

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

DATED 10th DAY OF OCTOBER 2023

COMPLAINT NO. CMP/220803/0009845

COMPLAINANT:

**SHARADINDU SENIOR COMMUNE
OWNERS ASSOCIATION
254, KERE THONNUR ROAD
RANGANA KOPPALU VILLAGE
PANDAVAPURA TALUK
MANDYA DISTRICT-571434**

**(BY SRI. ANANDITA SRINIVASAN
ADVOCATE)**

V/s

RESPONDENT...

**SREE SENIOR HOMES
S-314, MANIPAL CENTRE
47, DICKENSON ROAD
BENGALURU URBAN-560042**

(BY SRI. SRINIVAS L, ADVOCATE)

**PROJECT NAME &
REGISTRATION NO.**

**SHARADINDU-STATE III
PRM/KA/RERA/1267/375
PR/201222/000452**

Suresh K. V. M. S.
17/10/23
39/10/23

JUDGEMENT

1. This complaint is filed under section 31 RERA Act against the project "SHARADINDU-STATE III" developed by "SREE SENIOR HOMES" for the relief of direction to the respondent for transfer of full corpus fund collected.



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2. The promoter has developed this project in the limits of No.254, Sharadindu, KereThonnur Road, Banaghatta Circle, Ranganakoppalu, Hiremaralli Post, Pandavapuru, Mandya District.
3. The project is registered in RERA vide registration bearing no.**PRM/KA/RERA/1267/375/PR/201222/000452** which is valid upto 31/3/2020. This Authority has granted further extension to this project upto 31/3/2021.
4. The gist of the complaint is that the present complaint has been filed for the relief of directing the respondent to transfer the corpus funds collected by it to the tune of Rs.62.26 lakhs to the Complainant's Association. The complainant association was formed and registered on 7/4/2022. The said amount so collected by the respondent from various owners under the respective promoters agreement ought to have been transferred to the complainant's association which the respondent has failed to adhere. The project of Sharadindu Senior Commune is being developed phase/stage-wise. In addition to the aforesaid amount of Rs.62.26 lakhs, the respondent demanded maintenance charges at the rate of Rs.4.50 per sq.ft payable quarterly. Admittedly, there is no agreement between the parties to crystallize the maintenance charges. The complainant Association has learnt that the respondent has continued to convey various units to third parties and has collected the maintenance charges, the details of which has not been furnished to this complainant association. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed statement of objections as under:
6. The respondent has denied all the allegations made against them by the complainant association as false. It is submitted that it was due to non-cooperative attitude of the Co-ordination Committee of the allottees that the Association was formed only in April 2022 due to which the respondent firm



acting both as a developer and service provider was constrained to maintain the project. Since the corpus fund was utilized for the purpose of paying the outgoings(maintenance charges and service fee) on account of persistent refusal by the complainant Association to honour its obligation to pay the respondent association the deficit in maintenances costs made good by the respondent firm. It is the complainant association which is liable to pay a sum of Rs.1,65,72,221/- to the respondent firm on account of its refusal to honour the deficit maintenances costs and service fee based on the services were provided. The complaint has not been filed in accordance with the registered Bye laws dated 7/4/2022. No resolution has been produced to show that the Managing Committee has taken a decision to file the complaint against the respondent firm. An association claiming to be registered under the Karnataka Apartment Ownership Act, 1972 must act in accordance with the bye-laws. Any action initiated on behalf of the society which is not in accordance with bye-laws is illegal and unlawful. It is further submitted that the present dispute involves complex issues of facts and law which can only be adjudicated by civil court.

7. Further, it is contended that the estate project Sharadindu Senior Commune at Pandavapura, Mandya District is being constructed in various stages/phases. Phase-1 consists of 44 units for which occupancy certificate was obtained on 10.2.2016 before the commencement of RERA Act. It is contended that the corpus amount received from the allottees pertaining to Phase-1 of the project was Rs.27,22,300/-.

8. The respondent firm is a registered partnership firm which is engaged primarily in business of constructing communes for senior citizens, townships, weekend homes, cottages, villas, apartments and to maintain and run senior citizen homes. The respondent firm was not only the promoter, but also the service provider for the project. From April 2016, pursuant to the objects and purposes in the partnership deed, the



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respondent firm was acting as a service provider to the project to the knowledge of allottees. The said firm was also providing services like round-the-clock power, water, house keeping services, common kitchen and nursing services to residents of the commune at the most economical rates. Further, the promoter was only providing such additional services in accordance with the guidelines issued by Government of India. The respondent firm commenced the maintenance of the project from 1.4.2016. The respondent firm was under an obligation to maintain the said project till the association was formed.

9. Pursuant to its obligations under the Act, a separate service agreement was to be executed by the allottees in terms of promoters agreement and sale deed. The respondent firm had called a meeting of allottees on 28.10.2018, with a view to forming an association of the residents and embodying the existing arrangement in the form of service agreement. To substantiate the need for immediate upward revision of the maintenance charges, the respondent firm submitted a statement of average monthly maintenance accounts for the financial years 2016 to 2019 to the coordination committee. This statement clearly showed that a service fee of 35 percent of maintenance expenses is liable to be charged by the respondent firm for the service rendered. The coordination committee was also made aware of the increasing number of defaulters. The coordination committee evaded the execution of service agreement, refused to discharge their responsibility of executing the service agreement. When the respondent firm requested the coordination committee to form an association to take over the responsibility, but the coordination committee requested the respondent firm to continue maintaining the project and provide services. Further, because of Coordination Committee disbanded itself, another meeting of all registered owners was convened on 27/12/2020 by the respondent firm for the purpose of forming an association so that the



aforementioned issues relating to the maintenance and service could be formalized in the form of an written agreement. Once again the allottees refused to form the Association and constituted another coordination committee. Since the coordination committee was not coming forward to either hold a discussion on the accounts or finalize the service agreement, the respondent firm thereafter communicated directly with the owners urging them to finalize the agreement in discharge of their obligations.

10. Due to the initiatives and efforts by the respondent firm, meeting of the allottees was organized on 20.3.2022 which materialized in the formation and registration of complainant's association on 17.4.2022. Ever since the complainant association was formed, the respondent firm has been making efforts to amicably resolve issue of the payment of deficit in maintenance expenses and service fee by the owners. However, the complainant association has refused to pay any amount towards this deficit and service fee. It contends that the respondent association is liable to pay the maintenance charges and service fee to the promoter for the period commencing from April 2016 till April 2022. Obligation to maintain the project and provide services has to be discharged by the promoter under RERA till the formation of an association. Since the project was meant for senior citizens, the promoter had to provide both essential and non-essential services for the well being and over all welfare of senior citizens. Allottees since 2016 through various correspondences exchanged between respondent firm and coordination committee were aware about the maintenance expenses borne by the promoter and the services which were rendered at the rate of 35 percent of expenses.

11. It is submitted that the respondent firm is claiming maintenance charges Rs.4.5 per Sq.Ft. without prejudice to claiming increase in maintenance charges and a service fee of 35 percent of maintenance

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expenses for providing essential services and non-essential services during the period when the respondent firm was maintaining the real estate project. As regards the allegation that no management agreement exists between owners and senior homes, it is denied as false. Under the RERA, the respondent firm was obligated to maintain the real estate project and provide services till the formation of association. Hence, prayed to dismiss the complaint.

12. Further, the respondent has filed counter claim dated 13/12/2022 as under:

13. The respondent is entitled to maintain a counter claim to assert his contractual and statutory rights of pursuing legitimate claims before this Authority. RERA does not prohibit an aggrieved person from filing a counter claim. The project is being developed in phases. Each phase is a stand alone project. Phase-1 does not come within the scope of RERA as the occupancy certificate and possession of all the units were handed over prior to RERA came into existence. The allegation that the 80 units are yet to be completed is false and baseless. The allegation that the maintenance fee charged by the respondent/promoter at Rs.4.50 per Sq.Ft for the period between April 2016 to March 2022 is false. Complainant is put to strict proof of the same. As per clause-4 "Maintenance" of the respective promoters agreement entered into between the respondent and individual allottee. The allottees for the period commencing from financial year 2016 to 2022 enjoyed the benefits of the service provided by the respondent without disputing the accounts and/or statement of income and expenditure which had clearly stipulated that 35% of service fee was chargeable for the services provided.

14. The complainant has filed rejoinder to the statement of objections filed by the respondent as under:



15. The respondent has filed its statement of objections along with a counter claim to direct the complainant association to pay a sum of Rs.1,65,72,221/- towards outstanding deficits in the form of maintenance charges and service fee to the respondent.

16. The respondent while executing the promoter agreement with various allottees has charged a fee towards Sewage Treatment Plan over and above the said fee. The respondent is charging a sum of Rs.3,76,000/- towards consent fee together with a sum of Rs.46,610/- as the recurring expenditure and further a sum of Rs.31,542/- towards STP. The said figures are forthcoming in the Statement of receipts and expenditure 2021-2022 furnished by the respondent themselves vide email dated 16/6/2021. From the above, it is clearly forthcoming that the respondent has a surplus, from the maintenance fee collected between April 2016 to March 2022, a sum of Rs.6,13,458/-, a sum of Rs.17,22,820/- payable by the respondent towards its share of expenses to the complainant association for the shared amenities at the project. This itself is to the tune of Rs.23,36,278/-. In addition, the respondent is also demanding the aforesaid sum of Rs.3,76,000/- towards consent fee and other charges. Thus, the entitlement of a service fee to the tune of 35% of the expenses and counterclaim made herein, the respondent has, in no manner stated as to being a licensed service provider. The respondent has taken the tax credit inputs, which is illegal and unlawful. The respondent has not disclosed the details of the account maintained by him with regard to corpus fund received by it as per Section 11 of the Act.

17. As per the promoters agreement entered into between the said allottees, a maintenance fee charged by the respondent-promoter as per its email dated 14/04/2016 was Rs.4.50 per Sq.Ft. Majority of the allottees have complied with the said demand and paid the said maintenance fee every



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quarterly. The complainant association was registered on 07/04/2022. Upon formation and registration of the association, the complainant requested the respondent to transfer the corpus fund of Rs.62,26,000/- collected towards maintenance charges from various allottees. It is contended that there is no contract between the parties with regard to service fee as sought for by the respondent. The respondent is also not claiming the said amount as a right. There was no consensus of the parties vis-à-vis the liability of the complainant association to pay and the entitlement of the respondent to receive the said service fee. Under the Report and Certification of completion under RERA in Form 4 CC dated 12/5/2022, that a total deposit of Rs.16,00,000/- as corpus fund has been collected, which the respondent claims, that for want of the complainant association opening a bank account, the said corpus has not been transferred. The complainant is not liable to pay any amount to the respondent, much less the sum of Rs.1,65,72,221/- claimed by the respondent towards maintenance costs and service fee. There is no material on record to establish the same.

18. The complainant association, as per the provisions of bye-laws of the association took steps for initiating legal proceedings against the respondent for transfer of the corpus fund. The complainant has met the demand of the respondent and paid a maintenance fee of Rs.4.5 Sq.ft. as claimed in the email dated 14/4/2016. As per section 11 of the Act, the respondent is duty bound to transfer the corpus fund to the complainant association.. In fact, the counter-claim claimed by the respondent, in the absence of statutory or contractual right cannot be entertained by this Authority. The averment made by the respondent that the occupation certificate for 44 units, in Phase-I was obtained on 10/02/2016 which is prior to the enforcement of RERA Act and hence the corpus amount received to the tune of Rs.27,22,300/- is outside the jurisdiction of RERA. The project has been



registered under RERA and compliances are being made for the entire project.

19. The respondent was ought to have completed the project in a stipulated timeline together with all amenities under various promoters agreements. The allottees could not come forward to form an association since the development of the project was not commensurate with the deadlines promised by the respondent-promoter. Certain amenities as promised under the promoters agreement and the sale deed were not provided. A temporary club house was provided through a rented unit. The respondent demanded a maintenance fee which was met by the allottees. Sustainable power back up was not provided although the respondent has earned huge interest on the deposit collected against power back up, club house, corpus, STP and WTP. The respondent has made profits to the tune of Rs.26,00,000/- by levying the maintenance fee of Rs.4.50 per Sq.ft over and above the maintenance charges collected by it. No discussions or meetings were conducted between the parties for providing the services mentioned in the said email dated 14/04/2016 and fixing the rate of maintenance fee to the tune of Rs.4.50 Sq.ft.

20. The acknowledgement as alleged by the respondent was only in respect of receipt of the statement of income and expenditure furnished by the respondent. In view of the same, the averments regarding the acknowledgement of the service fee of 35% of the expenses mentioned in the said statements is unsustainable. The respondent in the statement of objections in no manner denies its liability to transfer the corpus fund of Rs.62,26,000/- to the complainant association. The complainant is also entitled to interest calculated vide memo dated 10/10/2022 since the same has not been addressed by the respondent. The averments made by the respondent in its statement of objections together with counter claim are categorically denied as false.

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20. Further, the complainant association has filed written arguments dated 9/5/2023 by denying entire defence taken up by the respondent which is as under:

21. The project as represented to the allottees of the complainant association, was to consist of a total of 340 units comprising of cluster cottages, garden cottages, 1 and 2 BHK apartment units and a club house of 1425.92 Sq.mt consisting of ground and first floor. The segregation of the aforesaid type of units to a respective stage/phase has not been undertaken by the respondent. In the absence of the same, the respondent cannot contend that the project in question is being developed phase-wise.

22. Further, complainant association contends that the respondent has not defined as to how many stages/phases in the said project in question being developed. Further, the proposed project proposed to be developed in future and which of the units fall within the respective phases/stages I and II.

23. The project is still under construction and has not been completed in its entirety. The club house was handed over to the complainant Association on 3/7/2022 only for the purposes of using the same without complying with section 17 of the RERA Act. Further, the respondent has orally responded to a query raised by this Authority on 13/4/2023 that stages I and II consisted of the cluster cottages; garden cottages, Blocks A and B. The respondent solely rely on the alleged Occupancy Certificate dated 10/02/2016 to contend that since the Occupancy Certificate in respect of the units, were issued in 2016, the same is prior to RERA and hence the said stage is not on "ongoing project" as defined under explanation to Rule 4 of RERA.

24. The undefined phases cannot be treated as a standalone real estate project as defined under section 2(zn) of the RERA Act since the development works and all improvements, as contemplated under the said section 2(zn) were required to be done as per the sanctioned plans and



layout plans as contemplated under section 2(q) for occupancy certificate to have been issued. The master plan dated 3/9/2012 and the commencement certificate does not define the said units to be developed stage/phase-wise. Under the circumstances in no manner it cannot be construed that the project is being developed phase wise and the cluster cottages, which allegedly formed a part of "Stage-I" was already completed at the time of commencement of RERA Act.

25. The entire project consisting of the various units (cluster cottages, garden cottages, 1 & 2 BHK apartment together with the amenities would be one single project. The club house with certain amenities was handed over to the complainant association only during July 2022. The cause of action for the complainant association to seek for transfer of the corpus collected towards maintenance has arisen only now when the complainant association was formed in April 2022. The demand made by the complainant to the respondent was refused by the respondent. Hence, the claim of the complainant being with respect to the entire project and not anyone single phase/stage, since there is only one association for the entire project.

26. The claim in the present complaint is with respect to the entire corpus collected towards maintenance of the entire project, at the time of filing the present complaint and the claims are not with respect to any one particular unit/apartment. The said township, which is being developed as one big project which is still under construction. Thus the corpus which has been collected is required to be duly transferred to the registered Association on its coming into existence as per the provisions of Section 11 of the RERA Act. The respondent has also not conveyed the undivided proportionate title in common areas to the complainant association.

27. As per the original brochure 11/8/2013, the township/project in question was to consist of 340 units. The entire project was proposed to be



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developed as a whole and not stage/phase-wise. The reduction of units from 340 to 188 which in turn reduces super built up area to 17,178 Sq.Mts from the original sanction of 24,779Sq.Mts. without there being any notice and compliance of statutory obligations. Furthermore, the respondent vide email dated 11/8/2013 also envisages the project to be comprising of 340 units and development of a township. The project is a peculiar project was represented to be having essential amenities catering to senior citizens. Without the said amenities, the units were not in an occupiable condition coming within the effective meaning of definition of occupancy certificate under the RERA Act.

28. The provision of car park to a unit (CCE1) which allegedly is a part of Stage-I was granted vide letter dated 22/9/2022. The owner of the unit CC4, on the other hand, has addressed an email on 29/12/2022 for not having been provided a car park, despite the respondent having received the consideration for the same. Thus, in no manner can it be contended that Cluster cottages, forming a part of Stage-I was completed in all respect and was in a state of occupation prior to the commencement of RERA having due regard to the scheme of development and the residents(senior citizens only) of the commune, who were dependent on the said amenities which were agreed upon by the respondent/promoter.

29. As regards claim of the complainant association for transfer of maintenance corpus, the respondent contends that since the complaint has been filed in respect of registration no. PRM/KA/RERA/1267/375/PR/170922/000452, which is allegedly registration for "STAGE III" only. What falls within stage III has neither been defined in the website nor in the brochure furnished by it or before this Authority. Even going by the said registration for "Stage III" the respondent initially seeks to mention 32 units in the alleged STAGE-III, the details of



which however has not been mentioned anywhere. At the time of completion, the alleged Stage III, the respondent unilaterally seeks to increase the number of units to be 44. Therefore, Stage III as contended by the respondent has also not been defined by the respondent. Section 4(2)(c) and (d) of the RERA Act read with Rule 15(B) of KRERA mandates that where a project is proposed to be developed phase wise, the respondent is required to furnish the approvals and commencement certificate from the competent authority for each of such phases. The respondent in no manner has demonstrated the project in question to be developed by phase wise. The respondent has conveniently without defining the stages, to avoid registering the same under the RERA Act, is attempting to wriggle out of its obligations to the complainant under the Act.

30. The object of the legislature in enacting RERA Act was to establish a Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building as the case may be, in an efficient and transparent manner and for establishment of adjudicating mechanism for speedy dispute redressal and also to establish a speedy redressal forum and for other matters incidental and connected thereto. The respondent at its behest, has deliberately not registered the entire township as one single Project, opposed to the representations, assurances and promises made by it to various allottees. The members of the complainant association being senior citizens are made to claim what is rightfully belonging to them, by resorting to legal recourse, at this stage of life and prayed to allow the complaint.

31. The respondent firm has filed written arguments on 9/5/2023 as under:

32. It is contended that the complaint has been filed only in respect of Phase-II. Corpus contribution amounting to Rs.27,22,300/- collected from allottees of Phase-I ought to be excluded as Phase-I is not an ongoing project and falls outside the purview of RERA.



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33. It is further contended that Section 3(2) of the Act exempts certain real estate project from the purview of provision of RERA. Those projects which have already received commencement certificate and /or occupancy certificate cannot be treated as ongoing projects. This is the ratio of law laid down by the Hon'ble Supreme Court in Newtech promoters and developers private limited Vs. State of UP MQNU/SC/1056/2021 at para-54 and the Hon'ble High Court of Karnataka in Provident Housing Limited Vs. Karnataka Real Estate Regulatory Authority and others at paras 14 and 15 as per memo of citations-1 filed by the respondent on 16/1/2023.

34. This complaint has been filed only in respect of project approval which has been granted only in respect of Phase-III which comprises of 44 units. The development and construction of a project was done in phase-wise manner and there are 108 units consisting of all the three phases, Phase-I and Phase-II and Phase-III which have been completed. Out of which, Phase-1 which consists of 44 units comprising of Block A and Cottage clusters which have received occupancy certificate on 10/2/2016. These have been sold to the allottees and actual possession has been handed over to all the allottees prior to commencement of RERA.

35. Further, in this particular case, all the units of Phase-I were sold prior to the commencement of RERA. As regards Phase II comprising 20 units, all the units had been fully booked and both internal and external development works had been completed prior to commencement of RERA. The aspect of retroactive nature of certain provisions as enunciated by the Hon'ble Bombay High Court case in Neelkamal's case is only limited to ongoing projects and projects for which occupancy certificate has been obtained prior to RERA are to be excluded from the provisions of RERA.

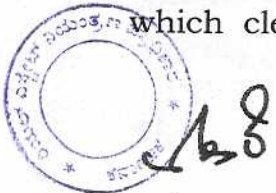
36. Further, Document No.4 i.e. report and certification of completion under RERA produced along with rejoinder filed by the complainant association on 30/11/2022, which is Form 4CC dated 12/5/2022 clearly demonstrates

that the compliance under RERA was being done in respect of Phase-III. Further as admitted by the complainant, since this was brought about in 2013, which was prior to commencement of RERA. The complainant had no such obligation to disclose in the said brochure, the fact that the project was being developed phase-wise. It is relevant to point out judicial precedents in support of this proposition of law has been produced along with Memo of citations-II filed by the respondent on 13/4/2023.

37. The email dated 10/9/2022 sent by one Mr. Venkatesh Deshpande containing email dated 22/8/2013 addressed by respondent firm to certain potential allottees states as under: *"we would complete the construction of phase-1(92 units, including row houses, cottages and apartments by January 2015" and at Page-23"when do you propose to complete the project? The project is being developed in stages. Phase-1 comprising about 90 units and the club house will be ready in about 24 months' time. The next phase will be completed in another two years"*. This itself clearly demonstrates that even during the formative years of the project, the respondent firm had represented to the potential allottees at that stage that the project was being constructed and or developed in phases.

38. The letter dated 22/9/2022 regarding allotment of car park would not in any way advance complainant's case, because according to the approved sanctioned plan, parking was never conceived for owners of Cottage clusters and the allottees of cottage clusters bought the units with full knowledge that the units so purchased had no car park. If at all, an owner of cottage clusters had purchased parking area, the parking area was to be allotted in other blocks.

39. The Deed of Declaration along with master plan filed by the complainant association on 10/2/2023, which is a registered document signed by the complainant association resulting in its formation contains admissions which clearly demonstrate that the project was conceived as stage wise



development. Under Clause 10 of DOD, the obligation of the developer to handover original title deeds to the association would arise only after completion of construction of remaining phases and sale of all units free from all encumbrances. Clause 15 of the DOD acknowledging the fact that the project was to be constructed and or developed in a phase-wise manner confers actual ownership of the club house with the right of entry on the developer till the completion of all stages/phases of developments as per the approved master plan. The developer has been granted rights to put up structures, store construction materials, regulate entry and exit into constructions etc., as per clause 31 of the DOD at Page 77 of the application filed by the complainant association. The developer to handover common areas and facilities listed therein to association only after entire project consisting of all phases has been completed. The very fact that the commencement certificates have been applied and obtained at various points in time which demonstrates that the construction and or development contemplated by the developer was a phase wise development and not a composite one. Partial occupancy certificate has been issued in respect of certain units. These partial occupancy certificates have been issued at different points in time advance the respondent's case that the development of project was being done in a phase wise manner.

40. The Bye-laws of the Association also contains provisions which acknowledge the fact that the development was being done in a phase-wise manner. The respondent has completed Stages I,II and III comprising of 108 units and has handed over actual possession of proportionate common areas by way of undivided share of lands comprised in the project. Bye-laws 2.13 recognizes that the development of the project is being done in phases/stages with each stage being registered as a standalone project in terms of Section 3(2) of the RERA. Clause 2.21 of Bye-laws defines phase to mean each phase/stage of the residential project constructed or under construction or to be constructed and developed by the developer as per the



building plan approved by T.S. Chatra Panchayat from time to time as a part of the Sharadindu Development and registered as standalone project for the purpose of RERA. Clause-5 sub-clause 11 gives full discretion to the developer in matters pertaining to construction and or development of project and according to scheme of development, developer may construct the project in stages.

41. Further, the application filed by the respondent firm on 2/3/2023 along with supporting documents clearly demonstrates that the project was being developed and or constructed in a phase-wise manner. The original master plan dated 31/3/2013 produced along with application filed by the respondent firm on 2/3/2023 contains a noting of Panchayat Development Officer which reads as *"Entire extent of 7 acre 18 guntas has received approval for formation of layout from Town and Country Planning Department and in accordance with conditions that FAR for such land is 1:1:8 FAR and the construction should not exceed 584100 Sqft, the General Meeting has approved the sanction plan for the construction to be done in a phase-wise manner"* As reflected in the original master plan, the project was supposed to consists of variety of housing for senior commune apartment(1 BHK)(2 BHK), cottage clusters, row houses to be constructed and or developed at different points in time as reflected in the commencement certificates. Revised master plan dated 27/3/2015 clearly reflects that project was supposed to consist of variety of housing for senior commune apartment(1 BHK)(2 BHK), cottage clusters, garden cottage clusters to be constructed and or developed at different points in time as reflected in the commencement certificates. The revised master plan and the noting it contains clearly shows that the construction and or development was to be done in a phase wise manner. Even the latest revised master plan of 2020 produced as document no.12(b) by the complainant association along with the application filed by complainant on 10/2/2023 contains noting made by the Panchayat Development Officer on the Master Plan issued on

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31/1/2013. It is submitted that no such striking or noting has occurred or transpired. No resolution endorsing such insertion is forthcoming from master plan. Further signature of Panchayat Development Officer endorsing such a striking off is absent in the alleged certified copy of master plan 2013.

42. It was contended by complainant association that after the commencement of RERA, there have been subsequent revisions of master plan by the respondent and in accordance with Section 14 of RERA. Such revisions and or modifications were not intimated to the allottees and no approval from the allottees were sought for. As regards master plan occurred in the year 2015 which was prior to the commencement of RERA, the change pertained to Phase II involving removal of row houses and introduction of garden cottage clusters which was done even before a single booking of Phase-II had happened. As regards the revisions which occurred subsequent to commencement of RERA, more particularly in the year 2017 and 2020, all these revisions and or modification did not involve revisions and or modification to Phase-III. In Section 14 sub clause 2 of RERA to mean such alteration or additions which are detrimental to the allottees and not the revisions or modifications which are beneficial. Judicial precedents demonstrating situations where golden rule of interpretation has been adopted and has been produced along with Memo of citations-II filed by the respondent firm on 13/4/2023.

43. The newspaper advertisements and brochure produced from Page-8 to 13 along with the application filed by the respondent firm on 2/3/2023, clearly shows that even at the time of marketing and sales, respondent used to make representations to the potential customers that the project was being developed in a phase-wise manner. Further, the email correspondences which were addressed by respondent firm to potential allottees, who subsequently purchased the units would also indicate that the project was being developed in a phase wise manner. Clause 5 Sub-

Clause XI confers full discretion on the developer in matters related to the development of project and that scheme of development as devised by the developer may provide for phase-wise development to which no objection can be raised by the purchaser. Further, the sale deed produced at Annexure-H of Statement of objections filed by the respondent on 7/11/2022 at Page-134 with reference to Clause 5.9 only imposes an obligation on the developer to hand over all the original documents pertaining to Sharadindu project after the said project has been completed in all respects. Further the certificate issued by Architect dated 4/2/2016 produced as document no.8 from page 48 to 58 of the application filed by the respondent firm on 2/3/2023 submitted along with application filed for obtaining the occupancy certificate for cottage clusters and Block A units(Phase-1) also shows that the project was being developed in a phase-wise manner and not as a composite manner.

44. The present complaint has not been filed in accordance with the Karnataka Apartment Ownership Act, 1972 and registered Bye-laws dated 7/4/2022. No resolution has been produced to show that the Managing Committee has taken a decision to file the complaint as against the respondent only after obtaining the approval of majority of the owners as mandated under Clause 21.4 of Bye-laws. No authorization has been produced by the Secretary from the managing committee to show that he has been authorized to file a complaint on behalf of Association. An association claiming to be registered under the Karnataka Apartment Ownership Act, 2917 must act in accordance with the bye-laws. Any action initiated on behalf of the society which is not in accordance with bye-law is illegal. A perusal of the minutes of meetings produced at document no.6 along with rejoinder filed by the complainant association on 22/11/2022 shows that the minutes of the meetings has not been verified and signed by all the members of the managing committee. A perusal of the minutes of



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meeting would indicate that there was no resolution passed for filing of the complaint. The application filed by the complainant association on 10/2/2023 at Page-130 reveals that this is nothing but an handwritten list of attendees which has been concocted and fabricated only for the purpose of maintaining the complaint.

45. Complainant association is not entitled for refund of corpus amount amounting to Rs.62.26 (Rs. Sixty two lakhs and twenty six thousand only). Per contra, complainant association is liable to pay a sum of Rs.1,65,72,221/- towards maintenance charges and service fee incurred by the respondent firm for the period commencing from April 2016 upto March 2022.

(a) obligation of allottees to pay maintenance charges and service fee under RERA

The promoter is responsible to providing and maintaining the essential services on reasonable charges till the handover of maintenance of the project by the association. There is corresponding obligation on the part of the allottees under Section 11(1)(g) of RERA to contribute for such outgoings for which purpose the corpus fund was collected. The term outgoings as mentioned in RERA includes, land cost, ground rent, municipal taxes, charges for water or electricity, maintenance charges including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions which are related to project. The proviso to the Section 11(1)(g) also obligates the promoter to make the payments to the concerned authorities even after the possession of the project has been transferred to association, if he has defaulted in making payments before the transfer of physical possession to allottees. Section 19(6) clearly states that every allottee shall be responsible for making payments in the manner and within the time as specified in the agreement of sale. In case, if the allottee fails to pay the said amount, Section 19(7) of RERA imposes an obligation on the allottee to pay interest amount on such delayed payments. Section 19(9) of RERA whereby

every allottee is obligated to participate towards formation of an association or society which in this case have clearly failed to do so.

46. A perusal of Promoter's agreement clearly indicates that the corpus fund which was collected from the allottees was for the purpose of meeting the expenses incurred for maintenance and other charges. There is an obligation on the allottee to share with other co-owners, the monthly expenses towards the maintenance of common facilities including the charges towards electricity, water and sewer treatment salaries/wages payable to maintenance staff including the security staff, any other common utility/facility as may be provided. Clause 8 sub-clause-r, casts an obligation on the allottee to enter into a service agreement with the promoter. Clause-s casts an obligation that the allottee shall not refuse to pay such sums as are demanded by the promoter for use and enjoyment of common facilities in the project.

47. It is submitted that the model agreement for sale at Clause 1.2 sub-clause-IV which is provided for under KRERA Rules authorizes a promoter to collect along with the price of apartment/unit recovery of maintenance charges and includes cost for providing all other facilities, amenities and specifications to be provided within the project. Clause 11 of the said agreement of sale imposes an obligation on the promoter to maintain project and provide essential service to allottees till such time maintenance is taken over by the association of allottee and for the purpose of discharging such an obligation, grants the promoter a right to collect the costs of such maintenance.

48. The complaint has been filed only in respect of Phase III as the project approval number cited in the complaint is that of Phase-III. Complaint does not contain any averment pertaining to other phases but purports to include corpus fund collected from other phases of project namely Phase I and Phase II. For this reason, corpus fund collected from Phase I and II have to be excluded from the purview of the complaint. Since Phase-1 of the project



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comprising of 44 units has already received occupancy certificate from the competent authorities on 10/2/2016 before the commencement of RERA. The present complaint in as much as it includes corpus fund of these 44 units liable to be dismissed. Complainant association admits that it was the respondent firm which was maintaining the project and providing services to the allottees for the period commencing from March 2016 to April 2022.

49. A perusal of the email dated 14/4/2016 would reveal that subsidized rate would be provided initially. The said correspondence also intimated to the allottees that the maintenance charges at Rs.4.50 per square feet of saleable area. No document has been produced by the complainant association that this amount has been paid. The complainant association which is liable to pay a sum of Rs.1,65,72,221/- on account of its refusal to honour the deficit maintenance costs and service fee based on which the services were provided by the respondent firm. A perusal of the minutes of meetings would reveal that the owners refused to form an association and constituted a coordination committee instead, which was entrusted with the responsibility, inter-alia hold discussions with the respondent to embody the maintenance and service legal arrangements in the form of written agreement.

B. After 2 years of continuous claim of Maintenance Sree Senior Homes demanded an increase in Maintenance charges without stipulating any specific rates.

C. During this period, the owners formed a Coordination Committee to look into claim of additional maintenance charges by Sree Senior Homes

D. CC insisted to get the expenses record of Sree Senior Homes. On verification of records, completion certificate were to see 35 percent demand of service fee over and above 5 percent of miscellaneous component

50. The accounts including the fee of 35% were accepted by the Coordination Committee were never disputed, as no reservations communicated to the respondent firm. The Coordination Committee evaded



the execution of service agreement based on frivolous grounds and eventually without raising any objections to the accounts handed over to them. Further, in the very same mail, the Coordination Committee agreed to the respondent firm being the service provider at the rates specified in the accounts. Even after providing the accounts which remained undisputed, the coordination committee refused to execute service agreement embodying the service arrangements. Notwithstanding numerous requests address by the respondent firm to the Coordination Committee, the Committee did not take any steps either to form association or to embody the present legal arrangements for maintenance of project and provision of services in the form of written legal agreement. The complainant association has refused to pay any amounts towards the deficit in maintenance charges and service fee which the respondent firm has incurred while discharging its obligations under RERA to provide the services, till the association was formed. According to the memo of calculation, the association is liable to pay a sum of Rs.1,65,72,221/- after adjusting the corpus fund received from the allottees.

51. In the complaint a false averment has been made by the complainant association that the respondent is making a profit of Rs.26.00 lakhs while maintaining the project and providing services to the allottee. However, no document has been produced by the complainant association to establish this fact. An attempt was made to rely on email exchanges between complainant association and respondent to resolve these issues amicably. If certain communications have been addressed by a party while making attempts to negotiate and amicably settle the matter, such communications are protected by without prejudice privilege and are not admissible in the court of law. Secondly, the email dated 23/6/2022 reveal that the members of association admit to errors in the excel sheets and requires further review. Thirdly, the Excel sheets have been prepared without taking into income and expenditure for the financial year 2016 and 2017. The excel



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sheets were prepared without taking into consideration the service fee of 35 percent of maintenance expenses. Fourthly, excel sheets were prepared without taking into consideration the maintenance charges yet to be paid by defaulters for each financial year. Hence, prayed to dismiss the complaint and allow the counter claim in terms of prayer sought in Statement of Objections/counter claim filed by the respondent firm on 7/11/2022.

52. The complainant in support of his claim has produced documents such as (1) Original brochure handed over to an allottee at the time of executing the promoters agreement in 2013. (2) Email dated 10/9/2022 sent by one of the allottees to the respondent along with a letter (3) letter dated 22/09/2022 issued by the respondent to one of the allottee (4) email dated 29/12/2022 issued by one of the allottees in the project (CCC4) to the respondent (5) Deed of declaration along with master plan (6) commencement certificates dated 04/02/2013, 06/11/2013, 07/02/2015, 17/10/2015 and 23/10/2020 (7) Endorsement dated 01/09/2018 in respect of unit nos. CGA4 . GCD2, GCB 3, GCC1, unit no.P-102, unit no.P-103 (8) emails dated 09/08/2022 approving the minutes of the meeting held on 4/8/2022 (9) Extract of the Register maintained for recording the minutes of the meetings held by the complainant association (10) demand for payment of maintenance vide email dated 01/05/2016. (11) demand for payment of maintenance vide email dated 16/02/2022 along with payment receipts. (12) copy of the email dated 16/6/06 sent by the respondent (13) copy of statement of receipts and expenditure 2018-2019, 2019-2020, 2020-2021, 2021-2022 (3) copy of the summary sheet (14) copy of the email dated 25/11/2021(attaching a sample MOU and Service Agreement) issued by the respondent to the allottees (15) copy of the minutes of meeting held on 19/5/2019 (16) copy of the said report and certification of completion under RERA in Form-4 CC dated 12.5.2022 (17) copy of the communication dated 9.5.2022 issued by the complainant to respondent (18) copy of the minutes

of the meeting held by the managing committee on 4/8/2022 (9) copy of the email dated 27/9/2021

53. The respondent in support of his defence has produced documents such as (1) copy of memo of calculation (2) Bye-laws of complainant association (3) copy of statement of corpus fund received from stage/Phase-1 (4) copy of occupancy certificates dated 10.2.2016 issued in respect of Phase-1 (5) copy of email dated 14.4.2016 addressed by respondent firm to one of the allottee (6) copy of promoters agreement executed in favour of one such allottee (7) copy of one sale deeds executed by the respondent firm in favour of one such allottee (8) copy of minutes of the meeting of allottees dated 28/10/2018 (9) acknowledgement of the receipt of income and expenses for the financial years 2016-2019 dated 13/1/2022 by the Coordination Committee (10) email dated 19/10/2020 addressed by the respondent firm to members of the coordination committee (11) copy of the email dated 27/10/2020 sent by Mr. Nadig-member of coordination committee (12) copy of the notice of the meeting of 27/12/2020 (13) minutes of the meeting held on 27/12/2020 (14) statements of income and expenditure for the financial years 2018-2019, 2019-2020 and 2020-21 dated 27/12/2020 (15) copy of email correspondences addressed by respondent firm to several allottees (16) copies of email correspondences addressed by the owners to the respondent firm (17) copy of one such reminder email dated 30.9.2021 addressed by the respondent firm to new coordination committee (18) Master plan dated 31.1.2023 (19) revised master plan dated 27.3.2015 (20) newspaper advertisement dated 16.3.2013 and 27.3.2015 (21) brochure (22) mails circulated by promoters to prospective allottees (23) promoters agreement and sale deed executed by and between SSH and V. Deshpande (24) certificate submitted by Architect dated 03.02.2016 in respect of Phase-1 (25) mails containing minutes dated 28.10.2019 and 27/12/2020 circulated to various owners.



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54. Heard arguments of both the parties. This matter was heard on 11/10/2022, 27/10/2022, 7/11/2022, 21/11/2022, 30/11/2022, 13/12/2022, 23/12/2022, 10/2/2023 and 2/3/2023.

55. On the above averments, the following points would arise for my consideration:-

1. Whether the complainant association is entitled for the relief claimed?
2. What order?

56. Findings on the above points are as under:-

1. In the Affirmative.
2. As per final order for the following

FINDINGS

57. **Findings to point No.1:-**The complainants association have approached this forum seeking for the relief of direction to the respondent firm to transfer the corpus fund of Rs.62.26 lakhs collected from the allottees. The respondent firm has been claiming a sum of Rs.80,000 per month towards additional promoter's fee for 48 elapsed months, with no prior communication to owners. Even though coordination committee was formed to look into the claims of additional maintenance charges, the respondent firm had failed to mention the maintenance rate to be paid and hence the owners had rejected to sign the maintenance and service agreements. The project is still under construction and has not been completed in its entirety. The intention to develop the project in question, in phase-wise was never contemplated by the respondent-promoter. The respondent has conveniently not registered the project as a whole. The project being under construction, the respondent ought to have registered the entire project as one. The respondent has also not conveyed the undivided proportionate title in common areas to the complainant association. The respondent has selectively registered some units and not all, although it ought to have been registered all, with the sole intention of evading accountability and compliances under the RERA Act and the



rules made thereunder. The respondent has acted on its own accord in arbitrary registration of the project and the same is not in accordance with law.

58. The same is resisted by the respondent on the grounds that the complainant association has filed this complaint belatedly only with an intention to protract the proceedings with the objective of keeping alive an unsustainable and non-maintainable complaint. The project is being developed in phases. Each phase is a standalone project. Phase-1 does not come within the scope of RERA as the occupancy certificate and possession of all the units were handed over prior to RERA coming into effect. The said registration has been issued only in respect of Phase-III and not for the entire project. The allegation that the total corpus received by the respondent-promoter towards maintenance charges is Rs.62.26 lakhs from various allottees of 88 units of the project is false. The complainant has not disclosed the fact that the promoter has maintained and provided services to the allottees for a period of six years and that outstanding maintenance charges are liable to be deducted from the said amount. The respondent firm was providing services like round-the-clock power, water, housekeeping services, common kitchen and nursing services to the residents of the commune. The respondent firm commenced the maintenance of the project from 1.4.2016. The respondent intimated to all the allottees that the maintenance charges at Rs.4.50 per square feet of saleable area. Respondent firm was under an obligation to maintain the said project till the association was formed. The respondent firm called for a meeting of allottees on 28/10/2018 with a view to forming an association of the residents, embodying the existing arrangement in the form of Service Agreement.

59. It is pertinent to note that as per section 3(2) of RERA, notwithstanding anything contained in sub-section(i), no registration of the real estate project shall be required. Section 4(2) (c) & (d) of the Act reads as under:

4(2)(c): "an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application and where the project is

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proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases”

42(d) “ the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority”

60. It is pertinent to note that the real estate project of Sharadindu Senior Commune at Pandavapura, Mandya District is being constructed in various stages/phases. Phase-I consists of 44 units for which Occupancy Certificate was obtained on 10/2/2016 before the commencement of RERA Act, 2016. The corpus amount received from the allottees pertaining to Phase-1 of the project is Rs.27,22,230/- and consequently in as much as this amount is concerned, it is outside jurisdiction of RERA to adjudicate.

61. Further, the complainant in his interlocutory application dated 10/2/2023 while enclosing deed of declaration along with master plan has stated that the present complaint has been filed for a relief directing the respondent to transfer the corpus funds collected by it to the tune of Rs.62,26,000/- to the complainant association. At the time of arguments on 23/12/2022 and 16/1/2023, the respondent has sought to contend while relying on the statement of objections, that the amounts collected towards corpus fund for “stage 1 and stage-2” are beyond the jurisdiction of this Authority, since the said stages being a project in itself, was not an “ongoing project” as per the definition under section 3 of the RERA r/w rule 4 of the RERA Rules, 2017. The following is the corpus fund received as on 31/3/2022:

STAGE 1	Rs.27,22,300
STAGE II	Rs.19,03,700
STAGE III	Rs.16,00,000
GRAND TOTAL	RS.62,26,000

62. During the arguments, the complainant prayed this Authority for transfer of Rs.62,26,000/- that is the corpus collected from the members. The respondent



argued that the project registration is for phase-III only. Complainant argued that it is for all the phases and not just phase-3. In Phase-III the amount collected was Rs.16.00 lakhs. The Bye-laws of the Association is not in proper form.

63. The respondent has orally responded to a query raised by this Authority on 13/4/2023, that Stages I and II consisted of the cluster cottages, garden cottages, Blocks A and B. He further unable to point out as to where this is forthcoming either in the master plan, brochure, communications with the allottees, official website, documents uploaded in the K-RERA website etc. Therefore, the intention to develop the project in question, in phase-wise was never contemplated by the respondent promoter. Only with an intent to dodge the accountability and various responsibilities as contemplated under the RERA Act and the rules made thereunder, the respondent has conveniently not registered the project as a whole. In the statement of objections dated 7/11/2022 the respondent has sought to rely on the occupancy certificate dated 10/2/2016 to contend that since the occupancy certificate in respect of said units were issued in 2016, the same is prior to RERA and hence the said stage is not an "ongoing project" as defined under explanation to Rule 4 under the RERA Rules, 2017. Hence, the present complaint is not maintainable for seeking transfer of corpus amounts, collected in respect of these units falling within Stage-1.

64. The undefined phases cannot be treated as a standalone real estate project as defined under section 2(zn) of the RERA Act since the development works and all improvements, as contemplated under the said section 2(zn) were required to be done as per the sanctioned plans and layout plans as contemplated under section 2(q) for occupancy certificate to have been issued. The master plan dated 3/9/2012 and the commencement certificate does not define the said units to be developed stage/phase-wise. Under the circumstances in no manner can it be construed that the project is being developed phase wise and the cluster cottages, which allegedly formed a part of "Stage-I" was already completed at the time of commencement of RERA Act and hence the claim of the complainant is not maintainable.

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65. Perused the promoters agreement dated 20/11/2013. Specific citations of the clauses under promoters agreement are explained as under:

Clause 2 (IV) : *"The amenities provided, however, will be made available to the purchaser only on completion of the project and its entirety. No request to occupy a portion thereof by the purchaser before the completion of the project will be entertained".*

Clause 1)sub-clause i: *"For a consideration of Rs.4,40,550/- the promoters agree to sell the schedule B property, being 979 sft of undivided share in the schedule A property, to the purchaser and for a consideration of Rs.25,79,400/-. The promoters further agree to construct the schedule C property as per the attached floor plan and to the specification contained in Annexure-B hereto and convey the same to the purchaser by way of absolute sale. The total sale consideration towards both the schedule B and Schedule C properties thus works out to Rs.30,19,950/-."*

Clause 1)sub-clause II: *"In addition to the aforementioned sale consideration, the purchaser has agreed to pay a sum of Rs.7,73,050/- towards "other charges and deposits" like club house membership, levies and duties payable to the local panchayat, deposit towards electrical connection, expenses towards sewer treatment and water connections, contribution to the common maintenance funds as shown below;*

Car park	Rs.1,50,000
Modular kitchen(hob-chimney+ units)	Rs.2,00,000
Utility(washing machine, drying system+ wash area	Rs.1,00,000
Water (Treatment, supply & deposits) @Rs.50.00 Sft	Rs.58,250
Electricity including sub-station @Rs.70.00 Sft	Rs.81,550
STP & Generators	Rs.50,000
Club house charges	Rs.75,000
Maintenance corpus payable @ Rs.50.00 sft	58,250

In the absence of any material to demonstrate that the project was being developed phase-wise and what constituted which phase, this contention of the respondent is



unsustainable.

66. As per clause-(iv) under the caption "Time for completion" of the said agreement, the amenities provided, however, will be made available to the purchaser only on completion of the project in its entirety. No request to occupy a portion thereof by the purchaser before the completion of the project would be entertained. The Club house with certain amenities was handed over to the complainant association only during July 2022. The complainant association sought for transfer of the corpus fund collected towards maintenance when the complainant association was formed in April 2022 and the demand made by the complainant association to the respondent was refused by the respondent. Hence, the claim of the complainant being with respect to the entire project and not anyone single phase/stage, since there is only one association for the entire project. The claim in the present complaint is with respect to the entire corpus collected towards maintenance of the entire project, at the time of filing the present complaint and the claims are not with respect to any one particular unit/apartment. The said township, which is being developed as one big project which is still under construction. Thus, the corpus fund which has been collected is required to be duly transferred to the registered Association on its coming into existence as per the provisions of Section 11 of the RERA Act.

67. It is pertinent to note that the respondent has also not conveyed the undivided proportionate title in common areas to the complainant association. The non-compliance with section 17 of the RERA Act, itself shows that the project in question is an ongoing project.

68. As per the original brochure 11/8/2013, the township/project in question was to consist of 340 units. The entire project was proposed to be developed as a whole and not stage/phase-wise. The reduction of units from 340 to 188 which in turn reduces super built up area to 17,178 Sq.Mts from the original sanction of 24,779 Sq.Mts. without there being any notice and compliance of statutory obligations. Furthermore, the respondent vide email dated 11/8/2013 also

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envisages the project to be comprising of 340 units and development of a township. The project is a peculiar project was represented to be having essential amenities catering to senior citizens. Amenities such as permanent kitchen and dining hall, equipped medical center, library, gym etc., have been provided at the time of formation of the complainant association. In fact, many of the other amenities such as emergency push button, intercom, indoor shuttle court, swimming pool, Jacuzzi, hobby room etc., as agreed to be delivered to the allottees by the respondents, have not yet provided and the respondent has to complete constructing the same. Some of these facilities and amenities, such as the emergency push button/intercom are senior citizen friendly and a day-to-day requirement.

69. It may be noted that the commencement certificates(5 nos) dated 4/2/2012 in no manner define the stage/phase development of the project in question. In fact the permission for commencement of construction of the club house has been sought on 4/2/2012, while the club house was handed over to the complainant association only in July 2022. Hence, the entire township being one project was an ongoing project at the time of commencement of RERA Act and the respondent ought to have registered the whole project as represented to the allottees.

70. Further, the complainant has produced endorsements which are of the year September 2018. Although the respondent ought to have registered the whole project, it has deliberately avoided doing so. The respondent having, assured certain amenities to the senior citizens and the scheme of development being a township catering to the needs of the senior citizens has not discharged the same. This clearly indicates that the respondent has selectively registered some units and not all, although it ought to have registered all, with the sole intention of evading accountability and compliances under the RERA Act and the rules made thereunder. The said documents pertain to units, which have been all together excluded from registration, although the respondent ought to have registered it since, the endorsement which the respondent relies on have been issued in September 2018, after the commencement of RERA Act. This once again shows that the respondent has acted on its own accord in arbitrary registration of the



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project and the same is not in accordance with law. For the deliberate default of the respondent, the complainant association cannot be made to suffer at the hands of the said respondent.

71. It is seen that Section 4(2)(c) and (d) of the RERA Act read with Rule 15(B) of the Karnataka Rules mandates that where a project is proposed to be developed phase-wise, the respondent is required to furnish the approvals and commencement certificate from the competent authority for each of such phases and upload all details regarding, inter alia the registration of the project, its details and the documents as mandated under Section 4(2) (c) and (d) of the RERA Act. The said mandate has not been complied with by the respondent even to this date and for this reason alone the respondent is required to be penalized and penalty of the highest order be imposed on it.

72. It is pertinent to note that the respondent has relied on one master plan dated 3/9/2012 produced in application dated 2/3/2023 to contend that the layout was approved to be developed phase wise, although the master plan in print does not suggest the stage/phase development and details thereof. The certified copy of the said document obtained by the complainant from the competent authority very clearly forthcoming that the very same endorsement has been struck down in pen by the competent authority. The said certified copy of the very same layout plan has been filed before this Authority on 13/4/2023 at the time of addressing oral arguments. Hence, viewed from any angle, the township in question is not being developed phase-wise. From the materials available on record such as approved plan of the said project dated 31/03/2013 it is apparent that the township in question is to be developed as not in phase wise. But it should be developed as single project.

73. In view of the aforesaid contentions the complainant has sought to rely on judgement passed by the Hon'ble UP Real Estate Appellate Tribunal in P.P. Buildcon Private Limited Vs. Om Prakash reported in 2021 SCC online RERA(UP)30, wherein similar contentions as raised by the respondent herein, has

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been urged as under:

Para-41. "...The Regulatory Authority in such case cannot take a stand that let the project be got registered and only thereafter it will entertain the complaint. If a complaint in such cases is not entertained by the Regulatory Authority, a scrupulous promoter or builder or developer may not register the project to avoid jurisdiction of the Regulatory Authority. This will frustrate the very purpose of the Act regarding giving relief to the complainant and ensuring compliance of the obligations by the promoters, real estate agents and allottees"

The above citation was produced before this Authority on 12/4/2023 at the time of addressing arguments.

74. On perusal of the entire documents placed on record, it is seen that the project has been registered as per the provisions of RERA Act, 2016. The apartment owners association is registered as Sharadindu Senior Commune Owners Association on 7.4.2022 as per the provisions of the Karnataka Apartment Owners Association Act, 1972. The total number of completed units are 108 as on date and the respondent is yet to construct and complete 80 more units. The total corpus received by the respondent-promoter towards maintenance charges is Rs.62.26 lakhs from various allottees of 88 units in the project. The maintenance fee charged by the respondent-promoter as per its mail dated 14.4.2016 is at Rs.4.50 per square feet for the period between April 2016 to March 2022. No maintenance agreement has been entered into between the parties as per Clause 4 "Maintenance" of the respective Promoters Agreement entered into between the respondent and individual allottee. The respondent in no manner has demonstrated the project in question to be developed by phase-wise. The respondent ought to have registered the entire project as one. The undefined phases cannot be treated as a standalone real estate project as defined under section 2(zn) of the RERA Act since the development works and all improvements, as contemplated under the said Section (2)(zn) were required to be done as per the sanctioned plans and layout plans, as contemplated under Section 2(q) for occupancy certificate to have been issued. The



claim in the present complaint is with respect to the entire corpus collected towards maintenance of the entire project at the time of filing the present complaint and the claims are not with respect to any one particular unit/apartment. The entire project consisting of various units viz: Cluster cottages, Garden cottages, 1 & 2 BHK apartment) together with the amenities would be one single project. The club house with certain amenities was handed over to the complainant's association only during July 2022.

75. It may be noted that the commencement certificate in no manner define the stage/phase development of the project in question. In fact the permission for commencement of construction of the club house has been sought on 4/2/2012 while the club house was handed over to the complainant association only in July 2022. Hence, the entire project being one project was an ongoing project at the time of commencement of RERA Act and the respondent ought to have registered the whole project. Further the complainant has produced endorsements which are of the year September 2018. The respondent having assured certain amenities to the senior citizens and the scheme of development being a township catering to the needs of the senior citizens has not discharged the same. For the deliberate default of the respondent, the complainant association cannot be made to suffer at the hands of the said respondent. In the absence of any material to demonstrate that the project was being developed phase-wise and what constituted which phase, this contention of the respondent is unsustainable.

76. It is pertinent to note that the respondent firm has failed to mention the maintenance rate to be paid and hence the owners had rejected to sign the maintenance and service agreements. It contends that the project has been developed in phase-wise manners. Phase-1 of the project consists of 44 units comprising of Block-A and Cottage Clusters which have received occupancy certificate on 10.2.2016 have been sold to the allottees and physical possession was handed over to the allottees prior to the commencement of RERA. Therefore, according to provisions of Section 3(2)(b) read with explanation, since the project



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has been developed stage wise, and each of the stages has to be treated as standalone project, and since Phase-1 has received partial occupancy certificate, the corpus fund amount received from such owners, is to be excluded from the purview of complaint as Phase-1 falls outside purview of RERA.

77. It is also pertinent to note that the promoter of the project has delayed the construction and completion of the project several years. The allottees grievances are required to be addressed as per the provisions of RERA. The allottees to get their grievance addressed have to form an association. As per the Act, the appropriate authority for formation of association of allottees includes Co-operative society as per section 11(4)(e) of RERA. The Act stipulates an obligation on the promoter to enable formation of association or cooperative society within a period of 3 months of the majority of the allottees have booked their apartments. The Hon'ble High Court of Karnataka in Writ Petition no.34660/2017 and its appeal WA 974/2019 has held that the association formed and registered under the Karnataka Cooperative Society Registration Act 1960. In the projects which are abandoned, stalled, and incomplete or delayed, the allottees association are required to approach this Authority for takeover of the project required to be registered entity to avail the legal rights and entitlements. Such take over can be done only by a society duly registered as cooperative society. The takeover is required when the project is abandoned, stalled or inordinately delayed and none of such project shall have occupancy certificate. These conditions are contrary to the provisions of the Act. If the registration is denied on the grounds contrary to the Act, that shall jeopardize the rights of the allottees. The administrative delays shall further cripple the allottees from achieving any remedies for their grievances. The concerned authorities are mandated to assist in the implementation of RERA Act which is a central enactment so as to ensure that the legislative objectives are achieved.

78. It is mandate of the RERA Act, that all the state instrumentalities shall function in coordination to achieve the objectives of the Act.

79. Section 32 empowers the Authority to make such recommendation to facilitate



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the growth and promotion of a healthy, transparent, efficient and competitive real estate sector for the protection of interest of the allottees and others.

80. With regard to providing facilities such as ambulance service, clinic-doctor on call with periodic visits, concierge services, kitchen services are not coming under the purview of this Authority.

81. The claim of the present complaint is with respect to the entire corpus collected towards maintenance of the entire project at the time of filing this complaint but claims are not with respect to any one particular unit/apartment. As per master plan dated 3/9/2012, layout to be developed phase-wise. Also the master plan suggest the stage/phase and details thereof. These appears to be handwritten endorsement which attempts to suggest that the layout can be developed phase-wise.

82. The Complainant Association which consists of allottees of III Phase of the project has sought for refund of corpus fund to the Complainant's Association as stipulated under section 11 (g) of the RERA Act.

83. As against this, contention of the respondent is that he has completed the phase I and II of the project prior to enactment of RERA. Therefore, he is not liable to refund corpus fund related to those two phases of the project. Thus, he is only liable to refund the corpus fund collected from the allottees of Phase III of the project.

84. Apparently, the Complainant's association consists of allottees of all the III Phases of the project. Since the project is to be regarded as completed after completion of the Phase III, from that point of view, section 11 of the RERA Act is applicable to the whole project. Even otherwise there are no materials before this Authority to show that the respondent has completed the project phase-wise. Moreover, the respondent has obtained sanctioned plan of all the 3 phases. Therefore, the said project is to be considered as a standalone project. Further, the respondent has obtained occupancy certificates of each flat. But neither in any occupancy certificate nor in the sanctioned plan there is a indication of phase wise.



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In addition, very purpose of collecting corpus fund is to transfer the same to the Association of allottees to be formed after completion of the project. Therefore, the respondent cannot withheld the corpus fund related Phase I and II merely because he has completed the same before enactment of RERA Act as it amounts to unjust enrichment which is never permissible under law.

85. It is also to be noted that common amenities under the project are made available for the common use and enjoyment of the allottees of all the phases and they are inseparable in nature.

86. Having regard to all these aspects this Authority is of the considered view that the respondent is liable to transfer the entire corpus fund in favour of Complainant's Association irrespective of whether he has completed the project phase-wise or not. Even from this angle, the contention of the respondent is not tenable. Accordingly, the point raised above is answered in the Affirmative.

87. **Findings on point no.2:** In view of the above discussion, this complaint deserves to be allowed. Hence, I proceeding to pass the following order:

ORDER

In exercise of powers conferred under Section 31 of the Real Estate(Regulation & Development) Act, 2016, the complaint bearing No: CMP/220803/0009845 is hereby allowed as under:

1. The respondent is hereby directed to complete the project and provide all the amenities as agreed within 60 days from the date of this order.
2. Further, the respondent is hereby directed to render accounts in respect of the expenses incurred towards advance maintenance charges collected from the allottees and to transfer the entire corpus fund to the complainant's association within 60 days from the date of this order.



[Handwritten signature]

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3. The complainant association is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to costs.



(H.C. KISHORE CHANDRA)

Chairman
K-RERA



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