

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

DATED THIS THE 26th DAY OF NOVEMBER, 2025

PRESENT

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

AND

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

APPEAL NO. (K-REAT) 17/2024

BETWEEN:

1. Mrs. Arshi Ahmed,
W/o E.Suhail Ahmed,
Aged about 44 years,
2. Mr. E.Suhail Ahmed,
S/o Late C. Latheef Ahmed,
Aged about 50 years,

Both are residing at
T-06, 1302,
L & T Realty Raintree Boulevard,
Byatarayanapura,
Bellary Road,
Bengaluru – 560 092.

...APPELLANTS

(By Parties in Person)

AND:

1. M/s. L & T Construction Equipment Limited
(Now known as L & T Realty Developers Ltd.)
A Limited Company incorporated under the
Companies Act, 1956, Having its
Registered office at L & T House,
Ballard Estate, Mumbai – 400 001.

Having its branch office at
Bellary Road, Next to GKVK,
Byatarayanapura,
Bengaluru – 560 092,
Reptd by its Managing Director

2. The Real Estate Regulatory Authority
Karnataka, having office at:
Second Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027,
Represented by its Secretary.

...RESPONDENTS

(By Smt. Sujatha H.H. Advocate for R-1
Sri. Rajashekhar K., Advocate for 2nd Respondent-RERA)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 20.01.2024, passed by the 2nd Respondent-RERA in dismissing their Complaint No.CMP/211104/0008514.

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

JUDGMENT

The facts leading to this Appeal by the Appellants No. 1 and 2-the Allottees (hereinafter referred to as 'the Allottees' for short) are that, the Respondent No.1/Promoter of the project "L & T Realty Raintree Boulevard" developed in the land measuring about 67 acres 4.5 guntas situated at Bytrayanapura Village, Yelahanka Hobli, Bengaluru North Taluk and the Promoter is registered with RERA, as five clusters namely LTCEL RAINTREE BOULEVARD CL1 TO CL5 and undertaken to complete the project before the

authority. The Allottees on the basis of the representations made and believing the version of the 1st Respondent - Promoter and trusting the brand name of L & T, they proceeded to book an Apartment in Tower CL2, by paying advance amount of Rs.5,55,000/- on 20.04.2018 and in furtherance of said booking and allotment, the Promoter entered in to a Registered Agreement of Sale on 27.08.2018 agreeing to sell apartment bearing No.1302 in Tower -6, which was part of Phase-1 of the Project, as per the specifications depicted in the Agreement subject to making the payments as per payment schedule in the Agreement for total sale consideration of Rs.1,89,52,406/- on the carpet area. The Promoter showed a model apartment complex which was displayed in the marketing office and the Allottees were also shown model apartment. The specifications as shown in the model apartment complex and model apartment would be adhered to. At the time of entering into Agreement of Sale, the Promoter has not furnished necessary documents of the said project.

2. It is further contended that the Allottees sought for changes to be made in the Agreement since, the clauses contained therein were one sided. They were assured by the Promoter that more than 600 Allottees have already signed the Agreement of Sale and it is the standard Agreement that satisfy all the applicable laws and refused to amend any clause. The Allottees were making

payments as per the terms of Agreement of Sale, but the Promoter failed to complete the Project as agreed. The Promoter was giving only 15 days period to make the payments and threatening to levy interest on delay payments. In October 2019 the payment got delayed by a few days, as such the Allottees have paid a sum of Rs.26,333/- for one of the demand raised by the Promoter on 4.6.2020 along with interest as per the demand raised by the Promoter. The Promoter assured to handover possession of the Apartment on 31.12.2020, unless there is delay due to Force Majeure.

3. It is further case of the Allottees that on 14.2.2020, the Promoter communicated the Possession Letter by claiming that the construction of the building was complete and that the BBMP has issued Occupancy Certificate in respect of Tower 'C' on 21.8.2019, and demanded payment of entire balance sale consideration of Rs.31,84,710/- and other sums amounting to a total sum of Rs.43,08,509/- and to get the sale deed executed in their favour. On 26.2.2020, the Allottees have inspected the flat and found that all the developmental works in Tower – 6 as well as the project had not been completed. The Allottees caused a communication in this regard to the Promoter calling upon them to inform them as to the date on which all the indoor amenities and

facilities would be fully ready to be used in the project. They have also sought other details regarding the project including the copy of Occupancy Certificate along with documents evidencing obtaining of water, sanitation and permanent electric connection and individual electrical meter for their flat along with draft sale deed. The said notice was sent by email as well as through RPAD, but the Promoter did not reply, but issued the possession demand letter to levy interest on any delayed payment in getting the sale deed. Even after receipt of email dated 7.3.2020, the Promoter failed to furnish the documents sought by the Allottees.

4. After receipt of draft sale deed, the Allottees sought certain corrections to be carried out, since they found certain anomalies. The project had not been completed in all aspects and the Promoter had proceeded to modify the sanctioned plans and changed the specifications in the project without due consent of the Allottees, they protested various covenants which were one sided including the covenants regarding levy of maintenance charges. The Allottees have paid total sale consideration of Rs.1,89,52,406/- together with an additional sum of Rs.5,00,000/- plus 12% GST towards additional car parking and a sum of Rs.23,503/- altogether total sum of Rs.1,95,35,909/-. The Promoter has executed the sale deed in their favour on 5.6.2020. The Promoter neither carried out any pre-delivery, quality

inspection and submit a report nor allowed the Allottees to carryout a third party inspection. The Allottees have taken the flat on 22.6.2020 and were asked to identify the snags in the flat that would be rectified at the earliest. During inspection, the Allottees found there were many snags which required rectification. After completing this process, the Allottees were handed over the letter styled as "Possession Certificate and Possession Letter" and were asked to sign the same before handing over the keys of the Flat. On perusal of the said letter, the Allottees found that the contents of the said document were not in conformity with the actual state of the project and were also in derogation of their rights and illegal, since they were being asked to "waive all claims, if any, under any law for the time being in force and they are taking possession without any dispute or demur." The Promoter not replied to their notice dated 27.2.2020 and they had also found the project apartment was not complete in all aspects as there were many snags.

5. The Allottees were informed either they sign the possession certificate and possession letter and to take possession of the flat or if they refuse to sign, the keys of the flat would not be given to them. As the Allottees have already paid the entire sale consideration, having left with no other choice, but to succumb to

the unreasonable demand of the Promoter, though they were not satisfied with the completion of work, under duress and force they had signed the possession certificate and took possession. Thereafter set out the violations, illegal acts of the Promoter under the following headings;

- i) Modification of development plan and building plan without obtaining consent as required u/s.14(2)(ii);
- ii) Not making available sanctioned plans and stage wise time schedule as required u/s.11(3)(a)(b) & Sec.19(1);
- iii) Premature demand for payment of balance sale consideration, premature reporting of completion of the project on the web portal of KA- RERA;
- iv) Illegally obtaining the Occupancy Certificate;
- v) Common area allotted illegally as second / additional car parking space;
- vi) Delay in forming the Association of allottees, conveying and delivering possession of the common areas to the Association;
- vii) Forcefully obtaining signature on the possession letter;
- viii) Unfair trade practice of promoting the sale of the project as "L & T realty Raintree Boulevard" by using the trade mark 'L & T' of its principal and now distancing the brand name 'L & T' from the project;

ix) Delay compensation by way of interest for failure of the respondent to complete and give possession of the apartment and the common areas in accordance with the terms of the agreement of sale and filed the complaint seeking for the reliefs in respect of the above violations of the Act.

6. Upon issuance of summons, the Respondent –Promoter appeared and filed its objection. In the objection the Promoter except execution of Agreement of Sale in respect of the Flat allotted to the Allottees, has denied entire complaint averments. It is further contended that, they have already completed the construction, obtained Occupancy Certificate and also handed over possession of the Flat No.1302 to the Allottees before the committed date of possession. The 2nd Complainant in his capacity as a President of erstwhile illegal association, cancelled by the competent authority, has already filed a similar complaint in CMP.No.8191 before the Authority with similar fact, claiming similar reliefs and he was being unsuccessful, in obtaining any favourable relief in the said complaint, has filed the present complaint.

7. It is further contended that, as per the terms of Agreement of Sale, the Promoter agreed to develop the project as per the Development Plan dated 18.9.2014 and the building plan sanctioned by BBMP on 26.5.2016 with respect to the registered

CL2. The Allottees had purchased the flat, without knowing or scrutinizing the BDA plan and BBMP plan and blindly signed the Agreement of Sale, is contradictory to their own claims. The Allottee No.2 is an advocate and would never proceed to sign any agreement that would go against the interest of the Allottees. The Promoter denied that they threatened the Allottees to levy interest on delayed payments.

8. It was contended that, the Allottees themselves have paid an amount of Rs.26,323/- to them, towards delay in making payments. All demands for payments were made in accordance with the Agreement of Sale and the Act. On 14.2.20220, they have communicated the Possession Demand Letter, claiming that the construction of the building is complete and upon which the BBMP has issued Occupancy Certificate in respect of Tower-6 on 21.8.2019. They have demanded entire balance sale consideration and all other sums, calling the Allottees to come forward to execute the Sale Deed in their favour. The Allottees demanded for inspection of the Flat on 26.2.2010 and the sale deed was executed on 5.6.2020. All the snags highlighted by the Allottees were rectified. All the documents which were requested by the Allottees, have already been uploaded in the portal maintained by the Authority.

9. It was further contended that, the Allottees have not sought for any corrections to be carried out in the Sale Deed. They have delivered the Flat to the Allottees as agreed and there is no delay. Though sale deed was registered on 5.6.2020, the Allottees waited till 22.6.2020 to take possession of the flat, as they wanted some snags to be rectified, though they were aware the defect liability period under RERA is 5 years and is not a matter to be settled before taking possession. However, the Allottees have refused to take possession till snags were rectified. The possession letter is in conformity with the actual state of the project. The Promoter has withdrawn all objectionable clauses as directed by the Authority and an intimation regarding the same has been sent to the Allottees vide email dated 11.5.2022.

10. The promoter submits that, the project was constructed as per the plan sanctioned and the entire construction has been taken place in seven registered projects plan sanctioned and RERA registration has been procured for the same. They have not violated any provisions of the Act. The claim that there is a second club house which was shown to them is completely questionable. The said club house with amenities are also clearly detailed by the Allottees vide email dated 27.2.2020, as part of the Agreement of Sale. All facilities are provided to the Allottees and residents of all

age groups. The Promoter has always been very transparent about all the sanctioned and compliances and all the Allottees have been informed through proper disclosures. The Allottees have raised the objections at a belated stage, without having any proper proof or evidence to substantiate the same. They are portraying the Promoter in 'bad light' thereby making other Allottees anxious and restless, even though there is no issue at all in the project. Their acts causing severe damage to their reputation and the project thereby leading to severe financial hardship.

11. It is further contended that, only after receipt of Occupancy Certificate, the Promoter has taken next steps by following due process of law and there is no illegality as alleged by the Allottees. The Promoter has obtained all the necessary approvals / NOCs from the competent authorities. The Promoter has been abiding every law in force and been timely obtaining all the statutory permissions as per the prevailing laws and bye laws.

12. The Allottees after having booked the apartment and before execution of the Agreement of Sale, applied for allotment of a second / additional car parking space on 31.7.2018 and agreed to bear the cost of the same. The car parking space was subsequently allotted, much after the date of execution of the Sale Deed. The Promoter has formed an Association of Allottees and

executed registered Deed of Declaration under the Karnataka Apartment Ownership Act, 1972 on 30.11.2020. As such, it is not liable to be penalized for violation of any provisions of the Act. The process of formation of Association has been initiated and the same has been communicated to all the Allottees vide email dated 5.8.2022. The acts of the Promoter by now distancing the name 'L & T' from the project does not amounts to unfair trade practice, since project is one which is affiliated to the brand "L & T", withdrawing the trademark "L & T" from the project also does not amounts to a deceptive practice of making the Allottees to believe that. It has the approval or affiliation of its parent company Larson and Toubro Ltd., which it has now withdrawn without any notice to the Allottees. There is no such violation of law as alleged by the Allottees. As per the terms of the Agreement, agreed to provide the amenities for benefit, enjoyment and use of Allottees of all Phases of residential development on the said land which is measuring 104108.71 square meters. The definition of common areas, said land/project land, phases of land is also defined under the Agreement of Sale. The Promoter has completed the project and entire development works along with all the amenities and facilities as promised within the stipulated period and also provided permanent electricity as agreed. The piped gas facilities were made

available in November 2020. Hence, the Promoter prayed to dismiss the complaint.

13. After hearing both sides, the Authority partly allowed the Complaint bearing No.CMP/211104/0008514, vide its order dated 20.1.2024, *wherein the Promoter is directed to return the original possession demand letter dated 22.6.2020 in favour of Allottees within 30 days from the date of the Order and obtain revised possession letter. Further, the Authority under the Powers vested u/s.37, directed the Promoter to return all other possession letters given to all the Allottees and to issue revised possession letters within 30days from the date of the order. Further directed the Promoter, to submit compliance report in this regard before the Authority. Further the Allottees are at liberty to file a fresh complaint for compensation for deficiency in service and for premature demand before Adjudicating Officer, KRERA. Further directed the Promoter, to allot additional car parking space to the Allottees as per BBMP guidelines, failing which the Promoter shall repay the money collected towards allotment of additional car parking space to the Allottees. Further directed that the Promoter is liable for any structural defect of the said project for 5 years from the date of formation of Association and handing over possession of common areas. Further directed the Promoter to*

provide all the amenities and facilities as per agreements of sale and to transfer entire corpus fund to the Association of Allottees of the said project. Further ordered that the Allottees are at liberty to enforce the said order in accordance with law if the Promoter fails to comply with the order.

14. Being aggrieved by the impugned order dated 20.1.2024, the Appellants-Allottees have preferred this Appeal on the ground that, the Impugned Order is erroneous, contrary to the fact of the case and law, principles of natural justice and is liable to be modified to the extent of granting reliefs as sought in the appeal. Further contended that the Authority has passed the order without considering the Complaint filed by the Allottees, the materials on record and the written arguments filed by them. The Authority without calling upon the Promoter to prove if it has obtained consent of 2/3rd of the Allottees in the project as required u/s.14(2), proceeded to pass the impugned order. The Promoter has virtually ignored the provisions of Sec.14 of the Act, notwithstanding anything contained in any law, contract or agreement, not to modify the sanctioned plans without obtaining 2/3rd consent of the Allottees in the Project holding that the Allottees were aware of the modified plan, before registration of the sale deed. The Authority has already held that the Promoter

has modified the plans without following the provisions of the Act, has completely ignored the findings given in the interim order dated 30.3.2023. The findings in the interim order and the findings in the impugned order are completely contradictory, which shows that the order was passed without application of mind and opposed to law. The Authority has failed to exercise its power under the Act, by refusing to take action in respect of the illegal office building constructed on the eastern side of the project by the Promoter in utter violation of the Act without taking consent of the Allottees. The Authority has completely ignored the mandatory requirements of the Act, which the Promoter has deliberately failed to adhere to, thereby allowing the Promoter to go scot-free, thus defeating the very purpose of the enactment of the Act prohibiting the modification of plans without obtaining 2/3rd consent of the Allottees. The Authority has given contradictory findings with regard to duty of the Promoter to provide the documents relating to the project to the Allottees. The observations of the Authority that, in view of the completion of the development works and that the apartment has been handed over to the Allottees in time, the requirement of providing stage wise time schedule of completion as per Sec.11(3)(A) would not be required to be complied with is not correct. The Occupancy Certificate dated 21.8.2019, on the face of it, does not meet the requirements of law and the

Authority, inspite of there being glaring defects in the Occupancy Certificate, the Authority failed to direct the Promoter to obtain a proper and valid Occupancy Certificate. The finding of the Authority that allotment of tandem car parking space in the basement as illegal, ought to have considered that the tandem car parking space that is allotted in part of the common areas and therefore direct the Promoter to pay the sum of Rs.5,00,000/- to the Apartment owners Association, in the event of failure on the part of the Promoter to allot additional car parking space. The Authority has failed to elucidate that the defect liability period extends to all defect narrated in Sec.14(3) and only stated structural defect which will lead to the Promoter interpreting that it is limited to structural defects only and will put the Allottees and other Allottees in the project, into difficulties and allow the promoter to avoid fulfilling its obligations. The Authority failed to notice the fact that, the project was promoted by the Promoter by relying on the brand name "L & T" and promoted the project by prefixing the brand name "L & T" to the name of the project in all its representations while marketing the project. The name of the project being "L & T Realty Raintree Boulevard" also finds a mention in the Agreement, as well as in the Sale Deed. However, at the time of formation of the Association and for any future reference to the project, the brand name "L & T" has been

conveniently done away with. The Authority has failed to appreciate the intent of the enactment and actions of the Promoter which call for strict action under the provisions of Sec.7 of the Act. The Authority while considering the question of premature demand having appreciated the fact that the Promoter has failed to complete the development works in the project till date and also having considered the fact that the notice sent by the Allottees on 27.2.2020 has remained unanswered and further the Promoter itself has admitted in another proceeding that, as on the date of which the final possession demand was raised, the development works in the project had not been completed, has failed to consider the delay and to grant delay period interest in accordance with Sec.18(1) of the Act. The Authority has completely failed to consider the judgments relied upon by the Allottees while passing the order. The Authority has not passed a reasoned order, while disallowing the reliefs sought by the Allottees. Viewed from any angle, the impugned order passed by the Authority to the extent of the grounds urged, is arbitrary, bad in law, unsustainable and therefore, the same is liable to be modified by allowing the appeal. In this appeal the Allottees have sought for following reliefs:

i) To pass orders directing the Promoter to demolish the office building erected on the eastern side of the project where the club house was proposed to be constructed as per the building plan

sanctioned by BBMP Vide LP. No. BBMP/ADDL. Dir/JDNorth/LP/0191/2015-16 dated 26.5.2016;

ii) Direct the Promoter to make available the sanctioned plans, modified plans, all NOCs along with other documents relating to the project as required under the Act and penalize the Promoter u/s.61 of the Act for not adhering to, for contravening with the provisions of Sec.11(3)(a) and (b) by levying penalty of 5% estimated cost of the real estate project;

iii) Direct the Promoter to obtain a valid and proper Occupancy Certificate in respect of the project in accordance with law.

iv) Penalise the Promoter for prematurely demanding for payment of balance sale consideration and thereafter prematurely reporting completion of the project on the web portal of this Authority and therefore for misusing the money collected from the allottees thereby violating the provisions of Sec.4(2)(i)(d) and Sec.60 & 61 of the Act;

v) Direct the Promoter to allot the additional car parking space which is duly sanctioned under the sanctioned building plan failing which direct the Promoter to pay the money collected towards additional car parking space to the Apartment Owners Association.

vi) Penalise the Promoter for failing to adhere to the provisions of Sec.11(4)(e) and Sec.17 of the Act,

vii) To pass orders extending the defect liability period in respect of the project for 5(five) years from the date of formal transfer of the common areas in the project to the Apartment Owners Association as per the provisions of Sec.14(3) of the Act.

viii) Direct the Promoter to include the words "L & T Realty" wherever the name of the project appears including in the name of Apartment Owners Association/Allottees Association that is to be formed.

ix) Direct the Promoter to pay delay period interest from the date of final possession demand and receipt of the sale consideration for the admitted delay in completion and till the date on which it completes all the development works in the project and delivers possession of the same as per the terms of the Agreement of Sale.

15. After service of notice, the Respondents 1 & 2 appeared through their respective counsels. Heard the arguments of Allottees as well as the learned Senior Counsel for the Respondent No.1. In addition to his oral arguments, the learned counsel for Respondent No.1 filed the written arguments. However, the Appellants have reproduced the copy of their written argument

filed before the Authority with citations. The counsel for Respondent No.2 supports the findings of the Authority.

16. Now, the points that would arise for our consideration are:

1. Whether the Appellants prove that the Impugned Order passed by the 2nd Respondent-Authority is arbitrary, bad in law, unsustainable and liable to be modified as prayed for?
2. What order?

17. Our findings on point No.1 in the '**Negative**' for the following:

REASONS

18. Point No. (i):- Before looking into the Points in controversy, we feel it proper to reiterate certain undisputed facts. The Allottees, who are husband and wife, evinced their intention to purchase the flat in question and accordingly executed the Booking Form on 20.4.2018. After completion of other formalities, the Registered Agreement of Sale was executed between the Promoter and Allottees on 27.8.2018. On 5.6.2020, the Registered Sale Deed came to be executed in favour of the Allottees. Thereafter, on 4.11.2021, the Allottees knocked the doors of the Respondent No.2 by filing an online complaint, seeking in all 12 reliefs as detailed in paragraph - 33 of the Impugned Order.

19. On perusal of the alleged shortfall as detailed in Paragraph 5 supra and upon consideration of the statement of objections filed by the Promoter, the Authority has formulated the following points for determination:

- 1. Whether the complainants are entitled to get returned the possession letter dated 22.6.2020 signed by them from the respondent?*
- 2. Whether the respondent is liable to demolish office building erected on the southern side of the project where the club house was proposed to be constructed as per the sanctioned plan?*
- 3. Whether the respondent had modified the sanctioned plan without the consent of allottees are required under section 14 of RERA Act?*
- 4. Whether the respondent is liable to make available the sanctioned plans, modified plans, all NOC's along with other documents relating to the project?*
- 5. Whether the respondent is liable for penalty u/s.61 of the Act for not adhering to for contravening with the provisions of section 11(3)(a) and (b) by levying penalty of 5% estimated cost of the said project?*
- 6. Whether the Occupancy Certificate dated 21.8.2019 is valid and proper?*
- 7. Whether the respondent is liable for penalty for premature demand for payment of balance sale consideration and prematurely reporting completion of the project on the web-portal of this Authority and for misusing the amount collected from the allottees*

and thereby violating the provisions of Sec.4(2)(I)(d) and u/s.60 and 61 of the Act?

8. Whether the respondent is liable to allot additional car parking space which is duly sanctioned under the sanctioned plan failing which the respondent has to repay the money collected towards allotment of additional car parking space to the apartment owners Association?

9. Whether the respondent is enable the formation of an Association of allottees and penalize him for not having adhered to the provisions of section 11(4)(e) and Sec.17 of the Act?

10. Can the defect liability period as provided under section 14(3) can be extended for (5) five years in respect of the project from the date of formation of Association and handover of the common areas of the project to the Association of Allottees?

11. Whether the respondent is liable to include the words "L & T REALTY" wherever the name of the project appears including in the name of the apartment owners Association / allottees Association that is to be formed?

12. Whether the registration granted for all the projects promoted by the respondent u/s.5 of the Act is to be revoked on account of default committed by the respondent and on account of the respondent involving in unfair practice and irregularities?

13. Whether the complainants are entitled for the interest on delay period?

14. What order?

20. After going through the pleadings of the parties and the documents placed before it, the Authority gave its findings on Points No.1, 8 and 10 in the Affirmative, Point No.2 was answered partly in Affirmative and Points No.5, 11 to 13 in the Negative. With respect to Points No.3,4,6,7 and 9, the Authority has come to the conclusion that, those issues do not survive for consideration and ultimately the complaint was partly allowed as averred in paragraph 13, herein above.

21. This being the factual position, it is just and proper to examine each and every reliefs claimed by the Allottees, one after another. As reiterated in paragraph 14, The first relief sought by them is to direct the Promoter to demolish the office building erected on the southern side of the Project where club house was proposed to be constructed as per the building plan sanctioned by the BBMP on 26.5.2016. This issued was discussed by the Authority in length at Paragraphs 52 to 54 of the Impugned Order and has come to the conclusion that, under scheme of RERA Act, Authority has not been conferred with powers to direct for demolition of any structure. Unless such powers are conferred, the Authority cannot direct for demolition of any structure and thereby gave its finding in the negative. At this stage, it is expedient to

look into the provisions contained in Secs.31 to 35 and 40 the RERA Act.

22. Secs.31 to 35 empower the Authority to enquire into the complaints, issue directions and impose penalties. Sec.38 allows the Authority to issue directions for ensuring compliance with the Act. Sec.40 enables recovery of penalty or compensation as arrears of the Land Revenue. Now it is clear that, the RERA has no power to order demolition of the structure. Reiterating the aforesaid provisions, the learned counsel for the Promoter drew our attention on the law laid down by High Court of Punjab & Hariyana at Chandigarh in the case of **Praveen Gambhir and others Vs. Union of India and others.** (CWP No.23526 of 2021) Neutral Citation No.2025 PHHC;046651-DB. In the said decision it was held as under:

"In so far as the vesting of powers of demolition in the RERA authorities are concerned, this Court has drawn a conclusion that no such power of demolition becomes vested in the RERA Authorities. However, the said power of demolition in respect of the constructions deviating from the sanctioned plans, may become vested either in the Commissioner of the Municipal Corporation concerned, or with the Town and Country Planning Department concerned."

23. In case of **M/s. Shreeya Infrastructure Pvt. Ltd., Vs. RERA Authority,** the Hon'ble High Court of Madhya Pradesh has clearly held that, the jurisdiction of RERA is limited to

regulation and adjudication; it cannot assume the powers vested in Municipality or Planning Authority. This being the settled proposition of law, we do not find any laches on the part of the Authority in rejecting the said prayer. As such, no reason to interfere with the said findings given by the Authority.

24. The second, third and sixth reliefs sought by the Allottees are to direct the Promoter to make available the sanctioned plans, modified plans and all NOC's along with all other documents relating to the project as required under the Act and penalize him u/s. 61 of the Act for not adhering to, for contravening with the provisions of Sec.11(3)(a) and (b), Section 11(4)(e) and Section 17 of the Act, by levying penalty of 5% of the estimated cost of the project and to direct the Promoter to obtain a valid and proper Occupancy Certificate. Relating to all those prayers, the Authority has formulated points at Sl.No.4 to 6 and made lengthy discussion on those points and gave its finding at Paragraphs 60 to 70.

25. The vehement contention of the Allottees is that, in spite of their several request to the Promoter to furnish all the required documents such as, sanctioned plan, modified plan, all NOC's from the competent authority and other documents relating to the Project, the Promoter did not bother to furnish the same.

With regard to imposing penalty, 2nd Allottee has vehemently argued that, the Promoter has violated the provisions of Sec.11(3)(a) and (b) of RERA Act and the Occupancy Certificate dated 21.8.2019 obtained by the Promoter is not valid and proper as it was obtained prior to obtaining Fire Clearance Certificate. It was the duty of the Promoter to apply for Occupancy Certificate only after collecting all the NOC's issued by the competent Authorities. Otherwise, such Occupancy Certificate has no recognition in the eye of law.

26. Refuting each and every contentions taken by the Allottees both in their oral as well as written arguments, the learned Senior Counsel for the Promoter has canvassed before us that, they have furnished all the necessary documents of the said project to the Allottees at the time of booking the flat and the Allottee No.1, who is a practicing advocate had booked the said flat after due verification of entire documents. The Promoter has also uploaded entire documents pertaining to the project in their website as well as web portal of K-RERA at the time of registration of project. Further they have kept open the entire documents pertaining to the said project in their office and the Allottees or any intending purchase can visit their office and verify the said documents. When such option is also made available,

Allottees cannot take such contention that they were not provided any necessary documents.

27. Considering the contentions and rival contentions of the parties, the Authority has come to the conclusion that, the Promoter had executed the sale deed of said flat in favour of the Allottees on 5.6.2020 and since then they are in actual possession and enjoyment of their flat. With regard to stage wise completion of the project, while the Promoter claims to have completed the project well within time, obligations cast under the Act has to be complied with. However, in view of the fact that, development has been completed and the apartment has been handed over to the Allottees in time, they are not entitled for such reliefs. The other observations made by the Authority is that, though the Promoter had applied for Occupancy Certificate before obtaining Fire Clearance from the Fire Service Department, Occupancy Certificate was issued subsequent to the Fire clearance. Noticing all those stage wise developments, the Authority has come to the conclusion that, there is no force in the contentions of the Allottees and ultimately Points No.2, 3 and 6 were answered as per aforesaid findings. While examining the facts and circumstances of the case, we are of the opinion that there is much force in the contention of the Promoter. As such, we do not find any ground to interfere with the well reasoned order passed by the Authority.

28. The fourth relief sought by the Allottees is to penalize the Promoter for prematurely demanding for payment of balance sale consideration. Looking into the Order Impugned, this issue was discussed in Paragraphs No.71 to 73 and thereby liberty was given to the Allottees to file a separate complaint before the Adjudicating Officer. Accordingly opportunity was given to the Allottees to agitate the said issue before Adjudicating Officer. Hence, re-agitation of the said issue before this Tribunal does not hold any water.

29. The fifth and eighth reliefs sought by the Allottees is to direct the Promoter to allot additional car parking space which is duly sanctioned under the building plan failing which, direct the respondent to pay the money collected towards additional car parking space to the Apartment Owners Association and to direct the Promoter to include the words "L & T REALTY" wherever the name of the Project appears including in the name of the Apartment Owners Association/Allottees Association that is to be formed.

30. The grievance of the Allottees with respect to their fifth prayer is that Allotment of Tandem car parking space in the basement is illegal and therefore, it is necessary to direct the Promoter to pay a sum of Rs.5,00,000/- which was collected by it

to the Apartment Owners Association, in the event of failure on the part of the Promoter to allot additional car parking space. As stated supra, the Registered Agreement to Sell was executed on 27.8.2018 and as on the date of Agreement of Sale, it was agreed by and between the parties to allot one covered car parking space to the Allottees. For the purpose of clarity, relevant portion of the Agreement of Sale is reproduced as under:

"Residential apartment bearing No.RBT06F1302 on 13th Floor of 06 in the Project "Raintree Boulevard", to be built on the Schedule A-1 Property, admeasuring approximately 1377 sq.ft. carpet area and 1985 sq.ft. of super built up area, with One Car Parking Space/s"

31. Now, it is clear that, as on the date of Agreement of Sale, there was no any demand by the Allottees for additional car parking and no such promise by the Promoter to allot one more car parking space either as tandem or covered parking. Only after execution of the agreement, the Allottees made a request for additional car parking and they have paid additional sum of Rs.5,00,000/-. In this back ground we feel it appropriate to look into the schedule 'D' of the Sale Deed of the Allottees. The schedule 'D' contains the description of the apartment purchased by the Allottees and same is as under:

"Residential apartment bearing No.RBT06F1302 on 13th Floor of Tower 06 in the project 'Raintree Boulevard', built on the schedule B property,

admeasuring approximately 127.93 square meteres (1377 square feet) of carpet area and 184.41 square meters (1985 square feet of super built up area, along with Two Covered Car Parking Space/s (One Tandem) and bearing BBMP Khatha No.239/240/275/88/1, 240/276/89/1373/ T-06/TF-1302."

32. By virtue of the said sale deed, the Allottees were provided with two covered car parking spaces and one among them is tandem parking. But the repeated contention of the Allottees is that, the Tandem car parking made available to them is in a place, which is neither legal nor convenient for their use and enjoyment. On the other hand, the contention of the Promoter is that except tandem car parking provided to the allottees, there is no other car parking space available with them that would suit the convenience of the Allottees. Considering each and every contentions of both Allottees and the Promoter, the Authority has directed the Promoter to refund the said sum of money to the Allottees. The further contention of the Promoter is that, in compliance of the said direction, a cheque for the sum of Rs.5,00,000/- was issued in favour of the Allottees. But without encashing the same, the cheque was returned to the Promoter without assigning any reasons.

33. As stated supra, now the contention of the Allottees is that even if an additional full-fledged car parking slot is not

available with the Promoter, a direction be issued to the Promoter to pay the said money to the Apartment Owners Association. On the other hand the stand taken by the Promoter is that, the alleged Association formed by some of the flat owners is illegal. Further, the Association so formed at the behest of the Allottees is misusing the brand name of 'L & T'. Hence, the 'L & T' has filed a Suit before High Court of Judicature at Bombay in Interim Application (L) No.12610 of 2022 in Commercial IP Suit(L) No.1206 of 2022. On 11.10.2022, the High Court of Judicature at Bombay passed an Interim Order in their favour, restraining the Association from making use of the brand name and the interim order is still in force. The same contention had been taken before the Authority and the said issue has not been resolved. This being factual position, the Authority was right in directing the Promoter to refund the amount to the allottees instead of the Association. Hence, the claim made by the Allottees to direct the Promoter to pay the said sum infavour of the Association does not make any sense. Further in view of the foregoing reasons the allottees are not entitled for any relief as claimed at Sl.No.8, unless and until the said issue is resolved in Commercial IP Suit(L) No.1206 of 2022. Therefore, the finding given by the Authority is sound and acceptable and no reason to interfere with the said order.

34. On perusal of Point No.4 formulated in the Impugned Order it is clear that, considering certain vital contentions of the Allottees, it was ordered that the Promoter is liable for any structural defect of the project for five years from the date of forming of the Association and handing over possession of the common areas. But not fully satisfied with the said direction, the Allottees sought their seventh relief to extend the defect liability period in respect of the project for 5 years from the date of formal transfer of common areas in the project to the Apartment Owners Association. In view of the said claim made by the allottees, it is expedient to go through Section 14(3) of the RERA Act. The said provision is read as under:

Section 14(3): In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act. (underlined for emphasis).

35. Having regard to the scheme of the Act, it is evident that the defect liability period is required to be reckoned from the date on which possession is handed over to the individual Allottee. The

subsequent handing over of the project to the Association of Allottees is only an administrative event and does not alter the statutory commencement of the defect liability period. Hence, the five year period shall commence from the date of delivery of possession to the Allottee. While examining the provisions contained in Section 14(3) of RERA Act, it is clear that the Order of the Authority is inconsonance of the RERA Act. As such, the defect liability period of five years cannot be extended as claimed by the Allottees in the instant Appeal. Hence, no grounds to interfere in the reasoned Order passed by this Authority on the said issue.

36. The ninth relief sought by the Allottee is to direct the Promoter to pay delay period interest from the date of final possession demand and receipt of the sale consideration for the delay in completion. As stated supra, the Registered Sale Agreement between the Allottees and Promoter was executed on 27.08.2018. Both parties to the agreement after going through its recitals on their own volition put their signatures. Copy of the Sale Agreement is part of the Memorandum of Appeal produced at Annexure 'D'. As per the clause 7.1 of the Agreement, the Promoter assured to hand over the possession of the apartment on 31.12.2020 unless there is a delay due to Force Majeure. But much prior to the date stipulated in the agreement i.e., on 05.06.2020, the Promoter executed a full-fledged Sale Deed in

favour of the Allottees. Now, the contention of the Allottees is that after impugned Order came to be passed, the Promoter in admission of the finding that the Possession Letter was forcibly obtained informed the Allottees that it is ready to return the Possession Letter. But refuting all these allegations, the Promoter has taken specific defence that, on 20.06.2019 itself the promoter had applied for Occupancy Certificate. Further, the Commissioner, B.B.M.P. has approved the Occupancy Certificate on 04.07.2019 and finally issued on 21.08.2019. Though the Occupancy Certificate was applied before obtaining Fire Clearance from the Fire Service Department, Occupancy Certificate was issued subsequent to the Fire Clearance. Since the possession was delivered much before the time stipulated in the agreement, there is no merits in their contention and sought for the rejection of the said prayer. Further contended that, on 14.02.2020, the Possession Demand Letter was sent to the Allottees. Then on 26.02.2020, they have inspected the Apartment and addressed the incomplete work in the basement No.1 and 2 and amenities and facilities and intimated to provide the relevant documents pertaining to the completion of the project. Subsequent to the rectification of the defects, the Promoter had executed the Sale Deed in favour of the Allottees on 05.06.2020. Added to that, placing much reliance on some of the recitals incorporated in the

Sale Agreement, the Counsel for the Promoter has vehemently argued that in the light of their previous representation, the Allottees are estopped from taking any stand contrary to the terms of the Sale Agreement and Sale Deed. In the light of aforesaid contention taken by the Promoter, we feel it expedient to re-produce Clauses 'E', 'G', 'I', 'J', 'L', 'M', 'N', 'O', 'P', 'Q', 'R' and 'S' incorporated in the Sale Agreement. Same is recapitulated as under:

"E. The Promoter has formulated the scheme for development of the Said Larger Land in several Phases and has appointed L&T Reality Limited as the Development Manager under the Development Management Agreement dated 25th November 2015 to manage the development of the Said Larger Land by constructing residential/commercial/retail/public building as may be decided by the Promoter at its own discretion.

G. The Promoter has by an Agreement to Sell dated 30th March 2018 registered as Document No.MLS-1-03645-2017-18. Book-1, stored in CD No.MLSD141 in the Office of the Sub-Registrar, Malleswaram, Bengaluru, agreed to sell and convey property admeasuring 53,001.73 square meters (equivalent to 13.10Acres) out of the Said Larger Land, in favour of Sparkle One Mall Developers Private Limited, at and for a consideration and on the terms contained there ("commercial Development"). The Promoter shall, in due course of time, convey the land admeasuring 53,001.73 square meters (equivalent to 13.10 Acres) in favour of Sparkle One Mall Developers Private Limited, by duly executing and registering a Sale Deed.

I. In the first phase of development, the promoter has conceived a scheme of development of residential complex with common areas and amenities comprising seventeen (17) multi-storeyed buildings/towers in clusters. The first cluster shall have seven (07) buildings/towers; the second cluster shall have five (05) buildings/towers, one (01) building/tower in the third cluster and the remaining) buildings/towers shall be in various clusters. The said multi-storeyed buildings/towers are being developed on a portion

of the Said Land measuring in total 30960 square meters, (comprised in Survey No.96/2, measuring 364.99 square meters. Survey No.96/1, measuring 4275.05 square meters, Survey No.95/1, measuring 2750.54 square meters, Survey No.95/2, measuring 5271.78 square meters, Survey No.94/1, measuring 656.06 square meters, Survey No.94/2, measuring 1544.70 square meters, Survey No.94/3, measuring 1107.77 square meters, Survey No.94/4 measuring 1305.91 square meters, Survey No.93/1, measuring 365.21 square meters, Survey No.93/2A, measuring 772.65 square meters, Survey No.93/2B, measuring 71.68 square meters, survey No.93/3, measuring 5501.94 square meters, Survey No.93/4, measuring 3987.97 square meters and Survey No.93/5, measuring 2983.17 square meters ("**Phase-I Land**"), more particularly described in Schedule "A-1" hereunder, and the Phase-1 development is known as "**L & T Realty Raintree Boulevard**" for the purpose of marketing, branding and promotion.

J. Apart from the Phase-I Development, the Promoter is also planning commercial development, comprising of retail, commercial office and SEZ Blocks, forming part of the Development plan approval by the Bangalore Development Authority, on the said Land.

L. The Promoter has obtained approval of the development plan for the Said Land from the Bangalore Development Authority vide No.BDA/TPM/DLP 32/2014-15/2330/2015, dated 18.09.2015 under the Project name "**L & T North Star**" for 8.8 million square feet of floor area for mixed use development and appurtenant basements for parking spaces. The Promoter has, as per the statutory norms set aside 10% of the Said Larger Land (i.e. 26,539.82 square meters) as park and open spaces and 6301.67 square meters and 5352.78 square meters of the Said Larger Land for road widening as per the Revised Master Plan 2015 and as per requirement of BBMP and 5% of the Said Larger Land (i.e., 5951.17 square meters) as civic amenities area.

M. Pursuant to the approval of the Development Plan, the Promoter has obtained the Building Plan sanctioned for construction of the residential towers on the Said Land (i.e., the Phase-I Development) from the Bruhat Bengaluru Mahanagara Palike, Bengaluru vide No.BBMP/Addl. Dir/JD North/LP/0191/2015-16.

N. The Promoter has registered the Project under the provisions of the Act with Karnataka Real Estate Regulatory

Authority at Bengaluru under Registration No.'s
 PRM/KA/RERA/1251/309/PR/171014/000245,
 PRM/KA/RERA/1251/309/PR/170923/000478 and
 PRM/KA/RERA/1251/309/PR/180328/002436 for cluster 1,2
 and 3 respectively.

O. The Allottee has applied for an apartment in the Phase-I Development and has been allotted an Apartment No.**RBTO6F1302** having carpet area of 1377 Sq.ft, type 3 BHK Supreme, on 13th floor in tower/block/building No.T06 along with One covered parking No.RBT06F1302, as permissible under the applicable law and of undivided pro-rata share in the common areas ("Common Areas"), as defined under clause(n) of Section 2 of the Act, and the said undivided pro-rata share ("said UDS") and the said Apartment is more fully mentioned and described in the Schedules "A-2"and "A-3"respectively, hereunder and hereinafter referred to as "the Apartment". The Apartment is hatched in "red" on the floor plan annexed hereto and marked as Annexure "A".

P. The parties have gone through all the terms and conditions set out in this Agreement and understood the mutual rights and obligations detailed herein and have affixed their signatures;

Q. The Parties hereby confirm that they are signing this Agreement with full knowledge of all the laws, rules, regulations, notifications, etc., applicable to the Project and Phase-I Development;

R. The Parties, relying on the confirmations, representations and assurances of each other to faithfully abide by all the terms, conditions and stipulations contained in this Agreement and all applicable laws, are now willing to enter into this Agreement on the terms and conditions appearing hereinafter;

S. In accordance with the terms and conditions set out in this Agreement and as mutually agreed upon by and between the Parties, the Promoter hereby agrees to sell and the Allottee hereby agrees to purchase the Apartment and the covered parking".

(underlined for emphasis)

37. In the booking Form dated 20.04.2018, it is agreed by the Allottees that, they are aware that plans for the project are

approved by the concerned Authorities and the Company at its sole discretion shall have the right to make alterations/ amendments in the lay out plans and the building plans. Further, the Promoter had obtained modification to the development plan from B.D.A. on 02.08.2018, which was prior to the date of agreement.

38. This being the factual position, we feel it proper to look into the law laid down by the Division Bench of Bombay High Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India, 2017 SCC online Bom 9302**. In the said decision it was held that RERA does not override contractual terms validly entered into between the parties, unless such terms are inconsistent with the Act's object or public interest. It is pertinent to note that, the law laid down by the Bombay High Court in the said decision was upheld by the Hon'ble Supreme Court. This being the legal position it is clear that, if the registered agreement for sale itself permits certain modifications or alterations and the allottees have consented to such terms in advance, then; the Promoter's action in making such modifications is not violative of Section 14(2)(ii). The requirement of consent of 2/3rd allottees arises only when there is an alteration beyond what was mutually agreed in the contract. In other words, when the change is within

the scope of the agreement, the allottees cannot later invoke Section 14(2)(ii) to insist upon 2/3rd consent. Hence, the parties litigating before us being the Allottees and Promoters are required to adhere to the terms of the agreement. Noticing the factual position, the Authority has held that there was no delay in handing over the possession as alleged and the Allottees cannot be held entitled for grant of interest on delay period as claimed. In view of the foregoing reasons, we did not find any error in the finding of the Authority. Such being the state of affair, the claim made by the Allottees for the alleged delay period interest holds no water. Hence, the said prayer is rejected.

39. On the basis of the contentions and rival contentions of the parties, the Authority has formulated as many as thirteen points for its determination and each point/prayer made by the Allottees were discussed in length in right perspective and thereby the complaint was partly allowed by granting some of the reliefs in their favour. Since the findings given by the Authority is sound and reasonable and is in consonance with the spirit of the RERA, we do not find any reason to interfere with the well reasoned order passed by the Authority. Hence, the Appeal filed by the Allottees deserves to be dismissed. With these observations, point No.1 is answered in the '**Negative**' and proceed to pass the following:

ORDER

- (a) The appeal is hereby dismissed;
- (b) The Order dated 20.01.2024 passed by the 3rd Respondent-RERA in complaint No. CMP/211104/0008514 is hereby confirmed;
- (c) In view of disposal of the main appeal, pending I.As., if any, shall stand disposed of, as they do not survive for consideration;
- (d) Registry is directed to comply with the provisions of Section 44(4) of the Act and to return the records to RERA.

No order as to costs.

**Sd/-
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**