constitution for more than 70 years, only in view of such progressive interpretations. Even pre-independence legislations are in-force even now in our great nation, because the Constitutional Courts are adopting progressive and constructive interpretations despite the change of circumstances and the social changes and developments in the Society. Inspite of fast developmental activities, such pre-independence statutes are able to sustain because of such progressive interpretations. Therefore, a blanket reading of the words "employed" in the legislation would not serve its statement of purpose and object and the heart and the soul of the statutes are to be culled out for the purpose of implementation of such legislations.

32. *The Appellate Tribunal further considered that many owners have taken their respective apartments and few more flats are vacant and with the possession of the appellants/builders. This apart, the appellant/builder is continuing their construction work in the project for the purpose of construction of villas. The appellants/builders are utilizing the amenities already provided in the project for the purpose of their construction activities and the disputed approach road is also being used, which is insufficient to meet out the number of villas, flats constructed in the project. The project is being developed in 112 acres as per the Project plan of the appellant/promoter. Thus, their presence is very much available in the project even as of now. Therefore, the project cannot be said to be a completed project. It is an on-going project. The project completion means that it must be completed in all respects and the entire project was handed. Therefore, the builder cannot enter thereafter into the project premises as they lost their legal rights except with the permission of the owners or with reference to the agreement, if any, between the parties. Thus, the completion indicates in all respects, and in entirety and, the various definitions provided under the RERA Act also indicates that the duties and responsibilities of the builders to ensure that all the common amenities and facilities are provided in accordance with the agreement and the laws in-force. Thus, the word "completion" cannot be read in isolation and it must be in connection with the definitions enumerated in various provisions under the RERA Act. Thus, the completion certificate*

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issued by the Executive Officer, Thiruporur Town Panchayat cannot be construed as a valid completion certificate for granting exclusion under the provisions of the RERA Act. This apart, there is no evidence to establish that such a completion certificate was issued by the Executive Officer, Town Panchayat only after conducting full-fledged inspection in the project. Every public authority is expected to issue completion certificate only after conducting an inspection with reference to the provision of the Statues. Any certificate issued by the public authority, which is not in consonance with the provisions of the statute is to be construed as invalid or improper certificate. The invalid certificate indicates that the certificate was not in consonance with the provisions of law. The improper certificate indicates that the certificate issued was without conducting proper inspection. Thus, an improper certificate or an invalid certificate, both cannot be accepted for the purpose of justifying the completion certificate issued by the competent authority. In the present case, though the completion certificate was issued by the competent authority under the provision of the Town and Country Planning Act or under the regulations, certainly such certificate is an improper one, which is to be construed as irregular as no full-fledged inspection or enquiry was conducted nor the completion certificate issued contains any of the particulars. Thus, such certificate would not confer any right on the parties to claim exoneration from the provision of the RERA Act, more specifically, under Section 3(2)(b) of the Act.

33. *The Act being comprehensive, remedial mechanism are provided in the Act. Undoubtedly, the provisions of the Act excludes the completed project. The question arises, what is the completed project. Completed project in common parlance is that a project, which is completed in its entirety in all respects and by complying with the specifications, norms prescribed in the building plan approval and by providing all amenities, facilities as agreed between the parties. The completion indicates that the builders/developer constructed the project as a whole and handed over the entire project as well as maintenance to the owners association as far as the apartments are concerned, including the title documents. Thus, it is made clear that a project, which is completed means or within the provisions of the RERA Act is that a project, which was completed in all respects by complying with the*

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covenants, terms and conditions in the agreement between the parties including handing over of all original title documents and all other documents etc. Thereafter, the rights of the builder to enter into the premises are restricted in accordance with the agreements, if any, between the parties. Thus, mere completion of structural building is insufficient to arrive a conclusion that it is a 'completion' within the meaning of the provisions of the RERA Act or under the Town and Country Planning Act. In such circumstances, a builder/developer may make an attempt to exploit or cheat the bona fide purchasers, who are all innocent purchasers. This exactly the legislators thought fit to enact the RERA Act. Large number of exploitations and cheatings are noticed in our great nations in real estate activities. Many crimes are registered in the subject of Real Estate business. Taking note of the prevailing situation in the real estate, the parliament thought fit and enacted the law in order to regulate the activities of the builders/developer. Therefore, in all respects, the Act should be applied in its real spirit so as to protect the rights of the innocent bona fide purchasers from the developer/builders. This apart, the developer of the on-going project cannot be allowed to escape from the clutches of the Act. It is not as if the Act grants exclusion for an on-going project or incompleted project. Therefore, the completion must be with reference to the provisions of the Act and not based on the certificate of completion issued by the Executive Officer, Town Panchayat who issued such certificates mostly on extraneous considerations. Thus, this Court is of the considered opinion that the certificates are not issued after inspection but obtained. This Court is conscious regarding the prevailing situation in the real estate business. For each and every thing, corrupt activities are dominating the field and the competent authorities are not initiating appropriate action to control the menace of corruption in the real estate activities. Thus, every protection ensured under the statute must be adequate and proper so as to protect the interest of public in general and more specifically, the bona fide purchasers of the apartments or villas from the developers/promoters. Court cannot close its eyes with reference to the corrupt activities in public offices. Thus, any certificate issued by such Executive Officer, Town Panchayat cannot be taken as a conclusive factor. If a literal meaning is adopted with reference to Section 3(2)(b) of the RERA Act, then many number of builders/developers, who are all in the

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process of construction will escape from the clutches of law and that is not the intention of the legislation and certainly, not the intention of the parliament. That is the reason why terms are carefully defined. What are all the amenities, facilities are also well defined. Even Section 3(2)(b) of the Act states that, where the promoter has received a completion certificate for real estate project prior to the commencement of the Act. Undoubtedly, in the present case, the certificate was obtained prior to the commencement of the Act. However, such certificate obtained is improper and illegal as the certificate was not issued within the parameters stipulated even under the Town and Country Planning Act and more specifically, by not conducting any proper inspection or enquiry with reference to the actual completion of the project as defined under the provisions of the statutes and in accordance with the plan approval. Thus, this Court has no hesitation in arriving a conclusion that the completion certificate issued by the Executive Officer, Town Panchayat cannot be trusted upon nor be accepted so as to arrive a conclusion that the said certificate was issued in compliance with the building plan approval or the Statute. Thus, with reference to the RERA Act, such completion certificate cannot be considered for grant of exclusion. Thus, the completion certificate is of no avail to the appellant and the reliance placed upon by the Regulatory Authority is improper and not in consonance with the statement of the objects and reasons as well as the provisions under the Act.

34. *The State Government in this regard has to issue appropriate orders to the Head of the Department to initiate action against all erring officials, who are all issuing such certificate without even conducting any proper inspection under the provisions of the Town and Country Planning Act prior to the commencement of the Act and not in consonance with approved building plan as well as specifications. No doubt, in the present case, the completion certificate was issued prior to the commencement of the RERA Act. Thus, the Executive Officer had no occasion to conduct any inspection in accordance with RERA Act. However, the Executive Officer would have conducted inspection or enquiry with reference to the provision of the Town and Country Planning Act and more specifically, with reference to the building plan approval sanctioned by the Director of the Town and Country Planning . Thus, even*

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considering the ground raised by the appellant that the completion certificate was issued prior to the commencement of the RERA Act, this Court is of the considered opinion that the certificate was not issued in accordance with the provisions of the Town and Country Planning Act as well as the building plan approval sanctioned by the Director of Town and Country Planning. It is relevant to note that even in common parlance, the word "completion" defines the "substantial completion" in accordance with contract. Thus, even in the absence of any statute, specifically, a completion certificate is to be issued by any Competent Authority, once if the project is completed. Substantial completion indicates providing of approach road, water facilities, including drainage etc. These are all the basic amenities to be provided, if at all the builder/promoter claims that the building is completed. If water facilitates and drainage facilities, approach roads are not provided adequately and the project is completed, then it will undoubtedly against the provisions of the Statutes. Therefore, the completion must be in all respects and in accordance with the contract between the parties. The covenants in the contract are the essential parameters, which must be the deciding factor regarding the actual completion and not mere completion of structure in the project. This being the object to be sought for, even in the absence of the RERA Act, the completion certificate issued by the Executive Officer, Town Panchayat is improper and not in consonance with the established principle for issuing a completion certificate even in a common parlance and under the Town and Country Planning Act.

35. *The only question of law raised in the present second appeal is that whether the complaint/application filed by the respondent before the Regulatory Authority is maintainable or not. In view of the fact that the completion certificate issued by the Executive Officer, Town Panchayat is not in consonance either with the provisions of the Town and Country Planning Act as well as the building plan approval sanctioned by the Director of Town and Country Planning or in accordance with the provision of the RERA Act, the same cannot be construed as a valid certificate for the purpose of grant of exclusion under Section 3(2)(b) of the RERA Act. The certificate is to be construed as insignificant and irrelevant as far as the RERA Act is concerned and for all purposes, the building is to be treated as on-going project. Therefore, the appellants/builders are bound to*

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comply with the terms and conditions in the project as well as comply with the provisions of various laws governing real estate affairs. Accordingly, this Court has no hesitation in arriving a conclusion that the application/complaint filed by the respondents/apartment owners association is maintainable under the provisions of the RERA Act, 2016 and accordingly, the order passed by the Appellate Tribunal stands confirmed and consequently, Civil Miscellaneous Second Appeal stands dismissed. No costs.

36. *The Regulatory Authority is directed to entertain the application/complaint filed by the respondents/apartment owners association and adjudicate the issues on merits and in accordance with law by affording opportunity to all the parties concerned and accordingly, pass speaking final orders within a period of three months from the date of receipt of a copy of this order.*

52.23. By relying on ***M/s Sare Shelters Project Pvt.***

Ltd's case he submits that the expression "completion certificate" occurring in Section 3(2)(b) of the Real Estate (Regulation and Development) Act, 2016 cannot be understood in a purely literal or mechanical manner. It is contended that the certificate relied upon by a promoter must be a valid certificate issued by the competent authority after satisfying itself that the project has been completed in accordance with the sanctioned plan, the applicable statutory requirements and the obligations undertaken by the promoter.

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52.24. Learned counsel submits that the Hon'ble High Court of Madras has held that the mere issuance of a completion certificate or Occupancy Certificate by a local authority would not, by itself, entitle a promoter to claim exclusion from the provisions of the RERA Act. If the certificate has been issued without a proper inspection, without verification of compliance with the sanctioned plan, or without ensuring that the project has been completed in all material respects, such a certificate cannot be regarded as a valid completion certificate for the purposes of Section 3(2)(b) of the Act.

52.25. It is further submitted that the said judgment recognises that the question whether a project is complete is one of substance and not of form. A project cannot be regarded as complete merely because the structural work has been completed or because a certificate has been issued by a local authority. Completion necessarily postulates that the entire project has been completed in accordance with the sanctioned plans, that all common amenities and infrastructure have been provided, that the contractual obligations undertaken by the

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promoter have been fulfilled, and that the project has been rendered fit for occupation in all respects.

52.26. Learned counsel further submits that the Hon'ble Madras High Court has emphasised that the Real Estate (Regulation and Development) Act, 2016 is a beneficial legislation enacted for the protection of homebuyers and, therefore, its provisions must receive a purposive and progressive interpretation. The statutory exclusion under Section 3(2)(b) cannot be interpreted in a manner that enables promoters of incomplete projects to evade the regulatory framework of the Act merely by relying upon certificates obtained without due compliance with the statutory requirements.

52.27. Applying the aforesaid principles to the facts of the present case, learned counsel submits that the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 relied upon by the petitioner cannot be treated as conclusive proof of completion of the project. According to him, the material placed on record discloses that no

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comprehensive inspection of the project was undertaken before issuance of the Occupancy Certificates, that several villas were incomplete, that all common amenities and infrastructure had not been provided, and that the project itself had not been completed in its entirety. In such circumstances, the respondents contend that the Occupancy Certificate cannot be treated as a valid certificate for claiming that the project stood completed or for excluding the project from the ambit of the Real Estate (Regulation and Development) Act, 2016.

52.28. It is therefore submitted that the issue whether the project is an "ongoing project" and whether the provisions of the Real Estate (Regulation and Development) Act, 2016 are attracted must necessarily be determined on the basis of the actual factual status of the project and not merely on the existence of an Occupancy Certificate. Consequently, the proceedings before the Real Estate Regulatory Authority are maintainable and are required to be adjudicated on their own merits in accordance with law.

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52.29. The respondent relies upon the decision of the Hon'ble Apex Court ***Badami (Deceased) by her LR-v-Bhali***⁴ more particularly paragraphs 19, 20, 21, 22, 23 24 & 25 which are reproduced hereunder for easy reference:

19. *Presently, we shall refer as to how this Court has dealt with concept of fraud. In S. B. Noronah v. Prem Kumari Khanna[12] while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, "a judgment obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity". (See Halsbury's Laws of England, Vol. 16 Fourth Edition para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.*

20. *In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others[13] this court commenced the verdict with the following words:-*

"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree

- by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

21. *In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A*

⁴ (2012) 11 SCC 574



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litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.

22. *In Smt. Shrist Dhawan v. M/s. Shaw Brothers[14] it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen v. Preeti Lal[15], Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education and other[16] and Ram Chandra Singh v. Savitri Devi and others[17].*

23. *In State of Andhra Pradesh and another v. T. Suryachandra Rao[18] after referring to the earlier decision this court observed as follows:-*

"In Lazars Estate Ltd. v. Beasley[19] Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. "

24. *Yet in another decision Hamza Haji v. State of Kerala & Anr.[20] it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.*

25. *It would not be an exaggeration but on the contrary an understatement if it is said that all facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a lease deed and magically in a hurried manner the plaint is presented, written statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the decree it is manifest that there is no reference of any kind of family arrangement and there is total non-application of mind. It only mentions there is*

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consent in the written statement and hence, suit has to be decreed. Be it noted, it was a suit for permanent injunction. There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27.11.1973 did not look at these aspects. When the second suit was filed in 1984 for title and the third suit was filed for possession thereafter, the courts below had routinely followed the principles relating to consent decree and did not dwell deep to find out how the fraud was manifestly writ large. It was too obvious to ignore. The courts below have gone by the concept that there was no adequate material to establish that there was fraud, though it was telltale. That apart, the foundation was the family arrangement. We have already held that it was not bona fide, but, unfortunately the courts below as well as the High Court have held that it is a common phenomenon that the people in certain areas give their property to their close relations. We have already indicated that by giving the entire property and putting him in possession she would have been absolutely landless and would have been in penury. It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death. All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:

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"Fraud generally lights a candle for justice to get a look at it; and rogue's pen indites the warrant for his own arrest."

52.30. By relying on ***Badami's case***, he submits that fraud vitiates every solemn act and every judicial or administrative proceeding. It is contended that it is a well-settled principle of law that an order or judgment obtained by practising fraud upon a Court or a statutory authority is a nullity in the eye of law and can neither confer any right upon the person obtaining it nor be permitted to stand merely because it has attained finality.

52.31. Learned counsel submits that the Hon'ble Supreme Court has repeatedly held that every litigant approaching a Court is under a solemn obligation to make a full, fair and truthful disclosure of all material facts. Suppression of material facts, concealment of relevant documents, or obtaining an order by misleading the Court amounts to practising fraud upon the Court and disentitles such a litigant from claiming any equitable or discretionary relief. It is further submitted that no Court would permit its process to be used as an instrument to

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perpetuate fraud or to enable a party to enjoy the fruits of an order obtained by deception.

52.32. Applying the aforesaid principles to the present case, learned counsel submits that the petitioner deliberately suppressed the true factual status of the project while approaching this Court. According to him, the petitioner projected the project as one that had been completed and in respect of which valid Occupancy Certificates had been issued, while concealing the fact that the project was incomplete, several villas had not been rendered fit for occupation, the requisite amenities had not been provided and possession had not been handed over to the purchasers. It is submitted that these facts were material to the adjudication of the writ petition and ought to have been candidly disclosed.

52.33. It is further contended that the petitioner has not only obtained favourable orders from this Court by relying upon the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 but is



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also seeking to utilise those orders before the Real Estate Regulatory Authority to contend that the project is not an "ongoing project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 and, consequently, that the Authority lacks jurisdiction to entertain the complaints of the allottees. According to the respondents, this constitutes a continuing attempt to derive an advantage from an order allegedly obtained by suppression of material facts.

52.34. Learned counsel therefore submits that, if this Court comes to the conclusion that the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were obtained or relied upon by suppressing material facts or that the earlier order of this Court was procured by misleading the Court regarding the true status of the project, the principles laid down in ***Badami*** would squarely apply. In such an event, this Court would not only be empowered but would be duty-bound to prevent abuse of its process by recalling or modifying its earlier order, since no litigant can be permitted to retain or enjoy

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the benefit of an order obtained by fraud or misrepresentation.

52.35. The respondent relies upon the decision in ***Meghmala and Others vs G. Narasimha Reddy and Others***⁵ more particularly paras 20, 21, 22, 23, 24, 25, 26, 27 & 28 which are reproduced hereunder for easy reference:

20. *It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1 : AIR 1994 SC 853] .) In Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] the Court observed without equivocation that : (QB p. 712) "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."*

21. *In A.P. State Financial Corpn. v. GAR Re-Rolling Mills [(1994) 2 SCC 647 : AIR 1994 SC 2151] and State of Maharashtra v. Prabhu [(1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116] this Court observed that a writ court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law."*

22. *In Shrisht Dhawan v. Shaw Bros. [(1992) 1 SCC 534 : AIR 1992 SC 1555] it has been held as under : (SCC p. 553, para 20)*

⁵ (2010) 8 SCC 383



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"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

23. *In United India Insurance Co. Ltd. v. Rajendra Singh [(2000) 3 SCC 581 : 2000 SCC (Cri) 726 : AIR 2000 SC 1165] this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.*

24. *The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] , Union of India v. M. Bhaskaran [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94] , Kendriya Vidyalaya Sangathan v. Girdharilal Yadav [(2004) 6 SCC 325 : 2005 SCC (L&S) 785] , State of Maharashtra v. Ravi Prakash Babulalsing Parmar [(2007) 1 SCC 80 : (2007) 1 SCC (L&S) 5] , Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. [(2007) 8 SCC 110 : AIR 2007 SC 2798] and Mohd. Ibrahim v. State of Bihar [(2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] .)*

25. *Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. [Vide Vimla (Dr.) v. Delhi Admn. [AIR 1963 SC 1572 : (1963) 2 Cri LJ 434] , Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] , State of A.P. v. T. Suryachandra Rao [(2005) 6 SCC 149 : AIR 2005 SC 3110] , K.D. Sharma v. SAIL [(2008) 12 SCC 481] and Central Bank of India v. Madhulika Guruprasad Dahir [(2008) 13 SCC 170 : (2009) 1 SCC (L&S) 272] .]*

26. *An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a*

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deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Chengalvaraya Naidu [(1994) 1 SCC 1 : AIR 1994 SC 853] , Gowrishankar v. Joshi Amba Shankar Family Trust [(1996) 3 SCC 310 : AIR 1996 SC 2202] , Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319] , Roshan Deen v. Preeti Lal [(2002) 1 SCC 100 : 2002 SCC (L&S) 97 : AIR 2002 SC 33] , Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education [(2003) 8 SCC 311 : AIR 2003 SC 4268] and Ashok Leyland Ltd. v. State of T.N. [(2004) 3 SCC 1 : AIR 2004 SC 2836])

27. *In Kinch v. Walcott [1929 AC 482 : 1929 All ER Rep 720 (PC)] it has been held that:*

"... mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury".

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

28. *From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.*

52.36. By relying on **Meghmala's** case he submits that it is a settled principle of law that any order obtained by practising fraud or by making material misrepresentations before a Court or a

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statutory authority is a nullity and cannot be permitted to subsist. It is contended that fraud vitiates every judicial, quasi-judicial and administrative act and that no litigant can be permitted to derive any advantage from an order obtained by deception, concealment or suppression of material facts.

52.37. Learned counsel submits that the Hon'ble Supreme Court has consistently held that suppression of material documents or material facts which have a bearing on the adjudication of the dispute amounts to fraud upon the Court. Such conduct disentitles a party from invoking the equitable and discretionary jurisdiction of this Court under Article 226 of the Constitution of India. It is further submitted that where fraud is established, every Court possesses the inherent jurisdiction to recall or set aside its own order, notwithstanding the availability or exhaustion of any statutory remedy, since an order obtained by fraud is non est in the eye of law.

52.38. Applying the aforesaid principles to the facts of the present case, learned counsel submits that

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the petitioner obtained the earlier order of this Court by projecting that the project had been completed in all respects and that valid Occupancy Certificates had been issued by the competent authority on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, while allegedly suppressing the true factual position that the project remained incomplete, several villas were not fit for occupation, common amenities had not been provided and possession had not been delivered to the allottees. According to the respondents, these facts were material to the adjudication of the writ petition and their non-disclosure has resulted in the Court being misled.

52.39. It is further submitted that the petitioner is now seeking to rely upon the order passed by this Court before the Real Estate Regulatory Authority to contend that the project is not an "ongoing project" and that the Authority lacks jurisdiction to entertain the complaints preferred by the allottees. According to the respondents, permitting the petitioner to continue to rely upon the said order would amount to allowing the petitioner to reap the

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benefit of an order allegedly obtained by suppression of material facts.

52.40. Learned counsel therefore submits that if, upon appreciation of the material placed on record, this Court arrives at the conclusion that the earlier order was procured by fraud, concealment or deliberate suppression of material facts, this Court would be fully justified in exercising its inherent jurisdiction to recall the said order. It is submitted that no principle of finality, acquiescence or any other procedural doctrine can be invoked to perpetuate an order tainted by fraud, as fraud unravels every judicial act and every advantage obtained thereby must necessarily be taken away.

52.41. The respondent relies upon the decision of this Court in ***Raffles Residency Private Limited v ANS Connectors Private Limited***⁶ more particularly paras 12 to 14 which are reproduced hereunder for easy reference:

12. A perusal of the legal notices which have been issued by the petitioners would indicate that the petitioner had called upon the respondents to come forward, make payment of the dues and execute a sale deed and construction agreement. The claim made by

⁶ CMP No. 504 of 2021 C/W CMP No. 494 of 2021



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the respondents before the RERA is also regarding execution of a sale deed, but of course the respondents have claimed certain other reliefs including compliance with the terms and conditions of the agreement of sale, as also claim for damages, compensation, etc., which is required to be adjudicated by the Authority.

13. Be that as it may, the claim of the petitioner in the legal notice being already pending before the RERA and RERA being a special authority created under the RERA Act of 2016, and a separate Adjudicatory mechanization having been provided under the said Act in terms of Section 89 thereof having over riding effect over any other law in force notwithstanding anything inconsistent therewith, I am of the considered opinion that RERA Act of 2016 will have a effect irrespective of the contents of the Arbitration and Conciliation Act, 1996. As such the proceedings now pending before the RERA Authority, it would be required for the said Authority to decide the disputes.

14. The submission of Sri.Christopher, learned counsel for the petitioner is that insofar as the disputes between the petitioner and respondents is concerned, the RERA would not have jurisdiction. If that be so, it is for the petitioner to make submissions regarding the same before the said Authority. In the event of the said Authority holding in favour of the petitioner, liberty would have to be reserved to the petitioner to revive the above petition.

52.42. By relying on **Raffles Residency Private Limited's** case, he submits that where disputes fall within the ambit of the Real Estate (Regulation and Development) Act, 2016, the Real Estate Regulatory Authority is the specialised statutory forum constituted by Parliament for adjudication of such disputes. It is contended that the RERA Act is a special enactment providing a comprehensive

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regulatory and adjudicatory mechanism for disputes arising between promoters and allottees, and by virtue of Section 89 of the Act, its provisions have overriding effect over any inconsistent law.

52.43. Learned counsel submits that the aforesaid decision recognises that once proceedings are pending before the Real Estate Regulatory Authority in respect of the subject matter, it is for the Authority to examine all questions arising under the Act, including issues relating to the maintainability of the proceedings and the extent of its own jurisdiction. If a promoter disputes the jurisdiction of the Authority on the ground that the project does not fall within the scope of the Act, such objection is required to be urged before the Authority itself, which is competent to adjudicate the same in accordance with law.

52.44. Applying the aforesaid principle to the facts of the present case, learned counsel submits that several complaints instituted by the allottees are admittedly pending before the Real Estate Regulatory Authority. One of the principal

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issues arising for consideration therein is whether the project is an "ongoing project" attracting the provisions of the Real Estate (Regulation and Development) Act, 2016. According to the respondents, that question falls squarely within the jurisdiction of the Authority and is required to be decided by it upon appreciation of the evidence placed before it.

52.45. It is therefore submitted that this Court ought not to render any finding which would either foreclose or prejudice the adjudication of the said issue by the Real Estate Regulatory Authority. The petitioner is at liberty to urge before the Authority all such contentions as are available in law, including the contention that the project falls outside the purview of the Act by reason of the Occupancy Certificates having been issued prior to the commencement of the Act. Equally, it is open to the allottees to contend that the project continued to remain an "ongoing project" notwithstanding the issuance of the Occupancy Certificates. It is for the Real Estate Regulatory Authority to adjudicate those rival contentions on their own merits in

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accordance with the provisions of the Act and the evidence placed before it.

52.46. The respondent relies upon the decision of the Hon'ble Supreme Court in ***Sakiri Vasu vs. State of Uttar Pradesh and Ors***⁷ more particularly paras 18, 19, 20, 21 & 22 which are reproduced hereunder for easy reference:

18. *It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.*

19. *The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd Edn., p. 267):*

"... If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission."

20. *In ascertaining a necessary implication, the court simply determines the legislative will and makes it effective.*

21. *An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in ITO v. M.K. Mohammad Kunhi [AIR 1969 SC 430] this Court held that the Income Tax Appellate Tribunal*

⁷ (2008) 2 SCC 409



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has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.

22. *Similar examples where this Court has affirmed the doctrine of implied powers are Union of India v. Paras Laminates (P) Ltd. [(1990) 4 SCC 453 : 1991 SCC (L&S) 208 : (1990) 14 ATC 798 : AIR 1991 SC 696] , RBI v. Peerless General Finance and Investment Co. Ltd. [(1996) 1 SCC 642 : AIR 1996 SC 646] (AIR at p. 656), CEO & Vice-Chairman, Gujarat Maritime Board v. Haji Daud Haji Harun Abu [(1996) 11 SCC 23] , J.K. Synthetics Ltd. v. CCE [(1996) 6 SCC 92 : AIR 1996 SC 3527] , State of Karnataka v. Vishwabharathi House Building Coop. Society [(2003) 2 SCC 412] (SCC at p. 432), etc.*

52.47. By relying on ***Sakiri Vasu's*** case, he submits that it is a settled principle of statutory interpretation that where a statute confers a power upon an authority to discharge a particular function, it also confers, by necessary implication, all such ancillary and incidental powers as are reasonably necessary to effectively discharge that function. Such implied powers are inherent in the statutory grant and need not be expressly provided for in the enactment.

52.48. Learned counsel submits that the Hon'ble Supreme Court has held that an express conferment of jurisdiction necessarily carries with it the authority to adopt all reasonable measures required to render the exercise of



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such jurisdiction effective. The absence of an express provision conferring a particular ancillary power does not denude the statutory authority of the power to take such measures as are indispensable for the effective discharge of its statutory duties.

52.49. Applying the aforesaid principle to the present case, learned counsel submits that the Real Estate Regulatory Authority, being a specialised statutory authority constituted under the Real Estate (Regulation and Development) Act, 2016, is entrusted with the duty of determining, inter alia, whether a project falls within the ambit of the Act, whether it constitutes an "ongoing project", and whether the promoter has complied with the obligations cast upon him under the Act. According to the respondents, the conferment of such jurisdiction necessarily carries with it the incidental and implied power to examine the validity, legality and evidentiary value of documents relied upon by the promoter, including an Occupancy Certificate or Completion Certificate, to the extent such examination is necessary for deciding the issues arising under the Act.

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52.50. It is therefore submitted that the Real Estate Regulatory Authority is not precluded from examining whether the Occupancy Certificates relied upon by the petitioner was validly issued, whether it was issued after due inspection and compliance with the applicable statutory requirements, and whether the mere issuance of such certificate is sufficient to take the project outside the purview of the Real Estate (Regulation and Development) Act, 2016. According to the respondents, such an enquiry is merely incidental to, and inseparable from, the Authority's statutory obligation to determine whether the project is an "ongoing project" and whether it is amenable to its jurisdiction.

52.51. On the aforesaid basis, learned counsel submits that the contention of the petitioner that the Real Estate Regulatory Authority is bound to accept the Occupancy Certificate at face value and is precluded from examining its validity or legal effect is untenable. Such a restricted interpretation would defeat the object of the Act and render the statutory powers conferred upon the Authority ineffective, contrary to the

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doctrine of implied powers recognised by the Hon'ble Supreme Court in ***Sakiri Vasu*** case.

52.52. As regard to Model Bye-laws dated 08.05.2015, his submission is that those Model Bye-laws are required to be adopted by respondent No.2 in terms of sub-section (2) of section 316 of the Karnataka Gram Swaraj and Panchayath Raj Act, 1993. Said Section 316(2) is reproduced hereunder for easy reference:

316. Power of Government to make model regulations and bye-laws and adoption of such regulations and bye-laws by the Panchayats.-

...

(2) A Grama Panchayat, Taluk Panchayat or Zilla Panchayat may by resolution adopt the model bye-laws or regulations, as the case may be, made under sub-section (1), and such bye-laws and regulations shall come into force within the jurisdiction of the Grama Panchayat, Taluk Panchayat or Zilla Panchayat from such date as the Grama Panchayat, Taluk Panchayat or Zilla Panchayat, as the case may be, may specify in a notice published in the prescribed manner....

52.53. By relying on Section 316(2), his submission is that if there is no adoption made of the Model Bye-laws by respondents No.2 and 3, the Model Bye-laws would not apply to them, requiring the Planning Authority to issue the Occupancy



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Certificates that are required. It is only if the Model Bye-laws had been adopted by respondent No. 2 and 3, the question of Occupancy Certificates being issued by respondents No.2 and 3 would arise. That means that the said Model Bye-laws would not apply to the present case.

52.54. He submits that even the Joint Circular issued by the Principal Secretary, Urban Development Department and Principal Secretary, Panchayathraj and Rural Development Department on 05.08.2024 would not be applicable to the current project since that is prospective in nature. It is a law as on the date on which the Occupancy Certificate was sought for that would have been considered which in this case requires the petitioner to have applied to the planning authority irrespective of whether the planning authority has rejected the application, the petitioner could not have approached respondents No.2 and 3 for grant of Occupancy Certificate. If the actions of the planning authority were contrary to law, it was for the petitioner to have challenged it before the appropriate court, seeking for appropriate

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relief. Instead of doing so, the petitioner has sought to confer power and authority on respondent No.2 and respondent No.3, which they never had.

52.55. He also makes certain submissions as regard the monies paid by the proposed respondent to the petitioner, the delay which is being caused, the compensation which is required to be paid by the petitioner to the proposed respondent, etc. All the same are not subject matter of the present writ petition and as such, are not adverted to.

52.56. Even after the receipt of the fraudulent Occupancy Certificates, the petitioner has sent multiple emails to the proposed respondent on 11.08.2017, 23.10.2017, 08.02.2018, 03.03.2018, 26.06.2018, 04.07.2018 and 14.02.2019, whereunder the petitioner always indicated that the construction of the project was still ongoing and would be completed. This conduct on the part of the petitioner in the various emails sent would again establish that the construction was not completed and the

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question of issuance of Occupancy Certificates would not arise.

52.57. Referring to the report as regard to joint inspection conducted on 26.02.2024, he submits that the said inspection was carried out on the basis of a direction issued by a co-ordinate Bench of this court in W.P. No. 26591/2023, which indicates that the construction was not completed. As regards the report dated 13.11.2024, issued by the Assistant Executive Engineer, Karnataka Real Estate Regulatory Authority, the project was incomplete as on 12.11.2024. The report dated 31.01.2025 submitted by the Executive Officer, Taluk Panchayat, Hoskote, indicates that the villas were incomplete. The report dated 25.04.2025 jointly submitted by respondents No. 2 and 5 also indicates that the project has not been completed, report having been filed on 04.06.2025.

52.58. He relies on the decision on the Hon'ble Supreme Court in ***Debashis Sinha and others v M/s R.N.R. Enterprise⁸***, more particularly

⁸ Civil Appeal No. 3343 of 2020



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para 11 and 12. which is reproduced hereunder for easy reference:

11. *The conduct of the respondents, the **NCDRC** recorded in the impugned order, was far too casual and on the face of it, the respondents are guilty of "unfair trade practice" within the meaning of section 2(1)(r) of the C.P. Act. After so recording, the NCDRC held that this does little to rescue the complainants. The reason assigned therefor defies logic. We have failed to comprehend as to what the NCDRC meant when it observed that the appellants "ought to have known what they were purchasing". More often than not, the jurisdiction of the consumer fora under the C.P. Act is invoked post- purchase. If complaints were to be spurned on the specious ground that the consumers knew what they were purchasing, the object and purpose of the enactment would be defeated. Any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the consumer fora. The reasoning of the NCDRC is, thus, indefensible. Indeed, the appellants had purchased their respective flats on payment of consideration amounts as per market rate and there was due execution and registration of the deeds of conveyance preceded by agreements for sale and these instruments did indicate, inter alia, what formed part of the common facilities/amenities; however, the matter obviously could not have ended there. Whether the appellants had been provided what the respondents had promised did survive for consideration, which does not get reflected in the impugned order.*

12. *NCDRC, in our opinion, might have missed to appreciate the present day realities of life. Now-a-days, flat owners seldom purchase flats with liquid cash. Flats are purchased on the basis of finances being advanced by banks and other financial institutions. Once a flat is booked and the prospective flat owner enters into an agreement for loan, instalments fall due to be paid to clear the debt irrespective of whether the flat is ready for being delivered possession. The usual delays that are associated with construction activities result in undue anxiety, stress, and harassment for which many a prospective flat owner, it is common knowledge, even without the project/flat being wholly complete is left with no other option but to take possession. Whether, upon taking possession, a flat owner forfeits his/her right to claim such services which had been promised but are not provided resulting in deficiency in services is a question that the **NCDRC** ought to have adverted to. Once*

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*the **NCDRC** arrived at a finding that the respondents were casual in their approach and had even resorted to unfair trade practice, it was its obligation to consider the appellants' grievance objectively and upon application of mind and thereafter give its reasoned decision. If at all, the appellants had not forfeited any right by registration of the sale deeds and if indeed the respondents were remiss in providing any of the facilities/amenities as promised in the brochure/advertisement, it was the duty of the **NCDRC** to set things right.*

52.59. By relying on **Debashis Sinha**, his submission is that having no option but to take possession on account of the long lapse of time, they took possession of the villa and completed the balance work of the villa. However, the common areas and common issues are still not completed.

53. Sri.M.S.Devaraj, learned counsel for Panchayat submits that:

53.1. The Gram Panchayat acted entirely on the basis of the representations made by the petitioner. It is contended that the petitioner had represented that all the 61 villas together with the clubhouse had been fully completed and were fit for occupation. In support thereof, the petitioner had produced a completion certificate issued by the project architects, namely, M/s. Karan Grover and Associates. Acting upon the

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said representation and the architect's certification, the Gram Panchayat, in its General Body Meeting, resolved to permit the entry of the villas in the e-Swathu software in accordance with the sanctioned plan approved by the jurisdictional Planning Authority and further resolved to issue e-Swathu records in respect of the villas and the clubhouse as requested by the petitioner.

53.2. Learned counsel further submits that respondent Nos.2 and 3 had thereafter caused a physical inspection of the villas to be conducted and, based on the material then available, Occupancy Certificates came to be issued. Subsequently, however, upon a further inspection conducted on 26.02.2024, the authorities found that the project had not, in fact, been completed in all respects. The inspection report dated 26.02.2024 has been placed on record. Placing reliance thereon, learned counsel submits that all the 62 structures, namely 61 villas and the clubhouse, were not complete and several deficiencies continued to exist. According to him, the Occupancy Certificates came to be issued

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primarily on the strength of the completion certificates furnished by the project architects, though, in reality, the construction had not attained completion in accordance with the sanctioned plan and the applicable statutory requirements.

53.3. It is further submitted that Occupancy Certificates in respect of 33 villas issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017, 05.05.2017 together with the clubhouse were initially issued by following the procedure contemplated under the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015. However, upon subsequently noticing that the construction had not been completed and that the villas were not fit for occupation, the Gram Panchayat cancelled the said Occupancy Certificates. The order of cancellation was challenged by the petitioner in the writ petition, wherein this Court, by order dated 11.12.2023, allowed the writ petition and directed restoration of the Occupancy Certificates, subject to the petitioner restoring 15 villas to a

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condition fit for occupation within three months, the remaining 18 villas within a further period of three months, and further directed payment of all outstanding property taxes within ninety days. Learned counsel submits that none of these directions have been complied with by the petitioner.

53.4. Learned counsel submits that the petitioner had, as early as 16.08.2016, represented before the Gram Panchayat that 61 villas and one clubhouse had been completed and sought issuance of Occupancy Certificates. However, the subsequent material placed on record completely belies the said representation. In particular, reference is made to the objections filed by the petitioner on 10.06.2025 to the inspection report, wherein the petitioner has admitted that only 20 villas have electricity connections and that the remaining villas do not have electricity supply. It is also admitted therein that 23 villas have been mortgaged to M/s. Indiabulls Housing Finance Limited and certain other villas have been mortgaged to Punjab National Bank.

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53.5. Learned counsel further submits that, out of the 61 villas, property taxes have been paid only in respect of 25 villas, whereas taxes remain unpaid in respect of the remaining 36 villas. According to him, the existence of mortgages does not absolve the petitioner of its statutory obligation to pay property taxes. It is therefore contended that the petitioner has failed to comply with the conditions imposed by this Court in its order dated 11.12.2023. Consequently, notices dated 08.08.2024 and 16.08.2024 were issued by the Gram Panchayat calling upon the petitioner to pay the outstanding property taxes and produce all relevant documents justifying the issuance of the Occupancy Certificates, failing which the Occupancy Certificates would be cancelled.

53.6. Learned counsel further submits that representatives of the Samethanahalli Gram Panchayat, along with officials of the Town and Country Planning Department and the Satellite Town Ring Road Regional Planning Authority (STRR Planning Authority), conducted a joint inspection of the project. During the course of the inspection, it was found that the petitioner

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had failed to restore the villas to a condition fit for occupation, despite the undertaking furnished before this Court. It is further submitted that the learned counsel appearing for the petitioner obstructed and interfered with the inspection proceedings conducted by the officials.

53.7. Referring to the inspection report, learned counsel submits that several deficiencies, deviations and violations were noticed. It is contended that there are substantial deviations from the sanctioned building plan in the common areas; electricity connections have not been provided to 41 villas; the internal roads and pathways have not been fully developed or maintained; the Sewage Treatment Plant has been constructed by encroaching upon the Government Rajakaluve and in deviation from the sanctioned plan; the clubhouse, though constructed, has not been properly maintained; and the diesel generator installed for the project has also not been maintained.

53.8. It is further submitted that only six villa owners are presently residing in the project and that

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they are themselves bearing the expenses towards security personnel and maintenance staff, which, according to the learned counsel, ought to have been borne by the petitioner. It is also submitted that two villas mortgaged to Punjab National Bank have become the subject matter of proceedings under Section 14 of the SARFAESI Act, pursuant to which possession has been taken by the Bank. Insofar as the remaining 23 villas mortgaged to M/s. Indiabulls Housing Finance Limited are concerned, it is submitted that the petitioner has defaulted in repayment of the loan, whereupon the secured assets have been taken over by Asset Care and Reconstruction Enterprise Limited (ACRE). It is further submitted that ACRE has proceeded to alienate the said villas.

53.9. On the basis of the aforesaid facts, learned counsel submits that the petitioner has consistently misrepresented the factual status of the project before the Gram Panchayat and other authorities. It is therefore contended that the decision of the Gram Panchayat cancelling the Occupancy Certificates is fully justified,

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legal and in accordance with the applicable statutory provisions and does not warrant interference by this Court.

54. Sri. Joshua Hudson Samuel, Learned Counsel appearing for the Petitioner, would submit that:

54.1. The impleading application as well as the application seeking recall of the order dated 11.12.2023 are wholly misconceived, devoid of merit and not maintainable either in law or on facts. According to him, the applicants neither have the requisite locus standi nor have they established any legal basis for seeking recall of a judicial order passed after hearing the parties to the writ petition. He therefore submits that both applications are liable to be dismissed.

54.2. Learned counsel further submits that the petitioner developed the project after obtaining all requisite statutory approvals and permissions from the competent authorities. Upon completion of the construction, the project architects, namely M/s. Karan Grover and Associates, certified that the construction had been completed in accordance with the sanctioned plans. Armed with the said

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completion certificates, the petitioner initially approached the Hoskote Planning Authority seeking issuance of Occupancy Certificates. It is submitted that the Planning Authority orally informed the petitioner that it was not the authority competent to issue an Occupancy Certificate and advised the petitioner to approach the jurisdictional Gram Panchayat. It was in those circumstances that the petitioner approached respondent Nos.2 and 3 for issuance of the Occupancy Certificates.

54.3. Learned counsel submits that, upon consideration of the petitioner's application, the Gram Panchayat issued Occupancy Certificates on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 in respect of 35 Villas . Subsequent thereto, the Electrical Inspectorate granted approval for installation and energisation of the electrical transformers, and the Karnataka State Pollution Control Board also inspected the Sewage Treatment Plant and granted the requisite consent for its establishment and operation. It is further submitted that, acting upon the Occupancy

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Certificates, nine purchasers are presently in possession and residing therein.

54.4. It is only thereafter, nearly six years after issuance of the Occupancy Certificates, that the Gram Panchayat issued a show cause notice dated 26.12.2022 proposing cancellation of 33 Occupancy Certificates. The said notice was challenged before this Court in the present writ petition, which came to be disposed of by order dated 11.12.2023.

54.5. Learned counsel further submits that the present impleading applicants claim rights only in respect of Villa Nos.8 and 53. Admittedly, neither of these villas forms part of the thirty-three villas covered by the impugned show cause notice or the consequential proceedings initiated by the Gram Panchayat. Consequently, the applicants have no direct or legal interest in the subject matter of the present writ petition and cannot be regarded either as necessary or proper parties to these proceedings.

54.6. It is further submitted that separate building licences had been issued by the Gram Panchayat in respect of each of the 61 villas



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and that the construction was completed substantially in accordance with the sanctioned building plans. According to learned counsel, only certain minor interior and finishing works remained to be carried out, which would not detract from the fact that the villas had attained substantial completion. It is submitted that the completion certificate issued by the project architects was accepted by the Gram Panchayat after due consideration, whereupon the Occupancy Certificates were issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017. Learned counsel therefore contends that the validity of the Occupancy Certificates cannot now be questioned after the lapse of several years. It is his further submission that, once the Occupancy Certificates had been issued prior to the commencement of section 3 of the Real Estate (Regulation and Development) Act, 2016 on 01.05.2017, the project ceased to be an "ongoing project" and consequently falls outside the purview of the provisions of the RERA Act. According to him, the Occupancy Certificates, having been issued by the

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competent authority, carry a presumption of validity and are required to be accepted unless they are set aside in accordance with law.

54.7. With regard to the transactions entered into by M/s. Indiabulls Housing Finance Limited and Asset Care and Reconstruction Enterprise Limited (ACRE), learned counsel submits that the petitioner had no knowledge of the alienations effected by the secured creditors. Upon becoming aware of the same, the petitioner has already initiated appropriate proceedings before the National Company Law Tribunal, Bengaluru, where the matter is presently pending consideration. Learned counsel submits that, as on date, 20 villas have been sold by Indiabulls Housing Finance Limited, 5 villas are stated to be under agreements of sale executed by Indiabulls, four villas have been sold directly by the petitioner, 3 villas continue to remain mortgaged with Punjab National Bank, and only 1 villa remains in the ownership of the petitioner.

54.8. Insofar as the 33 villas covered by the impugned notices are concerned, learned

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counsel submits that the inspection relied upon by the respondents has not been conducted in compliance with the directions issued by this Court. It is contended that, during the inspection, the petitioner specifically requested the inspection team to photograph the electricity meter board chamber and the area behind it, which would have disclosed the underground sewerage lines, water supply pipelines, electrical cabling, generator connections, earthing arrangements and other concealed infrastructure demonstrating that the villas were fully serviced. According to him, despite such request, the inspection team deliberately omitted to photograph those portions. The petitioner has therefore independently placed the relevant photographs on record.

54.9. It is further submitted that the inspection report relied upon by the respondents is not an independent inspection undertaken pursuant to the directions of this Court, but is a report prepared in connection with another proceeding and has merely been pressed into service in the present matter. Learned counsel therefore

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contends that no reliance can be placed upon the said report for the purpose of determining the validity of the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017.

54.10. Learned counsel lastly submits that respondent Nos.2 and 3 possess no statutory power to revoke or cancel an Occupancy Certificate once validly issued, except in exceptional circumstances expressly recognised in law, such as where the certificate has been obtained by practising fraud or where its issuance is demonstrably contrary to the provisions of the governing statute. According to him, no such circumstances exist in the present case. Hence, the impugned action cancelling the Occupancy Certificates is wholly without jurisdiction and liable to be set aside.

54.11. He relies on the model Bye-laws, more particularly Rule 12 thereof, which is reproduced hereunder for easy reference:

12. Completion Certificate. Every person erecting, reerecting, making material alteration, demolition a building shall, within one month after completion of such building shall give written notice to the Authority through the qualified Architect/ qualified empanelled engineer /

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supervisors (Civil Diploma holder) regarding completion of work prescribed in the license in the prescribed form given in Schedule V.

54.12. By relying on Rule 12, he submits that Rule 12 itself prescribes the procedure to be followed upon completion of a building. According to him, once the construction is completed, the obligation cast upon the owner or developer is to intimate the competent authority regarding such completion through a qualified architect, empanelled engineer or supervisor in the prescribed form. The Rule does not contemplate any further technical certification by any other authority before the Gram Panchayat proceeds to consider the request for issuance of an Occupancy Certificate.

54.13. It is his submission that, in the present case, the petitioner had strictly complied with the requirements of Rule 12 by furnishing the completion certificate issued by the project architects, namely M/s. Karan Grover and Associates, certifying that the construction had been completed in accordance with the sanctioned plans. Upon receipt of the said completion certificate and after causing such

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verification as it considered appropriate, the Gram Panchayat consciously issued the Occupancy Certificates. Having exercised its statutory jurisdiction and issued the Occupancy Certificates on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 , it is not now open to the Gram Panchayat to contend that the procedure prescribed under the Model Bye-laws had not been followed or that the certificates were issued without compliance with Rule 12.

54.14. Learned counsel further submits that Rule 12 does not envisage a detailed or elaborate enquiry of the nature now sought to be insisted upon by the respondents. If the Rule-making authority intended such a procedure, the same would have been expressly incorporated in the Model Bye-laws. In the absence of any such statutory requirement, the validity of the Occupancy Certificates cannot be questioned by importing procedural requirements which were not in existence at the relevant point of time. It is therefore submitted that the Occupancy Certificates were issued strictly in accordance with the statutory framework then prevailing

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and cannot be retrospectively invalidated on the basis of subsequent circulars, standard operating procedures or executive instructions issued by the Government.

54.15. In pursuance of this, action under Rule 13 is required to be taken. Rule 13 is reproduced hereunder for easy reference:

13. Occupancy Certificate. *Within a period of one month after receipt of the notice of completion the Authority shall communicate in the form given in Schedule VI the requisite permission to occupy any such building or to use any building or part thereof effected by any such work.*

54.16. By relying on Rule 13 he submits that Rule 13 casts a statutory obligation upon the competent authority to consider the notice of completion submitted under Rule 12 and, within one month thereof, communicate its decision regarding grant of permission to occupy the building in the prescribed form. According to him, the Rule contemplates a sequential statutory process, namely, the submission of a completion certificate under Rule 12 followed by consideration of the same by the competent authority and issuance of an Occupancy Certificate under Rule 13.

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54.17. Learned counsel submits that the petitioner had duly complied with the requirements of Rule 12 by submitting the completion certificate through the project architects. The Gram Panchayat, after considering the said application, exercised its statutory jurisdiction and issued the Occupancy Certificates in terms of Rule 13. The issuance of the Occupancy Certificates was thus a conscious administrative decision taken by the competent authority and not a ministerial or mechanical act. Once such statutory power had been exercised, the validity of the Occupancy Certificates could not subsequently be questioned merely because a different opinion had been formed regarding the state of completion of the project.

54.18. It is further submitted that Rule 13 does not confer any express power upon the Gram Panchayat to review, revoke or cancel an Occupancy Certificate once validly issued. In the absence of any statutory provision conferring such power, the authority which granted the Occupancy Certificate becomes functus officio after its issuance and cannot subsequently reopen or annul its own decision.

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According to learned counsel, if the legislature intended to confer a power of cancellation, review or recall, it would have expressly provided for the same in the Model Bye-laws.

54.19. Learned counsel therefore submits that the Occupancy Certificates having been issued in exercise of statutory powers under Rule 13, they continue to remain valid and operative unless set aside by a competent judicial forum or by an authority specifically empowered under the governing statute. The subsequent show cause notices and the orders cancelling the Occupancy Certificates are therefore wholly without jurisdiction, being unsupported by any statutory source of power, and are liable to be quashed on that ground alone.

54.20. Learned counsel submits that Rules 12 and 13 of the Model Bye-laws constitute a complete statutory scheme governing the issuance of an Occupancy Certificate. According to him, once a completion certificate is submitted by the owner through a qualified architect in accordance with Rule 12 and is accepted by the competent authority, the authority is required to proceed

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in terms of Rule 13 by issuing the Occupancy Certificate. It is submitted that the issuance of the Occupancy Certificate necessarily implies that the competent authority was satisfied about the completion of the construction in accordance with the sanctioned plan and the applicable statutory requirements.

54.21. Learned counsel further submits that the completion certificate issued by the project architects, which has been produced as Annexure-A to the writ petition, has been criticised by the respondents as being vague. According to him, such a contention is wholly misconceived. The certificate issued by the architects is in the format contemplated under the Model Bye-laws and certifies completion of the construction. Once the competent authority accepted the said certificate and acted upon it by issuing the Occupancy Certificates, it is not open to the respondents to subsequently contend that the certificate did not contain sufficient particulars. If the authority considered the particulars furnished to be inadequate, it ought to have sought clarification or additional information at the relevant point

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of time before issuing the Occupancy Certificates. Having accepted the completion certificate and exercised its statutory powers under Rule 13, the respondents cannot now be permitted to question the sufficiency of the particulars contained therein.

54.22. With regard to the deficiencies pointed out by the Gram Panchayat in its inspection report, learned counsel submits that the said report is vague, general and unsupported by any particulars. According to him, the allegations contained therein do not identify the specific villas in respect of which any deficiency is alleged to exist. It is submitted that although the respondents contend that electricity connections have not been provided to several villas, all the villas have in fact been provided with electricity infrastructure and the requisite electrical connections. Likewise, the allegation that the villas do not have main doors and windows is wholly unsupported by particulars, inasmuch as the inspection report does not specify the villa numbers in respect of which such deficiencies are alleged. The same is the position with regard to the allegations relating

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to incomplete plumbing works and electrical installations. According to learned counsel, the inspection report merely contains broad and omnibus observations without identifying the nature, extent or location of the alleged deficiencies or demonstrating how such deficiencies render any particular villa unfit for occupation.

54.23. It is therefore submitted that the report relied upon by the Gram Panchayat does not satisfy the minimum standards expected of an inspection report and cannot constitute the basis for cancellation of Occupancy Certificates which had remained in force for several years. Learned counsel reiterates that the villas had been substantially completed in accordance with the sanctioned plans, that the Occupancy Certificates were validly issued after due consideration by the competent authority, and that the subsequent inspection report is legally unsustainable.

54.24. On these grounds, it is submitted that I.A. No.1/2024 seeking impleadment and I.A. No.2/2024 seeking recall of the order dated

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11.12.2023 are liable to be dismissed and that no case is made out for recalling or otherwise interfering with the order dated 11.12.2023 passed by this Court.

54.25. In this regard, the Learned counsel for the petitioner relies upon the decision of Hon'ble Bombay High Court in ***M/s Satra Plaza Premises Co-op.Soc., Ltd. -v- Navi Mumbai Municipal Corporation***⁹ more particularly paras 28, 29 & 30, which are reproduced hereunder for easy reference:

28. At the outset, it needs to be stated that on facts, there is no dispute that Satra Properties was allotted the plots in question and that Satra Properties had undertaken the construction in question. The construction was undertaken as per the plans which were approved. The construction was never categorized to be an illegal construction and was in fact, granted an Occupancy Certificate on 09 February, 2012. The consequence of a building receiving Occupancy Certificate needs no elaboration, suffice it to observe that the building in question was permitted to be legally occupied as also tenements in the building could be purchased and sold by the members of the petitioner to third parties.

Thus, the consequence of Occupancy Certificate being granted not only is a consequence relevant to the co-operative society like the petitioner, in which such tenements are situated, but also relevant in so far as the members of the petitioner who have purchased the tenements and who are entitled in law to occupy the same on the assumption, that their occupation by

⁹ WP No. 1374 of 2017



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virtue of the Occupancy Certificate granted by the municipal corporation is legal and valid.

29. *The power of revocation of an Occupancy Certificate is governed by Section 51 of the MRTP Act. As the impugned order passed by the Municipal Commissioner is in exercise of such powers, such provision is required to be noted which reads thus:-*

"51. Power of revocation and modification of permission to development:-

(1) If it appears to a Planning Authority that it is expedient, having regard to the Development plan prepared or under preparation that any permission to develop land granted 1 [or deemed to be granted] under this Act or any other law, should be revoked or modified, the Planning Authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that- (a) where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed;

(b) where the development relates to a change of use of land, no such order shall be passed at any time after change has taken place.

(2) Where permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the revocation or modification, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer, and after considering his report, assess and offer, subject to the provisions of section 19, such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and gives notice, within such time as may be

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prescribed, of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the Court, and the decision of the Court shall be final and be binding on the owner and Planning Authority."

30. *A bare reading of Section 51 of the MRTP Act makes it explicit that the planning authority is required to be satisfied on the following requirements to invoke the powers under Section 51 to revoke the Occupancy Certificate:-*

i. If it appears to the Planning Authority that it is expedient, having regard to the "Development Plan" prepared or under preparation that any permission to develop land granted [or deemed to be granted] under the MRTP Act is required to be revoked or modified,

ii. Necessarily such a decision of the Planning Authority is required to be taken in the context of an existing development plan prepared or under preparation, that such a permission to develop is likely to affect such development plans.

iii. A Planning Authority in taking such action is under an obligation to grant an opportunity of being heard to the person concerned against such revocation or modification, before an order is passed to revoke or modify the permission.

54.26. By relying on **Satra Plaza Premises Co-op.Soc., Ltd.** he submits that the issuance of an Occupancy Certificate is not an inconsequential administrative act but a statutory determination by the competent authority that the building has been constructed in accordance with the sanctioned plans and is fit for occupation. Once an Occupancy Certificate is issued, valuable rights accrue not only in favour of the developer but

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also in favour of the purchasers, occupants, financial institutions and all other persons who have acted upon the representation made by the statutory authority. The Occupancy Certificate enables lawful occupation of the premises and facilitates conveyance, transfer and enjoyment of the property by the purchasers.

54.27. Learned counsel further submits that the Hon'ble Bombay High Court has recognised that the power to revoke or cancel an Occupancy Certificate is not an inherent administrative power but one that must trace its source to an express statutory provision. Such power, where available, has to be exercised strictly in accordance with the conditions prescribed by the governing statute. It is therefore contended that, in the absence of an express provision under the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 or the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015 conferring a power upon the Gram Panchayat to revoke or cancel an Occupancy Certificate once issued,

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respondent Nos.2 and 3 lacked the jurisdiction to issue the impugned notices proposing cancellation of the Occupancy Certificates.

54.28. It is further submitted that even assuming, without admitting, that such a power exists, the same can be exercised only upon strict compliance with the principles of natural justice and only upon recording cogent reasons demonstrating that the statutory conditions for exercise of such power exist. According to learned counsel, no such jurisdictional facts have been established in the present case. The impugned notices merely proceed on vague allegations regarding incomplete construction without identifying any statutory violation warranting cancellation of the Occupancy Certificates.

54.29. Learned counsel therefore submits that, the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 having remained in force since and several third-party rights having crystallised on the basis thereof, the respondents cannot seek to reopen or cancel the same merely on the

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basis of a subsequent change of opinion regarding the condition of the villas. Such action, apart from being unsupported by any statutory provision, would unsettle vested rights that have accrued to purchasers and other stakeholders who have acted upon the Occupancy Certificates issued by the competent authority. It is therefore submitted that the impugned notices and the consequential proceedings seeking cancellation of the Occupancy Certificates are wholly without jurisdiction and liable to be quashed.

55. Heard Sri. Joshua Hudson Samuel., Advocate for Petitioner. Sri. Boppana Belliyappa., AGA for R1, Sri. M.S. Devaraju., advocate for R2 and R3, Sri. A.V. Gangadharappa., advocate for R4, Sri. Yogesh D. Naik., Advocate for R5, Sri. Suraj Sampath, Advocate for the impleading applicants.

56. The Points that would arise for consideration are:

- (i) **Whether I.A. No.1/2024 seeking impleadment is maintainable and whether the applicants are necessary or proper parties?**
- (ii) **Whether I.A. No.2/2024 seeking recall of the order dated 11.12.2023 is**

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maintainable and whether sufficient grounds for recall, including fraud or suppression of material facts, have been established?

- (iii) What is the statutory regime governing issuance of Occupancy Certificates for buildings situated within Gram Panchayat limits but falling within a notified Local Planning Area/Planning Authority?**
- (iv) Which authority was competent in law to issue the Occupancy Certificate in respect of the subject project/villas?**
- (v) Whether respondent Nos.2 and 3/Gram Panchayat were competent to issue the Occupancy Certificate in the facts of the present case, notwithstanding the jurisdiction of the Planning Authority?**
- (vi) Whether the Occupancy Certificates were issued after compliance with the statutory requirements, including inspection, verification of construction against the sanctioned plan, and obtaining the requisite technical opinion?**
- (vii) Whether the subject villas/project were in fact complete and fit for occupation on the date of issuance of the Occupancy Certificate?**
- (viii) Whether the material on record establishes that the Occupancy Certificates were procured or issued on the basis of misrepresentation, suppression of material facts, or failure of the authorities to undertake the required verification?**

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- (ix) Whether the subsequent cancellation/withdrawal of the Occupancy Certificate was within the jurisdiction of the competent authority and was otherwise in accordance with law and the principles of natural justice?
- (x) What is the effect, if any, of the Occupancy Certificate and the present proceedings upon the applicability of RERA, and whether such question is required to be determined in the present proceedings?
- (xi) What relief, if any, is the petitioner entitled to in the writ petition and what relief, if any, are the impleading applicants entitled to?
- (xii) What consequential directions are required to secure compliance with the applicable planning, building and occupancy requirements, while preserving the rights of purchasers and issues pending before RERA?
- (xiii) What Order

57. This Court answers the above points as follows:

58. **Answer to Point No.(i): Whether I.A. No.1/2024 seeking impleadment is maintainable and whether the applicants are necessary or proper parties?**

58.1. Sri. Suraj Sampath, learned counsel appearing for the proposed respondents (the impleading

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applicants), submitted that his clients are purchasers of villas in the very same project and are, along with several other purchasers, before the Real Estate Regulatory Authority in proceedings that are presently pending. His submission was that the petitioner is relying on the order dated 11.12.2023 before the Authority to contend that the project ceased to be an "ongoing project" once the Occupancy Certificates were issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, and that this contention, if it succeeds, will defeat the very claims that his clients and other similarly placed purchasers have carried to the Authority.

58.2. Learned counsel submitted that his clients did not seek to be impleaded out of any interest in the thirty-three villas named in the notice as such, but because the observations recorded by this Court while passing the order dated 11.12.2023 touch the Occupancy Certificates issued for other villas , comprising in total sixty-one villas and the clubhouse , and the finding on its validity, which the petitioner now seeks to use against every purchaser before the

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Authority, including his clients. He submitted that a person need not hold a direct stake in the specific relief claimed in a writ petition to be a proper party; it is enough that the order likely to be passed will have a direct and prejudicial bearing on rights that are the subject of another pending proceeding to which the order will be cited.

58.3. It was further submitted that no proper verification had, according to the applicants, preceded the issuance of the Occupancy Certificates on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, and that this was a matter going to the propriety of the process followed by the official respondents, a matter in which every purchaser in the project, and not merely the owners of the thirty-three named villas, has a legitimate concern. Learned counsel accordingly submitted that his clients are, at the least, proper parties whose presence would assist the Court in arriving at a complete and correct adjudication of the questions raised.

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- 58.4. Sri. Joshua Hudson Samuel, learned counsel for the petitioner, opposed I.A. No.1/2024 on the short ground that the applicants are complete strangers to the subject matter of the writ petition. His submission was that the notice impugned in this petition, and the proceedings that culminated in the order dated 11.12.2023, concerned only thirty-three residential villas, being Villa Nos.1 to 6, 10, 12, 14 to 19, 24, 26, 32, 40, 42, 45, 46, 48 to 52, 54 to 56 and 58 to 61.
- 58.5. Learned counsel pointed out that the proposed respondents claim rights only in Villa Nos.8 and 53, and it is not in dispute that neither of these two villas figures anywhere in the list of thirty-three villas set out above. On this footing, he submitted that the applicants have no legal right or interest of any kind in the notice under challenge or in the order dated 11.12.2023, and are consequently neither necessary nor proper parties within the meaning of that expression.
- 58.6. It was further submitted that valid Occupancy Certificates subsist in respect of Villa Nos.8 and 53, that these certificates have never been

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questioned before any authority or court, and that the applicants therefore suffer no prejudice of any kind on account of the order impugned or sought to be reopened. According to learned counsel, a person whose own occupancy certificate is untouched and unchallenged cannot claim a right to be impleaded merely because the litigation concerns other villas forming part of the same layout.

58.7. A writ court is not bound by the strict conception of a “necessary party” applicable to an ordinary civil suit. While the distinction between a necessary party and a proper party remains relevant, the Court exercising jurisdiction under Articles 226 and 227 of the Constitution possesses a wider discretion to determine whether the presence of a person would facilitate a complete and effective adjudication of the controversy before it.

58.8. A person may, therefore, be impleaded as a proper party where, though his presence is not indispensable for the grant of the relief sought in the writ petition, his participation would assist the Court in effectively adjudicating an

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issue arising in the proceedings and in ensuring that its determination does not operate to his prejudice without an opportunity of being heard.

58.9. In the present case, the applicants' villas are admittedly not amongst the thirty-three villas covered by the impugned notice. Ordinarily, that circumstance would weigh substantially against their impleadment. The present proceedings, however, did not remain confined to the validity of the notice insofar as those thirty-three villas were concerned.

58.10. During the course of the proceedings, the Court is required to examine, inter alia, the statutory framework governing the issuance of Occupancy Certificates by Gram Panchayats in areas falling within the jurisdiction of Planning Authorities, the competence of the concerned authority to issue such certificates, and the procedure required to be followed before an Occupancy Certificates could be issued. This Court is also required to examine the circumstances in which the Occupancy Certificates in respect of the project had been

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issued and the adequacy of the inspection and verification said to have preceded its issuance.

58.11. The applicants' case is that their rights and remedies in proceedings pending before the Real Estate Regulatory Authority are going to be adversely affected by the findings in the present proceedings, particularly because the Occupancy Certificates issued in respect of the project is relied upon in those proceedings. This aspect cannot be regarded as wholly speculative. It is not in dispute that proceedings relating to the very same project are pending before the RERA Authority and that the Court had expressly clarified that the rights and liabilities of the parties under RERA were left open for independent determination by that Authority.

58.12. The objection of the petitioner that the Occupancy Certificates pertaining to Villa Nos.8 and 53 have neither been cancelled nor independently challenged is undoubtedly relevant. The applicants, however, do not seek, by their impleadment, any adjudication of the validity of the certificates pertaining to their

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individual villas, nor do they seek any substantive relief concerning those villas in the present writ petition. Their grievance is that findings made in these proceedings, particularly those concerning the circumstances under which the Occupancy Certificates were issued, may be relied upon in proceedings in which they are directly interested.

58.13. In these circumstances, this Court is of the view that the applicants have demonstrated an interest to justify their presence as proper parties, though not as necessary parties. Their presence would enable the Court, within the permissible scope of the present proceedings, to hear the persons who assert that the findings sought to be relied upon against them elsewhere have a bearing upon their rights and remedies.

58.14. This conclusion must, however, be confined within proper limits. The applicants are not necessary parties in the sense that no effective order in the writ petition could have been passed in their absence. Their impleadment does not enlarge the subject matter of the writ

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petition so as to bring Villa Nos.8 and 53 within the scope of the impugned notice, nor does it confer upon the applicants any independent right to seek adjudication of the validity of the Occupancy Certificates pertaining to those villas in the present proceedings.

58.15. For the aforesaid reasons, this Court answers point no.(i) by holding that I.A. No.1/2024 is maintainable and is allowed. The applicants are impleaded as proper parties; counsel for the Petitioner to carry out necessary amendments and file amended cause title within 14 days of the receipt of a certified copy of this Order.

59. **Answer to Point No.(ii): Whether I.A. No.2/2024 seeking recall of the order dated 11.12.2023 is maintainable and whether sufficient grounds for recall, including fraud or suppression of material facts, have been established?**

59.1. Sri. Suraj Sampath, learned counsel for the impleading applicants, submitted that the villas had not in fact been completed when the Occupancy Certificates dated 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 are stated to have been issued; that the completion certificate furnished by the

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project architect was consequently incorrect; and that the order dated 11.12.2023 was obtained on the basis of a representation of completion which, according to him, is contradicted by the petitioner's own contemporaneous conduct and correspondence.

59.2. Learned counsel first drew attention to the chronology. According to him, the first sale deed in respect of any villa in the project was executed only on 19.09.2018, with possession being delivered on 08.11.2018. He submitted that this was substantially after the Occupancy Certificate is stated to have been obtained on 19.09.2016, 14.12.2016, 15.03.2017, 10.4.2017 and 05.05.2017 and also well after the promised date of delivery of 26.02.2016. His submission was that, if the certificates genuinely reflected completion and fitness for occupation of the project as represented, the substantial interval before execution of even the first sale deed and delivery of possession called for explanation.

59.3. Learned counsel then placed emphasis on the date 05.05.2017. He pointed out that section 3

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of the Real Estate (Regulation and Development) Act, 2016 came into force on 01.05.2017, only four days earlier. His submission was that the proximity of the two dates was significant and warranted examination as to whether the Occupancy Certificates had been procured at that stage with a view to taking the project outside the statutory concept of an "ongoing project" under the said Act.

59.4. In support of this submission, learned counsel relied upon the petitioner's letter dated 12.05.2017 addressed to the Assistant Executive Engineer (Electrical), BESCOM, Hoskote Sub Division, produced as Exhibit R-39. He pointed out that, in this letter, written one week after the date of the recent of the Occupancy Certificates is stated to have been obtained on 05.05.2017, the petitioner informed BESCOM that servicing of the remaining forty-one villas was delayed and sought permission for servicing only twenty villas along with the common area. The petitioner, in the said letter, stated:

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"The delay in completing the remaining 41 villas is taking time, due to market bad conditions & the balance Kwh meters will be connected in due course."

59.5. Learned counsel submitted that this was not an assertion emanating from a third party, but a contemporaneous statement made by the petitioner itself to a public utility in the ordinary course of its affairs and for a purpose unconnected with the present proceedings. According to him, the statement was significant because it indicated that forty-one out of the sixty-one villas remained incomplete as on 12.05.2017, i.e., one week after the date on which the petitioner claims that the Gram Panchayat had already issued Occupancy Certificates in respect of certain villas on 05.05.2017 in respect of the project.

59.6. Learned counsel next relied upon the sanction letter dated 20.03.2018 issued by M/s. Indiabulls Housing Finance Limited, produced at Annexure-R3 to I.A. No.2/2024, by which a loan of Rs.100,00,00,000/- was sanctioned to the petitioner. He submitted that the facility was structured with disbursement linked to construction progress and operated through an

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escrow mechanism. According to him, the procurement of a construction-linked facility of such magnitude nearly a year after the recent of the alleged Occupancy Certificates were issued on 05.05.2017 was a circumstance indicating that substantial construction remained to be completed.

59.7. He further referred to the petitioner's letter dated 26.04.2018 addressed to the proposed respondents, produced at Annexure-R4, which, according to him, recorded that the loan had been obtained and that the works would be completed utilising those funds. He also relied upon the communications dated 11.08.2017, 23.10.2017, 08.02.2018, 03.03.2018, 26.06.2018, 04.07.2018 and 14.02.2019, in which, according to learned counsel, the petitioner repeatedly indicated that construction activities were still continuing.

59.8. Learned counsel also referred to the subsequent SARFAESI proceedings, culminating in the e-auction notice dated 24.08.2023 in respect of twenty-three villas at a reserve price of approximately Rs.3 crore per villa. He

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compared this with the original sale considerations stated to have been in the range of Rs.6 crore to Rs.7.2 crore during the period 2014 to 2017 and submitted that the substantial decline in the realisable value was consistent with the project having remained incomplete.

59.9. Learned counsel thereafter questioned the manner in which the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 came to be entered in the Panchayat records. Relying upon the Draft User Manual for online generation of Form No.9 and the letter dated 05.07.2025 of the Panchayat Development Officer, he submitted that the photographs uploaded at the time of data entry on 18.11.2015 were stock photographs taken from the petitioner's sales brochure and were not photographs depicting the actual villas. He further submitted that the then Panchayat Development Officer, Sri. C. Muniraju, had not personally visited the site or verified the state of construction before the entries were made.

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59.10. Learned counsel contended that this circumstance, when considered along with the spot inspection report dated 20.08.2016, which according to him recorded pending works, raised a serious question as to whether any genuine verification of the state of completion had preceded the issuance of the Occupancy Certificates subsequently relied upon by the petitioner.

59.11. On the legal consequence of suppression, learned counsel relied upon the decisions of the Hon'ble Supreme Court in ***Badami (Deceased) by her LRs. v. Bhali*** [(2012) 11 SCC 574] (paragraphs 19 to 25) and ***Meghmala and Others v. G. Narasimha Reddy and Others***, [(2010) 8 SCC 383] (paragraphs 20 to 28).

59.12. Learned counsel submits that these decisions establish the principle that an order obtained by practising fraud upon the Court, or by suppression of a material fact or document, cannot be permitted to stand; that fraud vitiates judicial proceedings; and that the Court

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possesses the power to recall an order obtained by such fraud.

59.13. From paragraph 20 of **Meghmala**, learned counsel relied upon the proposition that "Fraud avoids all judicial acts, ecclesiastical or temporal." He also relied upon paragraph 26, where the Hon'ble Supreme Court observed that suppression of a material document would amount to fraud on the Court.

59.14. From paragraph 20 of **Badami**, learned counsel relied upon the observation that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. He also relied upon the observations that a litigant approaching the Court must come with clean hands and is required to place before the Court relevant documents within his knowledge and custody, and that suppression of such material may amount to fraud upon the Court as well as upon the opposite party.

59.15. Applying the aforesaid principles, learned counsel submitted that the petitioner's letter dated 12.05.2017 addressed to BESCO, as well as the subsequent loan documentation and

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correspondence relied upon by the applicants, were material documents bearing directly upon the state of completion of the project and, consequently, upon the question whether the premises were fit for occupation. His submission was that these documents were within the petitioner's own knowledge and custody and had not been disclosed when the matter came to be considered on 11.12.2023. According to learned counsel, their non-disclosure, coupled with the petitioner's reliance upon the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 as evidence of completion, constituted suppression of material facts and documents of a nature sufficient to warrant recall of the order dated 11.12.2023.

59.16. Sri. Joshua Hudson Samuel, learned counsel for the petitioner, submitted that the allegation of fraud is wholly unfounded and devoid of material particulars. He submitted that the petitioner had practised no fraud, either independently or in collusion with the official respondents, and that the burden of establishing such serious allegation rested

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squarely upon the applicants, which burden, according to him, had not been discharged.

59.17. Learned counsel's principal submission on the facts was that the project had been substantially completed by the time the Occupancy Certificates were issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 and that whatever residual work remained, particularly interior finishing in respect of unsold villas, was deliberately deferred so that the villas could thereafter be finished in accordance with the individual requirements and preferences of the eventual purchasers. According to learned counsel, such a practice was neither unusual nor impermissible in the context of the sale of high-value villas.

59.18. He further submitted that the glass facades and window panels in certain villas had subsequently been removed on account of cracks caused by temperature variation and that doors had similarly been removed to facilitate customisation. His submission was that these circumstances related to the

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subsequent condition of the villas and could not, without more, establish that the villas were incomplete when the Occupancy Certificates were issued.

59.19. Learned counsel took the Court through the sequence in which respondent Nos.2 and 3 had, according to him, consciously exercised their statutory power under Rules 12 and 13 of the Model Bye-laws in issuing the Occupancy Certificates in 2016-2017, specifically on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, after accepting the completion certificate furnished by the project architects, M/s. Karan Grover and Associates.

59.20. He submitted that the Occupancy Certificates were thus the result of an exercise of statutory power by the competent authority upon consideration of the material placed before it and that the Gram Panchayat could not, years thereafter, reopen or invalidate that exercise except in accordance with law. The precise scope of the statutory power, the manner in which it was exercised, and the authority and

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jurisdiction, if any, to subsequently cancel or withdraw the Occupancy Certificates are matters considered separately under Point No.(ix).

59.21. Sri. M.S. Devaraju, learned counsel for respondent Nos.2 and 3, submitted that the Gram Panchayat had acted upon the representation made by the petitioner and the completion certificate furnished by the project architects, and that, at the relevant time, the Gram Panchayat had no reason to doubt the material placed before it. He submitted that it was only the subsequent inspection dated 26.02.2024, conducted pursuant to the directions of this Court, that brought to light the extent to which the project remained incomplete.

59.22. Learned counsel drew attention to the petitioner's own admission in its objections dated 10.06.2025 to the inspection report, that only twenty out of the sixty-one villas had electricity connections. He further pointed out that property tax remained unpaid in respect of thirty-six out of the sixty-one villas,

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notwithstanding the specific direction contained in the order dated 11.12.2023 requiring the petitioner to clear all outstanding dues within ninety days.

59.23. According to learned counsel, these circumstances demonstrated that the position presented to the Gram Panchayat at the time of issuance of the Occupancy Certificates could not be equated with the actual state of the project subsequently found on inspection, and also showed that the petitioner had not complied fully with the conditions imposed by this Court in its order dated 11.12.2023.

59.24. Before considering the allegation of suppression on merits, the objection to the maintainability of I.A. No.2/2024 requires consideration. It is contended that the applicants were not parties to the writ petition when the order dated 11.12.2023 was passed and, therefore, cannot seek recall of that order.

59.25. The objection cannot be accepted. Under Point No.(i), the applicants have already been held to be proper parties for the limited purpose of these proceedings. Their case is not merely that

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they are dissatisfied with the order. They contend that the order was obtained without placing before the Court material facts and documents concerning the state of completion of the project and that the order is being relied upon to their prejudice before the Real Estate Regulatory Authority.

59.26. The principles in ***Meghmala*** and ***Badami*** make it clear that an order obtained by suppression of material facts cannot be allowed to stand merely because the suppression is brought to the Court's notice subsequently.

59.27. **I.A. No.2/2024 is, therefore, maintainable.**

59.28. On merits, the material relied upon by the applicants falls broadly into two categories. The first consists of disputed questions concerning the physical condition of individual villas, including allegations regarding doors, windows, finishing, amenities and other aspects of construction. The parties have placed conflicting versions before the Court on these matters. This Court cannot, in these proceedings, undertake a detailed trial of such disputed questions. To the extent they relate to

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rights and remedies under RERA, they may be considered by the competent statutory forum.

59.29. The second category comprises contemporaneous documents, particularly the petitioner's letter dated 12.05.2017 addressed to BESCOM, the loan sanction letter dated 20.03.2018, and the sale deed for Villa No. 38 dated 19.09.2018, followed by the delivery of possession on 08.11.2018. These documents require separate consideration because their existence and contents are not dependent on the disputed inspection material.

59.30. The letter dated 12.05.2017 is the most significant of these documents. The petitioner referred to the project as comprising "61 villas + common area", sought permission to install meters for only twenty villas and stated:

"The delay in completing the remaining 41 villas is taking time, due to market bad conditions & the balance Kwh meters will be connected in due course."

59.31. This was a communication made by the petitioner itself to BESCOM in the ordinary course of its affairs. It expressly records that the remaining forty-one villas were yet to be



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completed. The petitioner may contend that the statement referred only to electrical servicing or had some other explanation. That does not, however, alter the fact that the petitioner itself had disclosed a state of affairs materially different from an unqualified assertion that all sixty-one villas had been completed.

59.32. The subsequent financing arrangement further supports this position. On 20.03.2018, the petitioner accepted a loan facility of Rs.100 crore from M/s. Indiabulls Housing Finance Limited. The material placed before the Court indicates that the facility was connected with project and sales milestones. The subsequent communication dated 26.04.2018 also refers to completion of the works using the loan facility.

59.33. This Court does not treat the sanction of Rs.100 crore, by itself, as proof that construction was incomplete. Financing may be raised for different purposes. However, in the context of a project comprising sixty-one villas and a clubhouse, substantial construction-linked financing obtained after the date on which the project is said to have been completed is a

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circumstance of considerable weight. Read with the petitioner's own BESCOM communication, it supports the conclusion that substantial project requirements continued after the asserted date of completion.

59.34. The chronology concerning Villa No.38 provides further corroboration. The sale deed was executed on 19.09.2018, and possession was delivered on 08.11.2018. This circumstance, by itself, does not establish that the project was incomplete. However, when read with the petitioner's 12.05.2017 communication and the subsequent financing arrangement, it assumes significance and is inconsistent with an unqualified assertion that the entire project had already attained completion and fitness for occupation.

59.35. The issue is therefore whether these facts were material to the order dated 11.12.2023 and whether their non-disclosure amounts to suppression.

59.36. The answer is in the affirmative. The order dated 11.12.2023 restored the Occupancy Certificates issued on 19.09.2016, 14.12.2016,

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15.03.2017, 10.04.2017 and 05.05.2017, subject to the premises being put into a condition fit for occupation. The state of completion and fitness for occupation was thus central to the relief granted. The petitioner approached this Court relying upon the Occupancy Certificates, while its own communication dated 12.05.2017 stated that forty-one of the sixty-one villas remained to be completed. This was a material fact directly relevant to the controversy. It ought to have been disclosed.

59.37. The Court is conscious that the loan sanction and the sale deed, considered separately, do not conclusively establish non-completion. Their significance lies in the circumstances in which they occurred. The BESCOM communication, followed by substantial construction-linked financing and subsequent completion-related correspondence, presents a consistent picture of continuing project work.

59.38. This Court is therefore not required to determine the exact extent of construction remaining on any particular date or to decide

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the condition of each villa individually. The material placed before the Court is sufficient to establish that the factual position concerning completion was not fully disclosed.

59.39. The suppression is material because the documents were within the petitioner's own knowledge and custody. The petitioner was the author of, or party to, the relevant communications and could not reasonably have been unaware of their contents. This Court accordingly finds that the petitioner did not merely omit a collateral circumstance. Material facts bearing directly upon the state of completion and fitness for occupation were withheld. The representation made before the Court was therefore not a full and truthful disclosure of the position reflected in the petitioner's own records.

59.40. This Court has reached this conclusion principally on the basis of the petitioner's own letter dated 12.05.2017, and not on the disputed allegations concerning individual villas. The Rs.100 crore financing arrangement and

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the chronology relating to Villa No.38 provide additional support to that conclusion.

59.41. The case is therefore not one where the applicants merely seek reconsideration because another view of the evidence is possible. The complaint is of non-disclosure of material documentary evidence which had a direct bearing upon the factual basis on which relief was granted.

59.42. The principles in ***Meghmala*** and ***Badami*** are consequently attracted. An order obtained by suppression of material facts cannot be permitted to operate to the advantage of the party responsible for such suppression.

59.43. In the circumstances, this court answers point no (ii) by holding that sufficient grounds are made out for recall of the order dated 11.12.2023. I.A. No.2/2024 is accordingly allowed and the order dated 11.12.2023 is recalled.

60. **Answer to Point No.(iii): What is the statutory regime governing issuance of Occupancy Certificates for buildings situated within Gram**



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Panchayat limits but falling within a notified Local Planning Area/Planning Authority?

- 60.1. Sri. Joshua Hudson Samuel, learned counsel for the petitioner, submitted that under the Model Bye-laws, the expression "Authority" means the authority authorised by the Gram Panchayat to grant licences and perform the functions assigned to it under the Bye-laws.
- 60.2. He submitted that Rule 9 makes the Gram Panchayat responsible for examining and approving building plans, though the plans are required to be signed by a qualified architect, engineer or supervisor. He further relied upon Rule 9 read with Section 111(2) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, to contend that every Gram Panchayat is required to have a full-time Panchayat Development Officer and that the Panchayat Development Officer is competent to exercise the powers conferred by the Bye-laws, including the power to issue an Occupancy Certificate under Rule 13.
- 60.3. On this basis, learned counsel contended that respondent Nos.2 and 3 had the statutory

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authority to issue the Occupancy Certificate. According to him, the fact that the Planning Authority had jurisdiction over the layout and development plan of the project did not take away the power of the Gram Panchayat to issue the Occupancy Certificate. This contention is considered under Points No.(iv) and (v).

60.4. The statutory position was explained principally by respondent No.1-State of Karnataka through affidavits filed pursuant to the directions of this Court. The learned Advocate General also assisted the Court after it became clear that the issues raised involved questions concerning the statutory framework applicable beyond the parties to the writ petition. Since respondent No.1 is a party to the writ petition, its affidavits are treated as its submissions on the statutory position.

60.5. In the affidavit dated 22.04.2024 of Sri. Rajesh S. Sulikeri, Under Secretary to Government, Urban Development Department, it was stated that Local Planning Areas are declared under Section 4-A of the Karnataka Town and Country Planning Act, 1961, and that the Planning

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Authorities constituted for such areas prepare and implement the Master Plan and Zonal Regulations.

60.6. The affidavit further states that, under Section 15 of the said Act, the Planning Authority grants permission for development of buildings by issuing a Commencement Certificate in the manner prescribed by the Karnataka Planning Authority Rules, 1965. It is specifically stated that, where Gram Panchayat limits fall within a Local Planning Area, the Commencement Certificate is issued by the Planning Authority and not by the Gram Panchayat.

60.7. The affidavit also placed on record Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993. Sub-section (1) requires prior written permission of the Gram Panchayat for erection, alteration or reconstruction of a building. Sub-section (2) provides for deemed permission where the Gram Panchayat does not communicate its decision within sixty days.

60.8. Of particular relevance is sub-section (5A) of Section 64, which requires Gram Panchayats to comply with the provisions of the Karnataka

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Town and Country Planning Act, 1961 while issuing building licences or approving housing or residential layouts. An approval contrary to that Act is treated as misconduct for which the concerned officer or official may be proceeded against.

60.9. The State further relied upon the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015, notified on 08.05.2015. According to the affidavit, these Bye-laws apply to Gram Panchayat areas falling within a Local Planning Area, subject to the Zonal Regulations framed under the Karnataka Town and Country Planning Act, 1961.

60.10. The affidavit states that a building licence is considered under Section 64 of the Act read with Rule 9 of the Bye-laws; a Building Completion Certificate is required from a qualified architect or empanelled engineer under Rule 12; and permission to occupy is issued by the Gram Panchayat under Rule 13.

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60.11. The State also clarified that the Karnataka Town and Country Planning Act, 1961 does not contain a provision authorising a Planning Authority to issue an Occupancy Certificate. According to the State, that function rests with the Gram Panchayat.

60.12. In relation to the Bengaluru Metropolitan Region, the State also referred to Rule 18(5) of the Bengaluru Metropolitan Region Development Authority Rules, 2022. The provision requires the prior concurrence of the Metropolitan Commissioner for specified proposals and activities, including proposals relating to technical opinion before issuance of building plans, Commencement Certificates and Occupancy Certificates for multistorey projects by local bodies, Planning Authorities and other authorities performing town and country planning functions within Local Planning Areas in the Bengaluru Metropolitan Region.

60.13. This Court's order dated 16.04.2024 had already identified the principal issue: whether and to what extent the Model Bye-laws operate within the jurisdiction of a Planning Authority

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and whether a Gram Panchayat has the necessary statutory and technical capacity to perform functions of this nature.

60.14. The learned Advocate General was accordingly requested to assist the Court. The matter was considered over several hearings between June and August 2024. In that process, the Additional Chief Secretary, Urban Development Department, and the Additional Chief Secretary, Rural Development and Panchayat Raj Department, issued a joint Circular dated 05.08.2024.

60.15. The Circular requires Gram Panchayats situated within a Planning Area to obtain the Commencement Certificate for building construction from the concerned Planning Authority under Section 15(1) of the Karnataka Town and Country Planning Act, 1961.

60.16. It further provides that, after completion of the building and upon production of the Building Completion Certificate from the qualified architect, empanelled engineer or other qualified person, the Panchayat Development Officer shall, before issuing the

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Possession/Occupancy Certificate, jointly verify the construction with the concerned authorities. The verification is to cover, among other things, compliance with the approved building plan and estimates, the Commencement Certificate and the licence issued by the Gram Panchayat. The Panchayat Development Officer is also required to obtain the technical opinion of the concerned Planning Authority regarding completion in accordance with the approved plan.

60.17. The Circular directs that the Occupancy Certificate is to be issued only after such compliance is established.

60.18. Thus, according to the State's own submission, the statutory scheme operates at two stages.

60.18.1. First, where a Gram Panchayat falls within a Local Planning Area, the Planning Authority controls development through the Commencement Certificate and the applicable planning framework. The Gram Panchayat thereafter exercises the power to grant the building licence and, upon completion, the power to

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issue the Occupancy Certificate under the Model Bye-laws.

60.18.2. Second, the exercise of the latter power is not independent of the planning framework. The Circular requires verification of compliance with the Commencement Certificate, approved plan and other applicable requirements, together with technical opinion from the concerned Planning Authority, before the Occupancy Certificate is issued.

60.19. The learned AGA, appearing on 28.08.2024, confirmed that the State considered this to be the procedure applicable.

60.20. Sri. Suraj Sampath, learned counsel for the impleading applicants, while not disputing the content of this Circular, submitted that it post-dates the events in question by several years and is, by its own terms, prospective. His submission was that it is the law as it stood in 2016-2017, when the Occupancy Certificates in the present case were issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, that governs the question of

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validity, and that the petitioner cannot invoke a procedural safeguard introduced by the 2024 Circular to justify what was done in 2016-2017, nor, equally, can the Circular be read backwards to invalidate what was validly done before its issuance.

60.21. The material on record shows that two statutory regimes operate within the same area. The first is the planning regime under the Karnataka Town and Country Planning Act, 1961. Once an area is declared a Local Planning Area under Section 4-A, the Planning Authority prepares and implements the Master Plan and Zonal Regulations and, under Section 15, grants permission for development and issues the Commencement Certificate.

60.22. The second is the Panchayat regime under the Karnataka Gram Swaraj and Panchayat Raj Act, 1993. Section 64(1) requires written permission of the Gram Panchayat for erection of a building within its limits. Under the Model Bye-laws, the Gram Panchayat grants the building licence, receives the Building Completion

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Certificate under Rule 12 and issues the Occupancy Certificate under Rule 13.

60.23. These provisions have to be read together. Section 64(5A) requires the Gram Panchayat to comply with the Karnataka Town and Country Planning Act, 1961 while issuing building licences or approving housing or residential layouts. Thus, the power of the Gram Panchayat under Section 64 is not to be exercised independently of the planning regime.

60.24. In practical terms, the Planning Authority deals with the planning and development of the land through the Master Plan, Zonal Regulations and Commencement Certificate. The Gram Panchayat deals with the construction through the building licence and, upon completion, the Occupancy Certificate. The two functions are distinct but connected.

60.25. The Karnataka Town and Country Planning Act, 1961 does not contain a provision authorising a Planning Authority to issue an Occupancy Certificate. This position is stated in the affidavit of respondent No.1 and has not been

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disputed before this Court. Therefore, the power to issue an Occupancy Certificate ordinarily rests with the Gram Panchayat even where the Gram Panchayat area falls within a notified Local Planning Area.

60.26. This, however, does not by itself answer whether respondent Nos.2 and 3 were competent to issue the Occupancy Certificate in the present case. That question depends upon the applicability of the Model Bye-laws and the procedure followed by the Gram Panchayat.

60.27. Rule 18(5) of the Bengaluru Metropolitan Region Development Authority Rules, 2022 introduces an additional requirement in relation to multistorey projects within the Bengaluru Metropolitan Region by requiring prior concurrence of the Metropolitan Commissioner before specified authorities issue a Commencement Certificate or Occupancy Certificate.

60.28. The present project, consisting of independent villas sanctioned in 2013, does not fall within the category of "Multistorey Projects" contemplated by that provision. Rule 18(5)

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therefore has no direct application to the Occupancy Certificate in question.

60.29. The Circular dated 05.08.2024 stands on a different footing. The objection that the Circular is prospective and cannot govern an Occupancy Certificate issued in 2016-2017, specifically on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017, is well founded. The Circular cannot retrospectively impose a requirement of joint inspection or mandatory technical opinion which was not contained in a binding provision applicable in 2016-2017.

60.30. Non-compliance with the 2024 Circular therefore cannot, by itself, invalidate the Occupancy Certificates issued in 2016-2017, specifically on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017.

60.31. The Circular is nevertheless relevant for a limited purpose. It was issued after the Court examined the manner in which Occupancy Certificates were being issued by Gram Panchayats and after the State was called upon to clarify the procedure to be followed. The Circular records the State's subsequent

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understanding of the checks required before an Occupancy Certificate is issued, including verification of the construction against the approved plan, estimates, Commencement Certificate and building licence, together with technical opinion from the concerned Planning Authority.

60.32. The statutory position may therefore be summarised as follows.

60.33. Within a Gram Panchayat which also falls within a notified Local Planning Area, the Planning Authority controls the planning and development framework and issues the Commencement Certificate under the Karnataka Town and Country Planning Act, 1961. The Gram Panchayat exercises its powers under Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, but must comply with the planning law by virtue of Section 64(5A). Where the Model Bye-laws apply, the Gram Panchayat issues the Occupancy Certificate under Rule 13 after completion of the building and receipt of the requisite completion certificate.

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60.34. Rule 18(5) of the 2022 Rules has no shown application to the present project. The Circular dated 05.08.2024 cannot retrospectively impose a new requirement for certificates issued in 2016, but may be considered as subsequent guidance while examining whether the verification undertaken at that time was adequate.

61. **Answer to Point No.(iv): Which authority was competent in law to issue the Occupancy Certificate in respect of the subject project/villas?**

61.1. Sri. Joshua Hudson Samuel, learned counsel for the petitioner, submitted that the Gram Panchayat, acting through the Panchayat Development Officer, was competent to issue the Occupancy Certificate. According to him, this power flows from Rule 9 read with Section 111(2) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, and, in particular, from Rule 13 of the Model Bye-laws.

61.2. The affidavits filed on behalf of respondent No.1, take the position, without qualification, that the Karnataka Town and Country Planning

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Act, 1961 contains no provision for a Planning Authority to issue an Occupancy Certificate, and that, on completion of construction, it is the Gram Panchayat that is competent to issue the Occupancy Certificate in Form VI prescribed under the Model Bye-laws.

61.3. Sri. Suraj Sampath, learned counsel for the impleading applicants, took a different position, namely that since the Model Bye-laws had admittedly not been adopted by respondent No.2, those Bye-laws could not confer competence on respondent Nos.2 and 3, and that this ought to have meant the Planning Authority was the competent authority instead.

61.4. Respondent No.1 has stated in its affidavits, and this position has not been disputed, that the Karnataka Town and Country Planning Act, 1961 does not confer power on a Planning Authority to issue an Occupancy Certificate. Therefore, the submission of Sri. Suraj Sampath that the Planning Authority ought to have issued the certificate cannot be accepted. This Court cannot hold that an authority has

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the power to perform an act which the statute governing that authority does not authorise.

61.5. This Court answers point No.(iv) by holding that, under the statutory scheme, the authority competent to issue the Occupancy Certificate was the Gram Panchayat and not the Planning Authority. Whether the Gram Panchayat could validly exercise that power in the present case, particularly in view of the admitted non-adoption of the Model Bye-laws by respondent No.2, is considered under Point No.(v).

62. **Answer to Point No.(v): Whether respondent Nos.2 and 3/Gram Panchayat were competent to issue the Occupancy Certificate in the facts of the present case, notwithstanding the jurisdiction of the Planning Authority?**

62.1. Sri. Joshua Hudson Samuel maintained that respondent Nos.2 and 3 were competent to issue the Occupancy Certificate, relying on the definition of "Authority" in the Model Bye-laws and on Rule 9 read with Section 111(2) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 for the proposition that the Panchayat Development Officer is the competent functionary. Learned counsel did not, in the

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submissions on record, address the specific objection that the Model Bye-laws had not been adopted by respondent No.2.

62.2. Sri. Suraj Sampath placed reliance on Section 316(2) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, which is reproduced hereunder for easy reference:

"316. Power of Government to make model regulations and bye-laws and adoption of such regulations and bye-laws by the Panchayats.—

...

(2) A Grama Panchayat, Taluk Panchayat or Zilla Panchayat may by resolution adopt the model bye-laws or regulations, as the case may be, made under sub-section (1), and such bye-laws and regulations shall come into force within the jurisdiction of the Grama Panchayat, Taluk Panchayat or Zilla Panchayat from such date as the Grama Panchayat, Taluk Panchayat or Zilla Panchayat, as the case may be, may specify in a notice published in the prescribed manner..."

62.3. As per Section 316, a model bye-law framed by the Government does not automatically bind any particular Panchayat; it must first be adopted by that Panchayat through its own resolution, and it comes into force within that Panchayat's jurisdiction only from the date the Panchayat itself notifies.

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62.4. Learned counsel for the impleading applicants submitted that respondent No.2 had admittedly not adopted the Model Bye-laws of 2015, a fact placed on record through the Panchayat Development Officer's own submission recorded in this Court's order dated 25.04.2024, and that the Bye-laws could not, therefore, have applied to respondent No.2 at the time the Occupancy Certificates were issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017. His conclusion was that this ought to have meant that the Planning Authority, and not the Gram Panchayat, was the authority to whom the petitioner should have applied.

62.5. It is not in dispute that respondent No.2 had not adopted the Model Bye-laws of 2015 by a resolution as contemplated by Section 316(2). This was also stated by the Panchayat Development Officer of respondent No.2 before the Court. The Court therefore proceeds on the basis that the Model Bye-laws had not been and has not been adopted by respondent No.2 even as on date.

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- 62.6. The consequence of such non-adoption, however, requires consideration. Sri. Suraj Sampath contended that, in the absence of adoption, the Model Bye-laws, including Rules 12 and 13, had no force within the jurisdiction of respondent No.2 and that respondent Nos.2 and 3 could not have acted under those provisions in issuing the Occupancy Certificate.
- 62.7. This submission is correct to that extent. The Model Bye-laws do not become binding upon a Gram Panchayat until they are adopted in the manner contemplated by Section 316(2). Consequently, Rules 12 and 13 could not, by themselves, confer statutory authority upon respondent Nos.2 and 3 in 2016-2017.
- 62.8. It does not, however, follow that the Planning Authority thereby became competent to issue the Occupancy Certificate. That contention has already been rejected under Point No.(iv), since the Karnataka Town and Country Planning Act, 1961 does not confer such power upon the Planning Authority. The question, therefore, is whether the power of the Gram Panchayat to issue an Occupancy Certificate was otherwise

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traceable to Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993.

62.9. Section 64(1) requires prior written permission of the Gram Panchayat for erection of a building within its jurisdiction. In the present case, it is not disputed that the petitioner obtained such permission from respondent No.2 for the subject project. The power to regulate the erection of a building would ordinarily include the incidental power to ascertain, upon completion, whether the building conforms to the permission granted. Otherwise, the statutory power to regulate construction would cease to operate at the very stage when compliance with the permission has to be determined.

62.10. The principle stated by the Hon'ble Supreme Court in ***Sakiri Vasu v. State of Uttar Pradesh and Others***, [(2008) 2 SCC 409] particularly in paragraphs 18 and 21, is that a statutory power carries with it such incidental or implied powers as are reasonably necessary to make the express power effective.

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62.11. Applying that principle, this Court is of the view that Section 64 carries with it the incidental power of the Gram Panchayat to examine, upon completion, whether a building constructed pursuant to its permission conforms to the sanctioned permission and may accordingly be occupied.

62.12. The Court therefore finds that the non-adoption of the Model Bye-laws did not, by itself, leave respondent Nos.2 and 3 without statutory power to issue an Occupancy Certificate. That power can be traced to Section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, read with the incidental power necessary to give effect to that provision.

62.13. To this extent, the petitioner's submission regarding the competence of the Gram Panchayat succeeds. This conclusion does not, however, answer whether that power was properly exercised in the present case.

62.14. The Model Bye-laws, had they been adopted, would have provided a specific procedure for dealing with completion and occupation, including the requirement of a completion

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certificate under Rule 12 and the procedure under Rule 13. Since the Bye-laws had not been adopted, those provisions could not themselves govern the issuance of the Occupancy Certificate.

62.15. The absence of the Bye-laws is nevertheless relevant while examining whether respondent Nos.2 and 3 had followed any lawful and adequate procedure for satisfying themselves that the construction conformed to the sanctioned permission and was fit for occupation. That question concerns the manner in which the power was exercised, rather than the existence of the power itself, and is considered under Point No.(vi).

62.16. This court answers point No.(v) by holding that respondent Nos.2 and 3/Gram Panchayat were competent to issue the Occupancy Certificate in the facts of the present case, notwithstanding the jurisdiction of the Planning Authority.

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63. **Answer to Point No.(vi): Whether the Occupancy Certificates were issued after compliance with the statutory requirements, including inspection, verification of construction against the sanctioned plan, and obtaining the requisite technical opinion?**

63.1. Sri. Joshua Hudson Samuel submitted that Rule 12 of the Model Bye-laws prescribes the complete procedure for completion of a building, requiring only that the owner give written notice of completion to the Authority through a qualified architect, empanelled engineer or supervisor, in the prescribed form. He relied on the text of Rule 12 of the Model Bye-laws, 2015, reads as follows:

"12. Completion Certificate. Every person erecting, re-erecting, making material alteration, demolition [of] a building shall, within one month after completion of such building shall give written notice to the Authority through the qualified Architect/qualified empanelled engineer/supervisors (Civil Diploma holder) regarding completion of work prescribed in the license in the prescribed form given in Schedule V."

63.2. Learned counsel submitted that the petitioner strictly complied with Rule 12 by furnishing the completion certificate issued by the project architects, M/s. Karan Grover and Associates, and that, once the Authority accepted this

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certificate, it was obliged to proceed under Rule 13, reads as follows:

"13. Occupancy Certificate. *Within a period of one month after receipt of the notice of completion the Authority shall communicate in the form given in Schedule VI the requisite permission to occupy any such building or to use any building or part thereof effected by any such work."*

63.3. According to learned counsel, Rule 12 casts the burden of certifying completion on the qualified architect or engineer, not on the Authority, and Rule 13 does not, in terms, require the Authority to conduct any independent technical inspection of its own before communicating permission to occupy. If the Rule-making authority had intended a more elaborate inquiry, he submitted, it would have said so; since it did not, the validity of the Occupancy Certificate cannot be tested against a standard of verification that finds no place in the Rules as they stood in 2016-2017, and cannot be measured retrospectively against the joint-inspection and technical-opinion requirement introduced only by the Circular of 05.08.2024.

63.4. Learned counsel further submitted that the deficiencies later pointed out by the Gram

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Panchayat in its own inspection reports are vague and lack particulars, in that they do not identify, villa by villa, which unit lacked which item, and that a report of this general character cannot form the basis for casting doubt on certificates that had stood unquestioned for several years.

63.5. Sri. Suraj Sampath submitted that there was, in truth, no meaningful inspection at all preceding the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017. He drew attention to the process by which entries were made in the Panchayat's software on 18.11.2015, pointing out, on the strength of the Draft User Manual for Form No.9 and the letter dated 05.07.2025 of the Panchayat Development Officer, that the photographs uploaded at that time were identical, type-wise, to photographs in the petitioner's own sales brochure, and were not photographs of the actual villas. He submitted that the then Panchayat Development Officer, Sri. C. Muniraju, never visited the site and never verified the state of construction, and that the spot inspection

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report dated 20.08.2016 itself recorded pending works, directly undercutting any claim that a certificates issued thereafter reflected a genuine, contemporaneous verification of completion.

63.6. Sri. M.S. Devaraju, learned counsel for respondent Nos.2 and 3, took a materially similar position on the state of the record, though advanced in defence of the Panchayat's later conduct rather than the petitioner's. He accepted, in substance, that the Panchayat had acted on the representation of completion made by the petitioner and the certificate furnished by the project architects, and that it was only the joint inspection conducted on 26.02.2024, under this Court's directions, and the further inspections that followed in 2025, that disclosed the true state of the project. He placed before the Court the inspection report dated 20.08.2016, which this Court itself examined on 23.10.2024 and found to contain nothing beyond the villa numbers and the extent of construction in each, with no indication of the nature or scope of the inspection actually carried out, no verification

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of structural completion, no reference to civic amenities, and no assessment of compliance with the sanctioned plan.

63.7. The petitioner's submission rests substantially on Rules 12 and 13 of the Model Bye-laws. Rule 12 requires a qualified architect or engineer to certify completion and submit the prescribed notice to the Authority. Rule 13 thereafter requires the Authority to communicate permission to occupy within one month.

63.8. Though Rule 13 does not prescribe in detail the manner in which the Authority is to satisfy itself before granting permission, it cannot be understood as requiring the Authority to act mechanically upon the certificate of the architect or engineer. The Rule places the power to grant permission to occupy with the Authority. That necessarily requires the Authority to apply its mind and satisfy itself that the building is fit for occupation and conforms to the sanctioned permission.

63.9. The absence of a detailed procedure in Rule 13 does not, therefore, dispense with the requirement of verification. The inspection

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report dated 20.08.2016 has to be examined in that light.

63.10. The report contains little more than the villa numbers and the extent of construction. It does not record any meaningful verification of the construction against the sanctioned plan, any structural assessment, or any examination of the civic amenities or other requirements relevant to occupation.

63.11. The subsequent material placed before the Court adds to this concern. The photographs entered in the Panchayat's software on 18.11.2015 were not photographs of the individual villas but stock photographs corresponding to the villa type from the Brochure of the petitioner. Some even have high-end cars parked in the driveway, which were never so parked. The material also records that the officer who processed those entries had not personally inspected the property. The Petitioner was always aware of the photographs being stock photos which could be clearly seen from the khatha certificate received by the Petitioner; this Court

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cannot with certainty give a finding on who provided the photographs; it would be required to be ascertained during the course of enquiry.

63.12. This Court is conscious that there are disputes regarding the actual physical condition of individual villas in 2016-2017. Those disputes need not be decided for the purposes of this Point. The narrower question is whether the Gram Panchayat carried out any meaningful verification before issuing the Occupancy Certificates. On that question, the material is clear. The inspection report does not record the checks ordinarily necessary to establish compliance with the sanctioned plan or completion of the project. There is also no material placed by the petitioner or respondent Nos.2 and 3 showing that such verification was carried out independently of what is recorded in the report.

63.13. The Circular dated 05.08.2024 does not alter this conclusion. As already held under Point No.(iii), the Circular cannot retrospectively impose the requirement of joint inspection and technical opinion upon Occupancy Certificates

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issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 . It may, however, be noticed that the Circular requires verification of the construction with reference to the sanctioned plan, estimates, Commencement Certificate and building licence, together with technical opinion from the Planning Authority. These are matters which reinforce the importance of actual verification before an Occupancy Certificate is issued, but the finding in the present case does not depend upon the Circular.

63.14. The Court therefore finds that the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 was not preceded by adequate inspection and verification. This conclusion is based principally on the Panchayat's own inspection report and the material concerning the photographs and site inspection. It does not require the Court to accept every allegation made by the applicants regarding the condition of individual villas.

63.15. The petitioner's objection that the applicants have not established particular defects in

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particular villas is consequently of no assistance. The deficiency found here is in the verification process itself. The record does not disclose that respondent Nos.2 and 3 adequately satisfied themselves that the construction conformed to the sanctioned permission and was fit for occupation before issuing the Occupancy Certificate.

63.16. For the aforesaid reasons, this Court answers Point No.(vi) by holding that the Occupancy Certificates were issued without compliance with the statutory requirements, including inspection, verification of construction against the sanctioned plan, and obtaining the requisite technical opinion.

64. **Answer to Point No.(vii): Whether the subject villas/project were in fact complete and fit for occupation on the date of issuance of the Occupancy Certificate?**

64.1. Sri. Joshua Hudson Samuel submitted that the project had been substantially completed by 2016, that the completion certificate issued by M/s. Karan Grover and Associates was accepted by respondent Nos.2 and 3 after due consideration, and that only minor interior and



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finishing works remained, which does not detract from substantial completion. He submitted that thirty-one villas were sold and nine purchasers were in occupation, and that the removal of certain doors, windows and glass facades in unsold villas is explained by cracks caused by temperature variation and by the deliberate deferral of customised interior finishing until a purchaser is identified, a practice he described as common in the sale of high-value villas.

64.2. Learned counsel further submitted that all sixty-one villas have in fact been provided with electrical infrastructure, that the allegation of missing doors and windows is unsupported by particulars because the inspection report does not identify villa numbers, and that the inspection team, during the survey ordered by this Court, deliberately avoided photographing the electricity meter board chamber and the area behind it, which would have disclosed underground sewerage lines, water pipelines, electrical cabling and other concealed infrastructure demonstrating that the villas were in fact fully serviced. He submitted that

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the petitioner has independently placed photographs of this concealed infrastructure on record.

64.3. Sri. Suraj Sampath submitted that the villas were never completed at all: that the petitioner's own letter to BESCOM dated 12.05.2017 admitted forty-one villas remained unserviced; that the first sale deed, for Villa No.38, was executed only on 19.09.2018, sixteen months after the certificate is said to have issued; and that the construction-linked loan of Rs.100 crore sanctioned on 20.03.2018 is inconsistent with a completed project. He added, specifically on the question of present physical condition, that of the sixty-one villas, only seven, namely Villa Nos.7, 8, 9, 11, 38, 53 and 62, are occupied; that twelve villas, namely Villa Nos.3, 21, 22, 24, 26, 27, 30, 34, 39, 46, 55 and 59, still have no BESCOM connection; and that for four villas, namely Villa Nos.24, 46, 55 and 59, an Occupancy Certificate that had at some point been issued has since been withdrawn.

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64.4. Learned counsel submitted that the joint inspection conducted on 26.02.2024, under the directions of a co-ordinate Bench of this Court in Writ Petition No.26591/2023, itself recorded that construction was not complete; that the report dated 13.11.2024 of the Assistant Executive Engineer, Karnataka Real Estate Regulatory Authority, recorded the project as incomplete as of 12.11.2024; that the report dated 31.01.2025 of the Executive Officer, Taluk Panchayat, Hoskote, recorded the villas as incomplete; and that the joint report of respondent Nos.2 and 5 dated 25.04.2025, filed on 04.06.2025, likewise recorded that the project had not been completed. He submitted that only six villa owners presently reside in the project and that they bear, out of their own pocket, the cost of security and maintenance staff that ought properly to have been borne by the petitioner.

64.5. On the question of why some purchasers nonetheless took possession despite these deficiencies, learned counsel relied on the decision of the Hon'ble Supreme Court in ***Debashis Sinha and Others v. M/s. R.N.R.***

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Enterprise, [Civil Appeal No. 3343 of 2020], more particularly paragraphs 11 and 12, from which he read the observation that (paragraph 12) "*flat owners seldom purchase flats with liquid cash ... instalments fall due to be paid to clear the debt irrespective of whether the flat is ready for being delivered possession ... many a prospective flat owner ... even without the project/flat being wholly complete is left with no other option but to take possession.*" He submitted that this is exactly what happened here: the handful of purchasers presently in occupation had no real choice but to move in and complete whatever finishing work they could themselves manage, and their possession cannot be read as proof that the project, or even their own villas, were complete when the certificates were issued.

64.6. Sri. M.S. Devaraju, for respondent Nos.2 and 3, supported this position, relying on the inspection report dated 26.02.2024 and the petitioner's own objections dated 10.06.2025 to the later inspection report, in which the petitioner admitted that only twenty of the sixty-one villas had electricity connections. He

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also referred to deviations noticed during the joint inspection with the Town and Country Planning Department and the Satellite Town Ring Road Planning Authority, including that the Sewage Treatment Plant had been constructed encroaching upon a Government rajakaluve and in deviation from the sanctioned plan, that internal roads had not been fully developed, and that the diesel generator for the project had not been maintained.

64.7. The reasoning under Point No.(ii) concerning the petitioner's BESCOM letter, the Villa No.38 timeline and the loan documentation is adopted for the present Point and need not be repeated. Those documents bear directly upon the question whether the project had in fact been completed when the Occupancy Certificates were issued.

64.8. In particular, the petitioner's own letter to BESCOM dated 12.05.2017 records that the remaining forty-one villas were yet to be completed. The subsequent loan documentation and the Villa No.38 transaction provide further corroboration. This material is sufficient to

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show that substantial work in the project remained outstanding after the date on which completion had been asserted.

64.9. This Court has already declined, under Point No.(ii), to determine the disputed villa-by-villa questions concerning the precise condition of individual units, the number of villas occupied or the present availability of BESCOM connections, that would be for the appropriate authority, including RERA to determine.

64.10. There is, however, independent inspection material obtained during the present proceedings which is relevant to the broader question of completion. The reports dated 26.02.2024, 13.11.2024, 31.01.2025 and 25.04.2025, prepared by different public authorities at different points of time, consistently record deficiencies and incomplete work in the project. These reports were prepared pursuant to directions of this Court and have not been shown to be the result of any improper motive or bias.

64.11. The fact that the reports were made at different times does not, by itself, establish the condition

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of the project in 2016-2017. They are relevant as subsequent evidence of the continuing state of the project and as corroboration of the earlier documentary material.

64.12. The petitioner's criticism of the manner in which the later inspections were conducted, including the allegation that concealed infrastructure behind the electricity meter boards was not photographed, does not affect the significance of its own contemporaneous documents. Whatever may be the merits of the objections to the later inspections, they do not explain the petitioner's statement to BESCOM that forty-one villas remained to be completed.

64.13. The fact that some purchasers took possession also does not, by itself, establish that the project was complete. As noticed in **Debashis Sinha**, possession by purchasers may occur even where construction or amenities remain incomplete. The varying figures regarding the number of occupied villas therefore do not alter the conclusion arising from the documentary and inspection material.

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64.14. On the material before the Court, this Court is satisfied that the project had not attained complete and fit-for-occupation status in all respects when the Occupancy Certificates were issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017. The petitioner's own contemporaneous correspondence is the principal basis for this conclusion, while the subsequent financing, the Villa No.38 transaction and the later inspection reports provide corroboration.

64.15. This finding concerns the state of the project as a whole. It does not determine the precise condition of every individual villa, which may require a more detailed factual inquiry and can be dealt with, where necessary, in the consequential directions under Point No.(xii).

64.16. For all the aforesaid reasons, this Court answers Point No.(vii) by holding that the subject villas/project were in fact **NOT** complete and fit for occupation on the date of issuance of the Occupancy Certificate.

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65. **Answer to Point No.(viii): Whether the material on record establishes that the Occupancy Certificates were procured or issued on the basis of misrepresentation, suppression of material facts, or failure of the authorities to undertake the required verification?**

65.1. Sri. Joshua Hudson Samuel submitted that the completion certificate furnished by the project architects, M/s. Karan Grover and Associates, was accepted in good faith by respondent Nos.2 and 3, that the petitioner made no misrepresentation of any kind, and that the certificate reflected the genuine professional assessment of a qualified architect at the relevant time.

65.2. Sri. Suraj Sampath, learned counsel, submitted that the petitioner had represented to respondent Nos.2 and 3 on 16.08.2016 that all sixty-one villas and the clubhouse had been completed. He pointed out that, in its subsequent letter dated 12.05.2017 to BESCOM, the petitioner itself stated that forty-one villas remained to be completed. According to him, the two statements are irreconcilable

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and show that the earlier representation of completion was false.

65.3. Sri. M.S. Devaraju, learned counsel for respondent Nos.2 and 3, submitted that the Gram Panchayat had acted on the petitioner's representation and the certificate issued by the architect. He submitted that the Panchayat had no qualified engineering staff to independently verify the completion of the project.

65.4. The findings under Points No.(vi) and (vii) are relevant to this Point and need not be repeated. Under Point No.(vi), this Court has found that the inspection report dated 20.08.2016 does not disclose any meaningful verification of structural completion, conformity with the sanctioned plan or availability of civic amenities. Under Point No.(vii), the petitioner's own letter dated 12.05.2017 to BESCOM records that forty-one villas remained to be completed.

65.5. These findings show that the completion certificate furnished by the project architects did not correspond with the actual state of the project. The representation of completion made

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to respondent Nos.2 and 3 was therefore incorrect.

65.6. The Court accordingly finds that the Occupancy Certificates were issued on the basis of a completion certificates which did not reflect the actual state of the project and without adequate verification by respondent Nos.2 and 3.

65.7. The responsibility for this situation will have to be examined by respondent No.2 and the competent authorities. They shall examine the role of all persons concerned, including the architects who furnished the completion certificate and the officials who processed and issued the Occupancy Certificates, and take such action as may be warranted in accordance with law.

65.8. In the above circumstances, this Court answers Point No.(viii) by holding that the material on record establishes that the Occupancy Certificates dated 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were procured or issued on the basis of misrepresentation, suppression of material

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facts, and failure of the authorities to undertake the required verification.

66. **Answer to Point No.(ix): Whether the subsequent cancellation/withdrawal of the Occupancy Certificate was within the jurisdiction of the competent authority and was otherwise in accordance with law and the principles of natural justice?**

66.1. Sri. Joshua Hudson Samuel, learned counsel for the petitioner, submitted that respondent Nos.2 and 3 had no statutory power to revoke or cancel an Occupancy Certificate once issued, except in circumstances expressly recognised by law, such as fraud in obtaining the certificate or issuance in violation of the governing statute. He contended that no such circumstance existed when the impugned notice was issued. In support, he relied upon the decision of the Bombay High Court in ***M/s Satra Plaza Premises Co-op. Soc. Ltd. v. Navi Mumbai Municipal Corporation***. [WP No. 1374 of 2017], more particularly paragraphs 28 to 30.

66.2. Referring to paragraph 28 of ***Satra Plaza***, learned counsel submitted that an Occupancy Certificate has consequences not only for the

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society but also for persons who have purchased the premises and are entitled to occupy them on the basis of the certificate. He relied upon paragraph 30 for the proposition that, under Section 51 of the Maharashtra Regional and Town Planning Act, 1966, revocation of development permission is subject to specified conditions, including a connection with an existing or proposed development plan and an opportunity of hearing.

66.3. Learned counsel submitted that neither the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 nor the Model Bye-laws of 2015 contains a provision corresponding to Section 51 of the Maharashtra Act conferring an express power to revoke an Occupancy Certificate. According to him, respondent Nos.2 and 3 therefore lacked jurisdiction to issue the notice dated 26.12.2022 proposing cancellation.

66.4. He further submitted that the notice was based on vague allegations, did not identify any specific statutory violation and did not disclose

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the jurisdictional facts necessary to justify cancellation.

66.5. Sri. M.S. Devaraju, learned counsel for respondent Nos.2 and 3, submitted that the Gram Panchayat had acted reasonably in issuing the notice dated 26.12.2022 once it became aware, through its own site inspection of 22.12.2022, that several villas remained incomplete despite the completion certificates furnished earlier, and that the subsequent withdrawal of the Occupancy Certificates on 10.01.2023 was a legitimate exercise of the Panchayat's regulatory responsibility once the petitioner and the project architect failed to respond to the notice or to cooperate with the joint inspection it called for.

66.6. The principle stated in **Satra Plaza**, particularly in paragraphs 28 to 30, is that an Occupancy Certificate is not a mere administrative formality and that persons affected by its cancellation should ordinarily be given an opportunity of being heard. The Maharashtra statute considered in that case expressly provided for revocation in specified

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circumstances. No similar express provision has been brought to the notice of this Court under the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 or the Model Bye-laws.

66.7. This, however, does not mean that Occupancy Certificates which are found to have been issued on an incorrect factual basis and without adequate verification cannot be reconsidered. As held under Points No.(vi) and (viii), the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 in the present case were issued without adequate verification and on the basis of a completion certificate which did not reflect the actual state of the project. Respondent Nos.2 and 3 were therefore justified in reconsidering the certificates when these facts came to light.

66.8. The next question is whether the petitioner was given a reasonable opportunity before the order dated 10.01.2023 was passed. The notice dated 26.12.2022 referred to the inspection conducted on 22.12.2022, set out the deficiencies noticed during the inspection and

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called upon the petitioner and the project architect to attend a joint inspection within seven days. The petitioner was thus informed of the basis on which action was proposed and was given an opportunity to participate in the further inspection and place its case before the authorities.

66.9. The petitioner did not avail itself of that opportunity. In the circumstances, this Court is unable to accept the contention that the order dated 10.01.2023 was passed in breach of natural justice. The opportunity granted was reasonable and sufficient in the circumstances, but the petitioner chose not to make use of it.

66.10. The subsequent material also cannot be ignored. The inspections carried out during the pendency of these proceedings, including the reports dated 26.02.2024, 13.11.2024, 31.01.2025 and 25.04.2025, consistently indicate that substantial work in the project remained incomplete. These subsequent reports are not being used to retrospectively create a defect in the procedure followed in 2022. They are relevant because the present

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proceedings require the Court to consider whether the factual basis for the Occupancy Certificates and the subsequent withdrawal of the certificates can still be accepted. The later inspections provide independent and consistent material supporting the earlier finding that the project had not attained completion and fitness for occupation in all respects.

66.11. The order dated 10.01.2023 had been quashed by the order dated 11.12.2023. That order dated 11.12.2023 has now been recalled under Point No.(ii) on the ground that it was obtained upon suppression of material facts. Once the order dated 11.12.2023 is recalled, the order dated 10.01.2023, which had been quashed by the recalled order, necessarily stands revived. The recall restores the position that existed immediately before the order dated 11.12.2023 was passed.

66.12. In view of the findings recorded in this judgment regarding the defective basis of the Occupancy Certificates, the subsequent inspection material and the sufficiency of the opportunity afforded to the petitioner before

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the order dated 10.01.2023, there is no reason to interfere with the order dated 10.01.2023.

66.13. Accordingly, this Court finds that respondent Nos.2 and 3 had the power to reconsider and withdraw the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017; the petitioner was afforded a reasonable opportunity to respond before the order dated 10.01.2023 was passed, which opportunity it did not avail itself of; and the subsequent inspection material supports the conclusion that the project had not been completed and was not fit for occupation in all respects.

66.14. Consequently, upon recall of the order dated 11.12.2023, the order dated 10.01.2023 stands revived and shall operate in accordance with law.

66.15. This Court answers Point No.(ix) by holding that the subsequent cancellation/withdrawal of the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were within the jurisdiction of the competent authority and was

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in accordance with law and the principles of natural justice.

67. **Answer to Point No. (x): What is the effect, if any, of the Occupancy Certificate and the present proceedings upon the applicability of RERA, and whether such question is required to be determined in the present proceedings?**

67.1. Sri. Joshua Hudson Samuel submitted that the Occupancy Certificates for certain villas were issued on 19.09.2016, 14.12.2016, 15.03.2017 and 10.04.2017, before Section 3 of the Real Estate (Regulation and Development) Act, 2016 came into force on 01.05.2017, the project ceased to be an "ongoing project" and consequently falls outside the purview of that Act. He submitted that the Occupancy Certificates, having been issued by the competent authority, carry a presumption of validity that must be given effect to unless set aside in accordance with law, and that this presumption governs the question of RERA's applicability.

67.2. Sri. Suraj Sampath submitted that the mere existence of a document styled as an Occupancy Certificate cannot, by itself, take a

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project outside the definition of an "ongoing project" if the certificate does not reflect the actual completion of the project. In support of this submission, he relied upon the decision of the Hon'ble High Court of Madras in **P. Anandasundaresan v. Akshaya Pvt. Ltd.**, [LAWS (MAD) 2025(1) 59(DB)] more particularly paragraphs 6, 7(a), 7(b), 8 and 9. Referring to paragraph 8, he submitted that obtaining a completion certificate is mandatory and cannot be substituted by a letter issued by the Panchayat purporting to record completion. He further relied upon paragraph 9 for the proposition that where the material on record does not establish actual completion, a project continues to remain an ongoing project notwithstanding a certificate or other communication suggesting otherwise.

67.3. Learned counsel next relied upon the decision of the Hon'ble Allahabad High Court in **Paramount Prop. Build. Pvt. Ltd. v. State of U.P. and Others**, [Writ Civil No. 12574/2020] more particularly paragraphs 6, 8, 18, 19 and 20. Referring to paragraph 18, he submitted that where development works have not been

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completed, merely applying for a completion certificate does not take the project outside the definition of an “ongoing project”.

67.4. Learned counsel also relied upon the decision of the Hon'ble High Court of Madras in ***M/s Sare Shelters Project Pvt. Ltd. v. Sare Squires***, [CMSA No. 27/2020] more particularly paragraphs 24, 27, 28 and 32 to 36. Referring to paragraphs 32 and 33, he submitted that completion has to be assessed with reference to the requirements of the Act and the actual completion of the project and cannot be determined merely on the basis of a certificate issued by a local authority. According to him, completion must be in all respects and in its entirety.

67.5. The submission of learned counsel, based on these decisions, is that the character of a project cannot be determined merely by the nomenclature of the certificate relied upon by the promoter. What is material is whether the project was, in fact, completed in accordance with the applicable statutory and contractual requirements. A certificate issued without such

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factual verification, according to him, cannot by itself take an otherwise incomplete project outside the ambit of the Real Estate (Regulation and Development) Act, 2016.

67.6. Learned counsel then addressed the question as to which forum is competent to determine whether the project is an "ongoing project". He relied upon the decision of this Court in **Raffles Residency Private Limited and Ans Connectors Private Limited**, [CMP No. 504 of 2021 C/W CMP No. 494 of 2021] more particularly paragraphs 12 to 14 and submitted that where proceedings are pending before the Real Estate Regulatory Authority, questions concerning the Authority's jurisdiction, including whether the project is an ongoing project, are matters for the Authority to determine, having regard to the overriding effect of Section 89 of the Act.

67.7. He also relied upon **Sakiri Vasu v. State of Uttar Pradesh and Others**, [(2008) 2 SCC 409] more particularly paragraphs 18 to 22, which have already been considered under Point No.(v) in the context of implied powers.

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Applying that principle to the present issue, learned counsel submitted that the power conferred upon the Real Estate Regulatory Authority to determine whether a project is an ongoing project necessarily includes the incidental power to examine the validity and evidentiary value of an Occupancy Certificate relied upon by the promoter to contend that the project had been completed.

67.8. Learned counsel therefore submitted that this Court ought not to record any finding which would foreclose or prejudice the determination to be made by the Real Estate Regulatory Authority. According to him, the petitioner must remain free to contend before the Authority that the project falls outside the Act, while the allottees must likewise remain free to contend that the project continued to be an ongoing project and was therefore subject to the Act.

67.9. This Court accepts the principle emerging from ***P. Anandasundaresan, Paramount Prop. Build. Pvt. Ltd. and Sare Shelters***, namely, that whether a project is complete, for the purpose of determining whether it remains an

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"ongoing project" under the Real Estate (Regulation and Development) Act, 2016, is a question of fact and substance. Findings have already been recorded under Points No.(vi), (vii) and (viii) that the verification preceding the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were inadequate and that the completion certificates on which it was based did not reflect the actual state of the project.

67.10. The question whether the project is an "ongoing project" within the meaning of the Act, however, is not required to be decided by this Court in the present proceedings. Determination of that question and may require consideration of the project as a whole, the extent of development and completion, the agreements entered into with individual allottees, the timelines applicable to them and the consequences, if any, under the Act. These matters fall within the jurisdiction of the Real Estate Regulatory Authority, particularly when proceedings concerning the same project are already pending before it.

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67.11. The decision in ***Raffles Residency Private Limited and Ans Connectors Private Limited (incidentally a case filed by the Petitioner itself)***, particularly paragraphs 13 and 14, supports this approach. Having regard to the special mechanism created under the Act and the overriding effect of Section 89, an objection concerning the jurisdiction of the Real Estate Regulatory Authority, when proceedings are pending before it, is to be raised before the Authority itself. The principle stated in ***Sakiri Vasu***, particularly paragraphs 18 to 22, also supports the conclusion that the Authority, having jurisdiction to determine whether a project is an ongoing project, possesses the necessary incidental power to examine the material placed before it, including the Occupancy Certificates relied upon by the promoter.

67.12. This approach is also consistent with the course adopted earlier in these proceedings when the pendency of proceedings before the Real Estate Regulatory Authority was brought to the notice of the Court. The present writ petition concerns the legal framework governing the issuance and

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withdrawal of the Occupancy Certificate. The rights and liabilities of the parties under the Real Estate (Regulation and Development) Act, 2016 are matters for determination by the Authority.

67.13. The findings recorded by this Court under Points No.(vi), (vii) and (viii) concerning the inadequacy of the verification preceding the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 and the material bearing upon the actual completion of the project may be placed before and considered by the Authority along with the other material available before it. Those findings shall not, however, be treated as a determination by this Court of the question whether the project is an “ongoing project” under the Act.

67.14. Accordingly, this Court leaves open for determination by the Real Estate Regulatory Authority the question whether the project constitutes an “ongoing project” within the meaning of the Real Estate (Regulation and Development) Act, 2016 and, consequently,

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what rights and liabilities arise therefrom. The Authority shall consider the question independently, in accordance with law and on the material placed before it. Neither the petitioner nor the impleading applicants shall be entitled to contend that this judgment has conclusively determined the applicability or otherwise of the Act to the project.

67.15. The cancellation of the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 has already been upheld under Point No.(ix). The fact that the Occupancy Certificates stands cancelled shall, however, not by itself be treated as a determination by this Court that the project is or is not an "ongoing project" under the Real Estate (Regulation and Development) Act, 2016. That question remains for determination by the Real Estate Regulatory Authority in the pending proceedings.

68. **Answer to Point No.(xi): What relief, if any, is the petitioner entitled to in the writ petition and what relief, if any, are the impleading applicants entitled to?**

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- 68.1. Sri. Joshua Hudson Samuel submitted that the petitioner is entitled to the reliefs originally prayed for, namely quashing of the notice dated 10.01.2023 and a direction that the petitioner be given sufficient opportunity before any further action is taken with regard to withdrawal of the Occupancy Certificate, together with dismissal of both I.A. No.1/2024 and I.A. No.2/2024.
- 68.2. Sri. Suraj Sampath submitted that the impleading applicants are entitled to recall of the order dated 11.12.2023 and dismissal of the writ petition.
- 68.3. Sri. M.S. Devaraju submitted that respondent Nos.2 and 3 are entitled to proceed against the petitioner in accordance with law once the true position regarding completion and verification is placed beyond doubt.
- 68.4. The relief to which the parties are entitled follows from the findings already recorded. The reasoning supporting those findings need not be repeated here.

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68.5. The order dated 11.12.2023, having been recalled for the reasons recorded under Point No.(ii), no longer survives. Consequently, the order dated 10.01.2023, which had been quashed only by the recalled order dated 11.12.2023, necessarily stands revived. The effect of the recall is to restore the position that existed immediately before the order dated 11.12.2023 was passed.

68.6. Under Point No.(ix), this Court has already considered the validity of the action culminating in the order dated 10.01.2023 and has held that respondent Nos.2 and 3 had the power to reconsider the Occupancy Certificates in the circumstances of the case. This Court has further found that the notice dated 26.12.2022 afforded the petitioner sufficient opportunity to respond to the deficiencies pointed out and to participate in the proposed inspection, but the petitioner did not avail itself of that opportunity. The subsequent inspection material also supports the finding that the project was not complete. There is, therefore, no ground to interfere with the order dated 10.01.2023.

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68.7. The consequence is that the cancellation/withdrawal of the Occupancy Certificates issued on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 under the order dated 10.01.2023 stands upheld. There is consequently no subsisting Occupancy Certificate in force in respect of the 33 Villas that are covered by the notice dated 26.12.2022. No fresh notice or proceeding before respondent No.2 is necessary for giving effect to this conclusion.

68.8. At the same time, this Court has, under Point No.(x), deliberately left open the question whether the project constitutes an "ongoing project" within the meaning of the Real Estate (Regulation and Development) Act, 2016. That question, and the consequences arising therefrom, are to be determined by the Real Estate Regulatory Authority in the proceedings pending before it. Nothing in the present judgment shall be construed as deciding that question.

68.9. The findings recorded in this judgment concerning the Occupancy Certificates, the

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adequacy of the verification preceding its issuance, the actual state of completion of the project and the circumstances in which the certificate came to be issued may be placed before the Real Estate Regulatory Authority and considered by it along with the other material before it. Those findings shall not, however, be treated as a determination by this Court of the question whether the project is an "ongoing project" under the Act.

68.10. The relief sought by the petitioner in the writ petition therefore cannot be granted. The order dated 10.01.2023, which stands revived upon recall of the order dated 11.12.2023, is upheld. The Occupancy Certificate stands cancelled and there is no subsisting Occupancy Certificate in respect of the 33 villas that are covered by the notice dated 26.12.2022. The rights and liabilities of the petitioner, the impleading applicants and other allottees under the Real Estate (Regulation and Development) Act, 2016 are left to be determined by the Real Estate Regulatory Authority in accordance with law.

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68.11. In view of the above, no further direction is required to be issued to respondent No.2 to initiate fresh proceedings concerning the Occupancy Certificates except as stated in answer to point No.(ix). The matter stands concluded to that extent, subject to the determination by the Real Estate Regulatory Authority of the issues falling within its jurisdiction.

69. **Answer to Point No.(xii): What consequential directions are required to secure compliance with the applicable planning, building and occupancy requirements, while preserving the rights of purchasers and issues pending before RERA?**

69.1. The findings recorded under the earlier Points require certain consequential directions. Under Points Nos. (iii) to (v), the power to issue an Occupancy Certificates for the project vested in respondent No.2. At the relevant time, however, respondent No.2 had not adopted the Model Bye-laws of 2015 and there was no prescribed procedure for verifying whether a project was complete before permitting occupation. Under Points Nos. (vi) to (viii), the Occupancy Certificate issued on 19.09.2016,

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14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017 were not preceded by adequate inspection or verification.

69.2. The completion certificate issued by the project architects, M/s. Karan Grover and Associates, also did not reflect the actual condition of the project, but certified an incomplete project as a completed project. As recorded under Point No. (vii), the project as a whole was not complete and fit for occupation when the certificates were issued. At the same time, this Court has not examined the condition of each individual villa, particularly since several villas have been sold and occupied and the Occupancy Certificates issued in respect of them have not been challenged. Under Point No. (x), the question whether the project is an "ongoing project" under the Real Estate (Regulation and Development) Act, 2016 has also been left open for decision by the Real Estate Regulatory Authority.

69.3. These findings show that the matter is not limited to the thirty-three villas covered by the notice dated 26.12.2022. They also disclose the

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absence, at the relevant time, of a clear procedure for a Gram Panchayat within a notified Local Planning Area to verify completion before permitting occupation. The individual rights of purchasers also depend upon facts which have not been examined in these proceedings.

69.4. The directions must therefore deal with three matters: the present status of the project; the rights of purchasers and allottees; and the steps required to avoid a recurrence of the deficiencies noticed in this case. The following directions are accordingly issued:

69.4.1. Respondent Nos.2 and 3 shall not treat this judgment as either permitting or prohibiting occupation of all the sixty-one villas. If a fresh application for permission to occupy any villa is made by the petitioner or a person claiming under it, the application shall be considered in accordance with the Circular dated 05.08.2024 after completing the remaining works and payment of property tax. There shall be

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joint verification with the jurisdictional Planning Authority of compliance with the sanctioned plan, building licence and Commencement Certificate. The required technical opinion shall also be obtained. The particular villa shall be inspected at site and photographed. Permission shall not be granted merely on the basis of a certificate issued by an architect or engineer.

69.4.2. This judgment shall not affect the Occupancy Certificates already issued and subsisting in respect of villas other than the thirty-three villas covered by the notice dated 26.12.2022, including Villa Nos.8 and 53. The rights of the purchasers of those villas, including the impleading applicants, shall also remain unaffected. Such Occupancy Certificates can be questioned only in independent proceedings before a competent forum and in accordance with law.

69.4.3. The petitioner shall complete the pending finishing and infrastructure

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works in all villas which remain unsold or incomplete. This shall include reinstatement of doors, windows and glass facades, provision of electricity connections, and completion of internal roads and common infrastructure. The works shall be completed within six months from the date of this judgment, as undertaken by the petitioner in its affidavit dated 12.03.2024.

69.4.4. The petitioner shall also clear the outstanding property-tax dues relating to the unsold villas and the clubhouse within ninety days from the date of this judgment. The petitioner shall report compliance to respondent No.2, which shall verify the same by physical inspection.

69.4.5. The deviations noticed during the joint inspections conducted pursuant to the orders of this Court, including the location of the Sewage Treatment Plant, encroachment upon the rajakaluve, incomplete internal roads and non-

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maintenance of the diesel generator, shall be examined by respondent No.2 and the jurisdictional Planning Authority. The petitioner shall be required to rectify or, where permissible, regularise the deviations within the time fixed by the competent authorities. If the deviations are not rectified or regularised in accordance with law, the competent authorities shall be free to take such action as is permissible in law, including action under Section 64(5A) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993.

69.4.6. Respondent No.2 and the Principal Secretary, Rural Development and Panchayat Raj Department, shall complete the examination directed by the order dated 07.07.2025 regarding the role of the then Panchayat Development Officer, Sri C. Muniraju, and other officials responsible for processing and issuing the Occupancy Certificates on 19.09.2016, 14.12.2016, 15.03.2017, 10.04.2017 and 05.05.2017

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without adequate verification. If the examination discloses any lapse warranting action, appropriate disciplinary or other action shall be taken in accordance with law. Compliance shall be reported within three months.

69.4.7. Respondent No.2 shall also examine the conduct of the project architects, M/s. Karan Grover and Associates, in issuing the completion certificate which did not reflect the actual condition of the project. If considered necessary, the matter may be placed before the Council of Architecture or any other competent body in accordance with law.

69.4.8. Respondent No.2 shall, within three months from the date of this judgment, place before its General Body a proposal for adoption of the Karnataka Panchayat Raj (Zilla Panchayat, Taluk Panchayat and Gram Panchayat Control of Erection of Buildings) Model Bye-laws, 2015, as amended from time to time. Compliance shall be reported to the Principal

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Secretary, Rural Development and Panchayat Raj Department.

69.4.9. The Principal Secretary, Rural Development and Panchayat Raj Department, and the Principal Secretary, Urban Development Department, shall continue, through the Unified Land Management System and the Court Case Monitoring System onboarding directed by orders dated 04.04.2025 and 04.06.2025, to monitor the adoption of the Model Bye-laws by Gram Panchayats situated within notified Local Planning Areas and compliance with the joint-inspection procedure prescribed by the Circular dated 05.08.2024.

69.4.10. Nothing in this judgment shall be understood as deciding whether the project is or was an “ongoing project” under the Real Estate (Regulation and Development) Act, 2016. That question has been left open under Point No. (x) for decision by the Real Estate Regulatory Authority.

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69.4.11. The petitioner shall not contend before the Authority or any other forum that the cancellation of the Occupancy Certificates, or any finding in this judgment, has decided that question. The impleading applicants and other allottees are free to place this judgment before the Authority and pursue their proceedings in accordance with law. The Authority shall decide the issue on the basis of the law and material before it.

69.4.12. As recorded under Point No. (ix), respondent No.2 need not issue any further notice or commence any fresh proceeding to give effect to the cancellation of the Occupancy Certificates in respect of the thirty-three villas covered by the notice dated 26.12.2022. The order dated 10.01.2023 shall stand revived and shall be given effect to in accordance with law.

69.4.13. The petitioner shall, however, be free to make a fresh application for permission to occupy any of those villas after

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completing the required works and complying with the aspects indicated above.

69.4.14. The petitioner, the impleading applicants and every purchaser of a villa in the project are at liberty to approach the jurisdictional civil court, the Real Estate Regulatory Authority or any other forum competent in law for relief concerning their individual rights, including possession, refund, compensation or specific performance. Those claims have not been decided in these proceedings.

69.4.15. For these reasons, Point No. (xii) is answered by holding that the above directions are necessary to ensure compliance with the applicable planning, building and occupancy requirements, while protecting the rights of purchasers and leaving undecided the matters which have not been adjudicated in these proceedings, including whether the project is or was an "ongoing project"

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under the Real Estate (Regulation and Development) Act, 2016.

70. **Answer to Point No.(xiii): What Order?**

70.1. For the foregoing reasons, this Court passes the following

ORDER

- (i) I.A. No.1/2024 is **allowed**. The applicants who filed that application are impleaded as proper parties to Writ Petition No.3640 of 2023, for the limited purpose and to the extent set out in the reasoning on Point No.(i).
- (ii) I.A. No.2/2024 is **allowed**. The order dated 11.12.2023 passed in Writ Petition No.3640 of 2023 stands recalled, on the ground of suppression of material facts, for the reasons recorded on Point No.(ii).
- (iii) Writ Petition No.3640 of 2023 is **dismissed**. The order dated 11.12.2023, having been recalled for the reasons recorded under Point No.(ii), no longer survives. Consequently, the order dated 10.01.2023, which had been quashed only by the recalled order dated



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11.12.2023, stands revived. The cancellation/withdrawal of the Occupancy Certificates is accordingly upheld.

- (iv) The directions issued under Point No.(xii) shall be complied with.
- (v) All other pending applications, if any, stand disposed of in terms of the findings and directions contained in this judgment. No further orders survive for consideration.

This Court has been assisted by Mr. Sourav,
Law Clerk, in the formulation of this Judgment.

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(SURAJ GOVINDARAJ)
JUDGE

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