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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 27341 OF 2024 (CS-RES)

C/W

WRIT PETITION NO. 5479 OF 2023 (CS-RES)

IN W.P.NO.27341/2024

BETWEEN

1. AKHILESH ANAND
S/O ANAND N KOTIAN
AGED ABOUT 45 YEARS
R/AT FLAT NO. B-20504
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
2. ADITYA KUMAR
S/O LATE PRAFULLA CHANDRA JHA
AGED ABOUT 39 YEARS
R/AT FLAT NO. C-30706
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
3. RAHUL KUMAR SINGH
S/O SUDHIR KUMAR SINGH
AGED ABOUT 40 YEARS
R/AT FLAT NO. B 20105
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
4. PRAVEEN KUMAR
S/O SATYENDRA NARAYAN SINGH
AGED ABOUT 36 YEARS
R/AT FLAT NO.B 21301
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
5. GOURAV KUMAR





- S/O RAJEEV KUAMR
AGED ABOUT 29 YEARS
R/AT FLAT NO. C-41203
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
6. RAJESH KUMAR SINGH
S/O AWADHESH KUMAR SINGH
AGED ABOUT 57 YEARS
R/AT FLAT NO. E-50703
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
7. SANDEEP KUMAR AGARWAL
S/O SANTOSH AGARWAL
AGED ABOUT 40 YEARS
R/AT FLAT NO. C-30307
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
8. PRADEEP SHARMA
S/O HIRALAL SHARMA
AGED ABOUT 49 YEARS
R/AT FLAT NO. C-31203
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
9. DEEPAK SINHA
S/O N K P SINHA
AGED ABOUT 54 YEARS
R/AT FLAT NO. C-50702
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
10. SANDIPAN BHATTACHARJEE
S/O SAMIR HANDRA BHATTACHARJEE
AGED ABOUT 41 YEARS
R/AT FLAT NO. C-40302
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
11. KAMTA PRASAD
S/O LAXMI PRASAD
AGED ABOUT 44 YEARS
R/AT FLAT NO. B-21002
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
12. ADITYA M YADAV
S/O. MAHADEV YADAV



- AGED ABOUT 55 YEARS,
R/AT FLAT NO. B-21101,
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 13.PRADEEP NIMBALGUNDI
S/O ANJENYA
AGED ABOUT 42 YEARS,
R/AT FLAT NO. C-20508,
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 14.SRINIVAS RAO V
S/O VENNAM HUSSAIN
AGED ABOUT 36 YEARS,
R/AT FLAT NO. E-51104,
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 15.RITESH SINGHANIA
S/O SWAR MAL SINGHANIA,
AGED ABOUT 43 YEARS,
R/AT FLAT NO. E-51302,
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 16.RAHUL GUPTA
S/O RAJENDRA PRASAD GUPTA,
AGED ABOUT 34 YEARS,
R/AT FLAT NO. C-31306,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 17.SUMANTHA MOITRA
S/O BISWANATH MOITRA
AGED ABOUT 64 YEARS,
R/AT FLAT NO. B-21204,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 18.RAMAKRISHNA BALAJI.K
S/O K.SREEDHAR,
AGED ABOUT 39 YEARS,
R/AT FLAT NO. C-31302,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.



- 19.ABHISHEK SINHA
S/O AMAR SINHA
AGED ABOUT 45 YEARS,
R/AT FLAT NO. B-20902,
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 20.MININATH P
S/O BABAN SIDHU PACHARNE
AGED ABOUT 48 YEARS,
R/AT FLAT NO. C-30205,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 21.DURGA PRASAD SHARMA
S/O DEVENDRA KUMAR SHARMA
AGED ABOUT 35 YEARS,
R/AT FLAT NO. E-51304,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 22.VIJETH SANKETHI K
S/O KESHAVA PRAKASH
AGED ABOUT 40 YEARS,
R/AT FLAT NO. C-30403,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 23.ABHINEET SRIVASTAVA
S/O SHYAM NARAIN SRIVASTAVA
AGED ABOUT 37 YEARS,
R/AT FLAT NO. C-30208,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 24.HARSHA N
S/O NARASHIMA SHETTY
AGED ABOUT 43 YEARS,
R/AT FLAT NO. B-21107,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562 106.
- 25.SANDEEP. K. T.
S/O. K. DHARMAPALAN,
AGED ABOUT 50 YEARS,
R/AT FLAT NO. B-21203 AND C-30901,
COMMUNE-1 APARTMENT,
MARSUR,



- BENGALURU-562 106.
- 26.ALOK KUMAR VERMA
S/O. LATE MADAN PRASAD VERMA,
AGED ABOUT 60 YEARS,
R/AT FLAT NO. E-50901,
COMMUNE-1 APARTMENT,
MARSUR,
BENGALURU-562 106.
- 27.AYUSH SINHA
S/O. ARUN KUMAR,
AGED ABOUT 35 YEARS,
R/AT FLAT NO. D-40902,
COMMUNE-1 APARTMENT,
MARSUR,
BENGALURU-562 106.
- 28.NILAKANTHA JENA
S/O. NANDA KISHORE JENA,
AGED ABOUT 45 YEARS,
R/AT FLAT NO. C-30903,
COMMUNE-1 APARTMENT,
MARSUR,
BENGALURU-562 106.
- 29.V SUNDAR RAJ
S/O VENKATASWAMY
AGED ABOUT 42 YEARS
R/AT FLAT NO. C 31308
COMMUNE 1 PARTMENT
MARSUR BENGALURU 562 106
- 30.ASHOK KUMAR SINGH
S/O NARENDRANATH SINGH
AGED ABOUT 55 YEARS
R/AT FLAT NO. B 20204
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 31.ADITYA SAXENA
S/O HARI SHANKAR
AGED ABOUT 42 YEARS
R/AT FLAT NO. B 20806
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 32.SWATI TULSIAN
W/O SANDEEP KUMAR AGARWAL
AGED ABOUT 40 YEARS



- R/AT FLAT NO. D 40403
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 33.BISWARANJAN SAHOO
S/O BANKANIDHI SAHOO
AGED ABOUT 38 YEARS
R/AT FLAT NO. C 30107
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 34.ROOPA PRAKASH
S/O PRAKASH B C
AGED ABOUT 35 YEARS
R/AT FLAT NO. C 30107
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 35.SHASHYENDRA SINGH GAUTHAM
S/O VIRENDRA SINGH GAUTAM
AGED ABOUT 40 YEARS
R/AT FLAT NO. C 31005
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 36.DIPANJAN MONDAL
S/O DR G C MONDAL
AGED ABOUT 37 YEARS
R/AT FLAT NO. D 41102
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 37.ABHISHEKH ANAND
S/O ANAND N KOTIAN
AGED ABOUT 43 YEARS
R/AT FLAT NO. B 20704
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 38.SRITAMA MAJUMDAR
W/O DIPTARKO
AGED ABOUT 38 YEARS
R/AT FLAT NO. B 20206 A 10203
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106
- 39.BIKASH KUMAR
S/O MAHESHWARI SHARAN
AGED ABOUT 52 YEARS
R/AT FLAT NO. D 40702



COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106

40.NITIN JUYAL
S/O DINESH CHANDRA JUYAL
AGED ABOUT 36 YEARS
R/AT FLAT NO. C 30507
COMMUNE 1 APARTMENT
MARSUR BENGALURU 562 106

41.J GOPINATHAN
S/O JEEVANANDAM
AGED ABOUT 45 YEARS
RA/T FLAT NO D40903
COMMUNE 1 APARTMENT
MARSUR
BENGALURU 562106

42.MALAY BISWAS
S/O LATE ANIL BISWAS
AGED ABOUT 55 YEARS
RA/T FLAT NO D41101
COMMUNE 1 APARTMENT
MARSUR
BENGALURU 562106

43.ARPITA GANGULY
W/O RAJIV KUMAR CHAURASIA
AGED ABOUT 42 YEARS
RA/T FLAT NO B21303
COMMUNE 1 APARTMENT
MARSUR
BENGALURU 562106

44.AZAM KHAN
S/O ADAM KHAN
AGED ABOUT 60 YEARS
RA/T FLAT NO B 20602
COMMUNE 1 APARTMENT
MARSUR
BENGALURU 562106

45.TULSIRAM PONDRATI
S/O PONDRATI APPARO
AGED ABOUT 44 YEARS
R/AT FLAT NO C30405
COMMUNE 1 APARTMENT
MARSUR
BENGALURU 562106



- 46.GAURAW KUMAR SRIVASTAVA
S/O BIPIN BHIHARI SRIVASTAVA
AGED ABOUT 38 YEARS
RA/T FLAT NO C30306
COMMUNE 1 APARTMENT
MARSUR
BEGNLURU 562106
- 47.DIPTI SINHA
D/O NAWAL KISHORE PRASAD SINHA
AGED ABOUT 52 YEARS,
R/AT FLAT NO.D-40602,
COMMUNE-1 APARTMENT, MARSUR,
BENGALURU-562106
- 48.NIRAJ KUMAR SINHA
S/O ADITYA PRASAD SINHA
AGED ABOUT 50 YEARS,
R/AT FLAT NO.C-30908
COMMUNE-1 APARTMENT, MARSUR,
BENGALURU-562106
- 49.PRATEEK KUMAR JAIN
S/O PRAVEEN KUMAR JAIN
AGED ABOUT 35 YEARS,
R/AT FLAT NO. C-30406,
COMMUNE-1 APARTMENT, MARSUR,
BENGALURU-562106
- 50.DHIRAJ KUMAR SINHA
S/O ADITYA PRASAD SINHA
AGED ABOUT 50 YEARS,
R/AT FLAT NO.B-20308,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562106
- 51.AKANKSHA SAHAY
W/O VIJAYANT ANAND
AGED ABOUT 35 YEARS,
R/AT FLAT NO.B-20505,
COMMUNE-1 APARTMENT, MARSUR,
BENGALURU-562106
- 52.SUNITA SAHAY
S/O AJAY KUMAR SAHAY
AGED ABOUT 68 YEARS,
R/AT FLAT NO.B-20402,
COMMUNE-1 APARTMENT,
MARSUR, BENGALURU-562106



- 53.RAJNISH KUMAR
S/O LATE SHRI BRAJNANDAN PRASAD
AGED ABOUT 51 YEARS
R/AT FLAT NO. C-31303
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 54.SUMAN SATPATHY
S/O GIRISH PRASAD SATIPATHY
AGED ABOUT 44 YEARS
R/AT FLAT NO. C-31305
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 55.RAVI PRASAD SINHA
S/O ADITYA PRASAD SINHA
AGED ABOUT 55 YEARS
R/AT FLAT NO. C-30808
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 56.GAURAV VERMA
S/O SUBASH CHANDRA PRASAD
AGED ABOUT 40 YEARS
R/AT FLAT NO. C-31303
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 57.SANJAY KUMAR SHARMA
AGED ABOUT 61 YEARS
R/AT FLAT NO. C-30506
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 58.ANURAG SAURABH
S/O RATNESHWAR PRASAD SINHA
AGED ABOUT 37 YEARS
R/AT FLAT NO. B-21103
COMMUNE-1 APARTMENT
MARSUR, BENGALURU 562 106
- 59.COMMUNE -1 COMMUNE RESIDENTS
WELFARE ASSOCIATION (R)
(A SOCIETY /ASSOCIATION REGISTERED UNDER
KARNATAKA SOCIETIES REGISTRATION ACT)
(REGD. VIDE DRB3/SOR/487/2022-2023
REGD OFF 2ND FLOOR, CLUB HOUSE
THE COMMUNE-1, MARASUR VILLAGE



NC: 2025:KHC:23360
WP No. 27341 of 2024
C/W WP No. 5479 of 2023

KASABA HOBLI, ANEKAL TALUK
BENGALURU 562 106

REPRESENTED BY ITS PRESIDENT
MR. K RAMAKRISHNA BALAJI
S/O K SREEDHAR
AGED 38 YEARS

...PETITIONERS

(BY SRI. RAJASHEKAR S., ADVOCATE)

AND

1. STATE OF KARNATAKA
REP BY ITS SECRETARY
DEPARTMENT OF CO OPERATIVE SOCIETIES
VIKAS SOUDHA
AMBEDKAR VEEDHI
BENGALURU 560 001
2. THE REGISTRAR KARNATAKA CO-OPERATIVE SOCIETIES
NO. 146, 8TH CROSS, SAHAKARA SOUDHA,
MARGOSA ROAD, MALLESHWARAM,
BENGALURU-560 003.
3. DISTRICT REGISTRAR OF SOCIETIES
ZONE-3, BENGALURU DISTRICT,
NO. 146, 8TH CROSS,
SAHAKARA SOUDHA,
MARGOSA ROAD,
MALLESHWARAM,
BENGALURU-560 003.
4. KARNATAKA REAL ESTATE REGULATORY
AUTHORITY (RERA)
NO.1/14, 2ND FLOOR,
SILVER JUBILEE BLOCK,
UNITY BUILDING BACKSIDE,
CSI COMPOUND, 3RD CROSS,
MISSION ROAD,
BENGALURU-560 027,

REP. BY ITS SECRETARY.
(DELETED V/O/D 10.12.2024)
5. THE SUB-REGISTRAR
ATTIBELE SUB-REGISTRAR OFFICE,



NO. 430, ANNA BUILDING,
HENNAGARA GATE,
BOMMASANDRA INDUSTRIAL AREA,
HOSUR MAIN ROAD,
ATTIBELE,
BENGALURU-560 105.

6. COMMUNE PROPERTIES INDIA PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT NO. 823,
21ST MAIN ROAD, 8TH BLOCK,
KORAMANGALA,
BENGALURU-560 095,

REP. BY ITS AUTHORIZED REPRESENTATIVE
MR. A. X. ANTONY.

7. COMMUNE BUYERS WELFARE ASSOCIATION
COMMUNE 1 APARTMENTS,
CLUB HOUSE, MARASUR VILLAGE,
CHANDAPURA- ANEKAL ROAD,
ANEKAL TALUK,
BENGALURU-562 106,
REP. BY ITS SECRETARY.
(A SOCIETY REGISTERED UNDER THE
SOCIETIES REGISTRATION ACT)

8. COMMUNE 1 APARTMENT CO-OPERATIVE SOCIETY LTD.,
(A SOCIETY REGISTERED UNDER THE KARNATAKA CO-
OPERATIVE SOCIETIES ACT)
MARSURU VILLAGE,
KASABA HOBLI,
ANEKAL TALUK,
BENGALURU-562 106,
REP. BY ITS SECRETARY.

9. ANAND PATIL
S/O. LATE BAPUGOUDA PATIL,
AGED ABOUT 45 YEARS,
R/AT FLAT NO. 41303 AND 20406,
D BLOCK, COMMUNE 1,
MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.



- 10.SUSHIL TAJES SOANS
S/O. PREMKUMAR SOANS,
AGED ABOUT 37 YEARS,
R/AT FLAT NO. 50202, E BLOCK,
COMMUNE 1, MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.
- 11.P. N. KRISHNA KUMAR
S/O. K. K. UNNI NAIAR,
AGED ABOUT 53 YEARS,
R/AT FLAT NO. 41302,
D BLOCK, COMMUNE 1,
MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.
- 12.GAURAV BARUA
S/O. B. C. BARUA,
AGED ABOUT 25 YEARS,
R/AT FLAT NO. 41304,
D BLOCK, COMMUNE 1,
MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.
- 13.HARIPRASAD
S/O. VASUDEVAN VENGATASAMY,
AGED ABOUT 43 YEARS,
R/AT FLAT NO. 40202,
D BLOCK, COMMUNE 1,
MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.
- 14.SAJAN SHAAJI
S/O. SHAAJI JI,
AGED ABOUT 43 YEARS,
R/AT FLAT NO. 40304,
D BLOCK, COMMUNE 1,
MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.
- 15.RAJESH SUBRAMANIAN
S/O. SUBRAMANIAN,
AGED ABOUT 51 YEARS,
R/AT FLAT NO. 20102,
B BLOCK, COMMUNE 1,



NC: 2025:KHC:23360
WP No. 27341 of 2024
C/W WP No. 5479 of 2023

MARSUR,
CHANDAPURA-ANEKAL ROAD,
BENGALURU-562 106.

.... RESPONDENTS

(BY SRI. YOGESH D. NAIK., AGA FOR R1 TO R3 & R5;
SMT. PRADEEP KUMAR P.K., FOR CR/7 &
C/R8 & ALSO FOR R9 TO R15;
SRI. VENKATESH R BHAGATH., ADVOCATE FOR R6;
SRI. GOWTHAMDEVE C ULLAL., ADVOCATE FOR R4;
V/O DATED 10.12.2024 IS DELETED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
REGISTRATION CERTIFICATE BEARING NO. AA.HA. HAAA.RE-
50/REGISTRATION/06/54965/2023-24 DATED 11.08.2023 ISSUED
BY SECOND RESPONDENT REGISTRAR FOR CO-OPERATIVE
SOCIETIES, ZONE-3, BENGALURU URBAN DISTRICT AT ANNEXURE-J
AND ETC.

IN W.P.NO.5479/2023
BETWEEN

1. RAJESH SUBRAMANIAN
S/O V SUBRAMANIAN
AGED 48 YEARS,
RESIDING AT B20102, B BLOCK 1ST FLOOR,
COMMUNE 1 APARTMENT
CHANDAPURA ANEKAL ROAD,
BANGALORE - 562106
2. P N KRISHNA KUMAR
AGED ABOUT 48 YEARS,
S/O MR K.K. UNNI NAIAR,
RESIDING AT NO 29 ,
LAKSHMI NILAYAM, FCI ROAD,
N R LAYOUT BENGALURU-560016
3. RAJESH VALERI SIVASANKARAN NAIR
S/O MR VALERI SIVASANKARAN,
AGED ABOUT 43 YEARS,
RESIDING AT MANA TROPICALE TOWER 3 G1
CHIKKANAYAKANAHALLI



NC: 2025:KHC:23360
WP No. 27341 of 2024
C/W WP No. 5479 of 2023

OFF SARJAPUR ROAD,
CARMELARAM P O
BANGALORE - 560035

...PETITIONERS

(BY SRI. SATISH T.E., ADVOCATE)

AND

1. THE STATE OF KARNATAKA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF CO OPERATIVE SOCIETIES,
M S BUILDING, BANGALORE
2. THE REGISTRAR
DEPARTMENT OF CO OPERATIVE SOCIETIES
(HOUSING AND OTHERS)
CENTRAL OFFICE,
NO 01, ALI ASKAR ROAD,
ULSOOR,
BENGALURU - 560025
3. THE ADDITIONAL REGISTRAR
DEPARTMENT OF CO OPERATIVE SOCIETIES
(HOUSING AND OTHERS)
CENTRAL OFFICE,
NO 01, ALI ASKAR ROAD,
ULSOOR BENGALURU - 560025
4. THE ASSISTANT REGISTRAR
DEPARTMENT OF CO OPERATIVE SOCIETIES
8TH CROSS, 3RD MAIN ROAD,
MARGOSA ROAD,
MALLESHWARAM,
BENGALURU - 560005
5. THE DISTRICT REGISTRAR
DEPARTMENT OF CO OPERATION
ZONE 3, MARGOSA ROAD,
NEAR KANCHIPURAM SILKS,
MALLESHWARAM
BANGALORE - 560003
6. KARNATAKA REAL ESTATE REGULATORY AUTHORITY



NO 1/14, 2ND FLOOR,
SILER JUBILEE BLOCK,
UNITY BUILDING BACKSIDE,
CSI COMPOUND, 3RD CROSS,
MISSION ROAD, BENGALURU - 560027
REPRESENTED BY ITS THE CHAIRMAN

7. INSPECTOR GENERAL OF REGISTRATION AND
COMMISSIONER OF STAMPS
KANDYA BHAVAN
8TH FLOOR, K G ROAD,
BENGALURU - 560001
8. THE SUB REGISTRAR BANASHANKARI
AGRICULTURE PRODUCE CO-OP MARKETING
SOCIETY BUILDING APMC,
KANAKAPURA ROAD
BANASHANKARI
BENGALURU - 560050
9. COMMUNE PROPERTIES INDIA PVT LTD
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT
NO 823 GROUND FLOOR, 21ST MAIN ROAD
8TH BLOCK, KORAMANGALA,
BANGALORE - 560095
REP BY ITS DIRECTOR
10. PRATAP SATYANARAYANA KUNDA
S/O MR SATYANARAYANA KUNDA
AGED ADULT,
FOUNDER DIRECTOR AND PROMOTER OF
COMMUNE PROPERTIES INDIA PVT LTD
RESIDING AT 8 -2-703/4/P ROAD NO 12,
BANJARA HILLS,
HYDERABAD, TELANGANA - 500034
11. RATISH KUMAR MOORTHY
AGED ADULT
DIRECTOR
COMMUNE PROPERTIES INDIA PVT LTD
RESIDING AT NO 820, 80 FEET ROAD
20TH FEET ROAD,



20TH MAIN 8TH BLOCK
KORAMANGALA
BANGALORE – 560095

12. ANAND RATHI GLOBAL FINANCE LIMITED
A NON BANKING FINANCE COMPANY
HAVING ITS REGISTERED OFFICE AT
4TH FLOOR,
SILVER METROPOLIS,
JAI COACH COMPOUND
OPPOSITE BIMBISAR NAGAR GOREGOAN (EAST)

MUMBAI MAHARASHTRA INDIA 400063
THE MORTGAGER-REP BY AUTHORISED OFFICER
MR. BIJAY MAHANA

13. SENIOR SUB REGISTRAR ATTIBELE
NO 430, ANNA BUILDING
HENNAGARA GATE,
BOMMASANDRA INDUSTRIAL AREA,
HOSUR MAIN ROAD,
ANEKAL TALUK,
BANGALORE-562106.

.... RESPONDENTS

(BY SRI. YOGESH D. NAIK., AGA FOR R1 TO R5, R7, R8 R13;
SMT. VENKATESH R. BHAGATH., ADVOCATE FOR R9 TO R11;
SRI. GOWTHAMDEVE C. ULLAL., ADVOCATE FOR R6;
SRI. RISHABHA RAJ THAKUR., ADVOCATE FOR R12)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO DIRECT THE R2, R3 AND R4
TO EXPEDITIOUSLY REGISTER THE CO-OPERATIVE SOCIETY, “
COMMUNE I APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD.,
AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND
HAVING BEEN RESERVED FOR ORDERS ON 25.04.2025, THIS DAY,
THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ



CAV ORDER

1. The Petitioners in W.P.No.27341/2024 are before this

Court seeking for the following reliefs:

- a. *Quash Registration certificate dated 20.11.2020 DRB3/SOR/378/2020-2021 issued by third Respondent District Registrar for Societies, Zone-3, Bengaluru Urban District at Annexure-B*
(Deleted vide order dated 10.12.2024)
- b. *Quash order dated 05.07.2022 in Complaint No. (KRERA) 7613/2020 at Annexure-C and Order dated 03.01.2023 & 17.05.2024 in CMP 221116/0010348 clubbed with CMP 210223/0007613 at Annexure-U passed by Third Respondent Karnataka Real Estate Regulatory Authority (RERA);*
(Deleted vide order dated 10.12.2024)
- c. *Quash Registration Certificate bearing No. AA.HA. HAAA.RE-50/REGISTRATION/06/54965/2023-24 dated 11.08.2023 issued by Second Respondent Registrar for Co-operative Societies, Zone-3, Bengaluru Urban District at Annexure-J.*
- d. *To quash notice dated 15.07.2024 bearing No. DRB-3/DIS/48/2024-25 at Annexure-W and order dated 31.08.2024 bearing No. DRB-3/DIS/48/2024-25 passed by Third Respondent District Registrar for Co-operative Societies at Annexure-Z by writ of Certiorari or by any other writ.*
- e. *Issue necessary directions to second Respondent Registrar of Co-operative Societies and Third Respondent District Registrar for Societies, Zone-3, Bengaluru Urban District, to desist from intervening with the affairs of petitioner Association pertaining to task of management of Common areas and common amenities in Commune 1 Project.*



- f. *Issue necessary directions to Sixth Respondent Developer to act on Representation dated 29.04.2024 at Annexure-H by taking all such necessary steps towards formation and registration of an Association of Apartment owners under the provisions of Karnataka Ownership Act, 1972 for the purpose of accomplishing the maintenance of common areas and common amenities in Commune-1 Project,*
- g. *Issue necessary directions to Seventh respondent Sub-Registrar, Attibele, Bengaluru to accept and register Deed of Declaration and Bye laws and Rules and Regulations pertaining to registration of Association for Flat owners at Commune 1 Project at Annexure-AL to writ petition, or to register any other Deed of Declaration of Bye-laws duly approved by all the Apartment owners at Commune 1 Project.*
- h. *Issue Directions to all the Respondents herein to extend support and co-operation towards formation and registration of an Association of Apartment owners under the provisions of Karnataka Apartment Ownership Act, 1972 for the purpose of undertaking the maintenance of common areas and common amenities in Commune-1 Project,*
- i. *To pass such other order or writ as this Hon'ble Court deems fit to grant under the facts and circumstances of the case.*
- j. *For costs of this Writ petition.*

2. The Petitioners in W.P.No.5479/2023 are before this Court seeking for the following reliefs:

- a. *Direct the R2, R3 and R4 to expediently register the co-operative Society, "Commune I Apartment owners Co-operative Society Ltd.,"*



- b. Direct R7 to ensure that the order dated 24.03.2022 of the R6 at Annexure-C are complied by all the jurisdictional sub-registrars.*
- c. Direct the R8, R13 and other sub-registrar having jurisdiction to refrain from registering the sale deeds when presented by R9 and R12 in violation of the orders of R6 at Annexure-C.*
- d. Direct R6 to order take over of the project by the complainant in CMP/210223/0007613 being a welfare association registered as per at Annexure-B before R5 with an option to transfer the same to the proposed Society or any appropriate association.*
- e. Direct R9 to R12 to immediately deposit all the amounts collected by sale of apartment units pursuant to the order of restraint dated 24.03.2022 Annexure-C in the account of the complainant association in CMP/210223/0007613.*
- f. Direct R9 to deposit the amounts required for completion of the project as mentioned in Annexure-G at page no. 123 in the account of the complainant association in CMP/210223/0007613.*
- g. Direct R6 to pass orders declaring the legal validity regarding the mortgage between the R9 and R12. Being found illegal by R6 in its order dated 24.03.2022 at Annexure-C at page No. 53.*
- h. Direct R7 to initiate undervaluation proceedings in respect to the sale of 42 apartments mentioned in at Annexure-F at page no.110 to 119 by R9 in favour of R12.*
- i. Grant costs of the proceedings. Grant such other relief, relief's and orders as this Hon'ble Court deems fit under the facts and circumstances of the case in the interest of justice and*



FACTS IN W.P. No. 27341/2024:

3. The Petitioners claim to be the owners of residential apartments at the Commune 1 residential apartment complex, which was constructed and/or is in the process of construction by the sixth Respondent, Commune Properties India Private Limited, [hereinafter referred to as the 'Developer'] on 5 acres, 14 guntas of converted land in Sy. Nos. 477/4, 478/A2, 479/A, and 480/3, situated at Marasur village, Kasaba Hobli, Anekal Taluk, the project being known as 'Commune 1'.

4. The Petitioners are before this Court as owners of apartments in Commune 1 project to espouse their own grievances as also on behalf of Petitioner No. 59, Commune 1, Commune Residents Welfare Association (R), a Society registered under the Karnataka Societies Registration Act, 1960 [hereinafter referred to as the '**Society**'].



5. The Petitioners claim that there are 384 residential apartments required to be constructed in five different towers in Commune 1 complex, with the towers named as Tower A to E. By the end of the year 2017, the developer had constructed Towers B and C. Tower D was completed in the year 2020.
6. Thereafter, the developer abruptly stopped construction of Towers A and E affecting the interest of the persons who had agreed to purchase apartments in Tower A and E. Insofar as Tower B, C and D are concerned, the apartments having been constructed have been handed over to the purchasers and the purchasers are residing in those three towers.
7. In respect of Tower B, it is claimed that there are 70 out of 104 apartments which are occupied. In respect of Tower C, 80 out of 104 apartments have been occupied. In respect of Tower D, 30 out of 52 apartments were occupied. In respect of Tower E, 15



out of 52 apartments are occupied. Thus, it is claimed that a total of 195 out of the total proposed 384 apartments have been sold and are occupied.

8. In view of the stoppage of the construction of Tower A and E by the developer, the aggrieved agreement holders, formed an association under the name and style of 'Commune 1 Buyers Welfare Association', [hereinafter referred to as the '**Association**'], viz., Respondent No.7 herein, which is also a Society registered under the provisions of the Karnataka Societies Registration Act on 20.11.2020.

9. The said Buyers Welfare Association comprising of agreement holders of Tower A and Tower E, had filed a complaint in No. 210223/ 0007613, before the Karnataka Real Estate Regulatory Authority [hereinafter referred to as '**RERA**'], seeking for a direction to the developer to complete the



construction of the apartments and convey them to the members of the said association. In the alternative, the association sought permission to complete the construction of the apartments by itself. The Society, claims that on filing of such complaint before the RERA, the RERA has passed illegal and unsustainable orders, one of them being an order dated 05.07.2022, wherein the RERA issued directions to the Association to register itself as a co-operative Society and thereafter submit a formal application under Section 8 of the Real Estate (Regulation And Development) Act, 2016 [hereinafter referred to as '**RERA 2016**'].

10. Sri. Rajashekar S., learned counsel for the Petitioners, submits that:

10.1. The impugned order passed by the RERA is an illegal order passed contrary to law. The RERA has not taken into consideration that the



association did not have the requisite membership and majority in terms of the entire project. There being 384 apartments, owners of 195 of them are members of the Society who have no grievance as regards the construction or otherwise by the developer. It is only the remaining persons who have purchased apartments in Tower A and Tower E or who have entered into an agreement to purchase apartments in Tower A and Tower E who had grievances, and they could not be said to be the majority of the apartment purchasers.

10.2. The contention is also that no co-operative Society could be formed since there is a requirement to subject the apartments and apartment purchasers to the provisions of the Karnataka Apartment Ownership Act 1972 [hereinafter referred to as '**KAOA 1972**']. No



co-operative Society could be formed in respect of the said apartments. Thus, the direction issued by the RERA in respect of the formation of the co-operative Society is misplaced and ill-conceived.

10.3. It is contended that there could at the most have been a direction to form an association in terms of the KAOA 1972, which has not been issued, which is contrary to the finding of the division bench of this Court in several matters. It is contended that there are multiple entities which are now in operation, inasmuch as Petitioner No.59 is a Society registered under the Societies Registration Act, Respondent No.7 is again registered under the Societies Registration Act and in terms of the direction of the RERA, Respondent No.8, Commune 1, Apartment Co-operative Society Limited has



been registered [hereinafter referred to as '**Co-operative Society**'].

10.4. By such multiple entities being registered, there would be confusion, which would cause obstacles and hurdles in protecting and fostering the interest and welfare of the apartment owners of the entire project. It is contended that there are only 250 apartments which have been sold, balance 134 apartments are yet to be sold, and as such, in terms of the claim of only 55 agreement holders, the RERA could not have directed the registration of a Cooperative Society.

10.5. It is contended that the Society has a strength of 140 apartment owners out of the total 200 occupants, that the remaining 50 could not have approached the RERA seeking the formation of a co-operative Society. The



Society has been formed to protect the interests of its members at an earlier point in time; it is the Society alone that can represent the interests of the purchasers.

10.6. It is contended that it is due to a subsequent order dated 03.01.2023 passed by RERA recommending the second respondent, Registrar, Karnataka Co-operative Societies, to take steps to register the application of Respondent No. 8 and in pursuance of such direction that the Registrar of Co-operative Societies has registered the Co-operative Society. In the absence of such a direction, there could not have been any such registration, and as such, it is contended that the direction itself, being illegal and contrary to law, registration of the Co-operative Society is also bad in law.



10.7. The contention is that, until then, some kind of construction was going on, but from March 2023, the developer stopped the construction of Tower A and Tower E, as well as stopped maintenance of the common areas in the other Towers, putting at risk the interest of the petitioners. It is in that background that the responsibility of the maintenance of the common areas and common amenities was taken over by the Petitioners by registering a Society under the Societies Registration Act, since not all the owners have come forward to subject themselves to the KAOA 1972.

10.8. The petitioners, it is claimed, have made consistent efforts to persuade the developer as well as the other purchasers to subject themselves to a deed of declaration and register an Association in terms of KAOA 1972, which has not yielded any positive result. In the



meanwhile, the Respondent No. 8, Cooperative Society, has been registered in terms of the direction of the RERA. The said Co-operative Society functioning in an urban area requiring a minimum of 200 members, not having such membership, despite the direction of RERA, the second respondent, Registrar, ought to have refused the registration of the Co-operative Society.

10.9. It is further contended that the objects of the Co-operative Society and the functioning of the Co-operative Society in terms of the bye-laws registered are contrary to the Karnataka Co-operative Societies Act 1959, [hereinafter referred to as '**KCSA 1959**']. The KCSA 1959 does not provide as one of the objects the maintenance of common areas and common amenities. Thus, the registration is illegal.



10.10. The Co-operative Society has apparently been formed and registered by the apartment purchasers of Tower A and Tower E on account of the said Towers not being completed. Thus, there is a personal interest of those members of the Co-operative Society as regards their own apartment, and they are not concerned with the other apartment owners in Towers B, C and D, which have been completed and are in occupation of the purchasers.

10.11. Few of the purchasers in Tower A and Tower E who have formed the Co-operative Society who do not even number 50 members have sought to take over the entire project including the management of common areas and common amenities, despite their apartments not having been ready and they not being in possession of the apartments for the purpose of their maintenance.



10.12. The contention is that the interest of the owners of the apartments which have been completed, in Towers B, C and D, which have been completed differently, is different from the interest of the purchasers who have entered into an agreement of sale in Towers A and E, which have not been completed. The claim of those agreement holders being only as regards Tower A and Tower E, they have sought to exercise management and superintendence over Tower B, C and D, which is not permissible. It was but required for all the apartment owners to have come together and to have registered as an association of KAOA, 1972. Knowing fully well that the same may not be in the personal interest of the purchasers of Tower A and Tower E, it is contended that a Co-



operative Society has been formed for the entire project, which is not permissible.

10.13. It is contended that the Petitioners have no objection insofar as the Co-operative Society restricting its activities to Tower A and Tower E, the Co-operative Society would have no role to play in respect of the completed units in Towers B, C, and D. The agreement holders in Towers A and E, not being in possession of their apartments, they are not residing in the apartment complex, are not aware of the day-to-day requirements of the apartment owners who are in possession of Towers B, C and D and therefore, they would be unable to maintain Towers B, C and D.

10.14. It is further contended that there is no requirement for those agreement holders to



maintain Towers B, C, and D, over which they have no interest. Insofar as common areas are concerned, the common areas being utilised by the persons who are residing in the apartment complex, again, it is those persons who would know what is required to be done and not persons who do not have possession of any apartment in the said complex.

10.15. In that background, that the purchaser in possession had entered into an agreement with No Broker Technology Solution Private Limited (hereinafter for brevity referred to as "**No Broker**") for the purpose of maintenance of the common areas and common amenities, which was sought to be interfered by the Co-operative Society and as such, some of the petitioners along with the Society and No Broker had filed a suit in O.S. No. 7717 of 23 wherein an interlocutory application under Order XXXIX



Rules 1 and 2 of the Code of Civil Procedure, 1908 had been filed seeking for an injunction restraining the office bearers of the Co-operative Society from interfering the use of the application of No Broker and the maintenance of the common areas. The said application was allowed, and an injunction was granted on 21.12.2023, which has attained finality not having been challenged.

10.16. It is contended that after the said injunction on 22.12.2023, respondent Nos . 9 to 15, who are the office bearers of the Co-operative Society, filed a complaint through the Co-operative Society against petitioner No.59 - Society before the Registrar of Societies, making certain false allegations and that the Society could not maintain the apartment complex.

10.17. While the suit was being contested, the Co-operative Society pursued the complaint before



the RERA, wherein an order was passed on 17.05.2024 permitting the Co-operative Society to take over the project under Section 8 of the RERA 2016 and complete the project within 24 months. While doing so, a direction was issued to the developer to cooperate with the Association of Allottees to complete the construction and transfer the apartments.

10.18. It is contended that this order could have been restricted only to Tower A and Tower E and not to completed Towers B, C and D. By virtue of the said order, the RERA order dated 17.05.2024, the RERA has handed over the entire project to the Co-operative Society, which is not permissible. The agreement holders have no title in their favour; they are mere agreement orders, nor are they in possession of any apartments since the apartment has not been constructed. Thus, no



order could have been passed in their favour contrary to the interest of the petitioners, who have a sale deed in their favour, and are in occupation and enjoyment of their respective apartments. In the meantime, even Tower E was completed, and the developer had called upon the purchasers to occupy the same. The construction of Tower A was also proceeded with by the developer. No action was taken by the Co-operative Society to either complete Towers A or E. The Co-operative Society has unduly taken advantage of the proceedings before the RERA to stop the development to the detriment of all concerned and has also come in the way of the developer developing and completing the property.

10.19. It is contended that the action on the part of the Co-operative Society was only in the interest of the agreement holders and



respondents Nos . 9 to 15, the office bearers and not in the interest of all the persons. The only action taken by the Co-operative Society is interference with the activities of all and everyone concerned including the occupants of Towers B, C and D, as also the action of the developer, if not, for respondent Nos.9 to 15 having interfered and formed the Co-operative Society, the developer would have completed the construction, which would have enured to the benefit of the petitioners. The common areas and common amenities would have been properly catered to by the association, which would have been subject to KAOA 1972. None of the so-called members of the Co-operative societies have made available any monies for the purpose of completion of the construction. There is no genuine interest on the part of the Co-operative Society to complete the project,



which is causing harm and injury to the petitioners.

10.20. Under the guise of being victims of the developer, the Co-operative Society and its members are victimizing the petitioners who are genuine *bonafide* purchasers in occupation and enjoyment of the apartments in Towers B, C and D. The Co-operative Society can only restrict its claim, if at all, to the completion of Towers A and D. Tower E also being complete in most aspects, it is only Tower A which is required to be completed. Instead of doing so, the Co-operative Society has interfered with even the maintenance of common areas and amenities of Towers B, C and D, which is not permissible.

10.21. In that background, the petitioner No.59 - Society had made a representation to the Registrar of Co-operative Societies to appoint



an Administrator and conduct a fresh election of the Cooperative Society by admitting all purchasers as members of the Cooperative Society. This representation dated 02.07.2024 has also not been acted upon by the Registrar, and as such, it is only a few of the agreement holders in Towers A and E who continue to be members of the Co-operative Society who are causing detriment to all concerned.

10.22. On 15.07.2024, a notice of enquiry was issued to the petitioners calling upon them to appear before the Registrar on 24.07.2024, but there was no hearing held. Though the officers of the Society were present, their presence was not noted, and they were informed that the next date would be communicated to them. When no such communication was received, the office bearers of the Society submitted a detailed



response to the enquiry notice on 26.07.2024 by Registered Post Acknowledgement Due.

10.23. As a further complaint on 28.07.2024, as regards the actions of respondent Nos . 8 to 15, bringing to notice of the Registrar that respondent Nos . 9 to 15 had also indulged in physical altercations with the residents. Despite such a reply and complaint having been issued, no action was taken. However, an order is stated to have been passed on 31.08.2024 by the Registrar of Co-operative Societies directing the petitioner No.59 - Society not to collect maintenance fees from any of the apartment owners in the project. It is in furtherance thereof that the Society has not collected any amounts nor carried out any maintenance activities but has challenged the said order dated 31.08.2024 in this proceeding.



10.24. It is contended that in view of the order dated 31.08.2024, it is the petitioners who are suffering; respondent Nos . 9 to 15 are not maintaining the entire project, nor do they have the monies to maintain the same, let alone interest in such maintenance. The said agreement holders are inconsiderate and insensitive to the problems of the persons in possession and occupation of the apartments. In the meanwhile, an application filed under Order VII Rule 11D of the Code of Civil Procedure in the aforesaid suit in O.S.No.7717 of 2023 was dismissed. However, respondents Nos . 10, 13, 14 and 15 continued their barrage against No Broker, coming in the way of No Broker rendering services, resulting in No Broker by its letter dated 13.09.2024, terminating the agreement of maintenance.



10.25. Thereafter, on 10.09.2024, the Co-operative Society raised a demand for maintenance charges on the purchase of the apartment by stating that they had availed the service of the MyGate application and insisting that all the apartment owners make payment through the said application. It is in that background that an emergency meeting of the Society was called for on 10.09.2024, wherein it was resolved to challenge the illegal actions of the Co-operative Society.

10.26. The Co-operative Society, vide its email dated 15.09.2024, took up the stand that in view of the orders passed by the RERA, it is the Co-operative Society which can handle the maintenance of the common areas and common amenities and in pursuance thereof had deputed certain bouncers from an agency to stop the entry of the apartment owners,



pursuance of which a police complaint was submitted on 16.09.2024. The police authorities did not take any action thereon.

10.27. The dispute between the owners in occupation and the agreement holders has been escalating from time to time, and it is on that basis that the owners in occupation contend that their interests are being adversely affected. The Petitioners in W.P.No.27341 of 2024 are before this court seeking the aforesaid release.

10.28. It is contended that the total occupancy of the project is about 195 apartments, out of which 140 apartment owners are members of the Society, who are unable to streamline proper and effective management of the common areas and common amenities on account of non-cooperation by the developer as also on account of the separate Co-operative Society which has been set up by the agreement



holders. The sale deeds which have been executed in favour of the apartment purchasers mandate that an association under the KAOA 1972 is required to be formed. As a temporary measure, a Society has been formed to handle the day-to-day affairs. The petitioners are ready to subject the apartments and the project to a deed of declaration in terms of KAOA 1972.

The best of the efforts made by the petitioners have not yielded any results, and as such, it is contended that a direction be issued by this court to all the apartment owners, as also the developer, to draft a deed of declaration and subject the same to the KAOA 1972. The continued disinterest on the part of the developer and the efforts made by the Co-operative Society to take over the management, when in fact many of them are only agreement holders and not even owners of



the apartments, have resulted in improper administration of the project and maintenance of the common areas and common amenities.

10.29. It is also contended that if everyone were not to come together, at least the majority of the owners may be permitted to register an Association under KAOA 1972 with an option available for the others to join the said Association from time to time. The Association cannot undertake the construction of the apartment complex. The Co-operative Society could not have been formed by only a few of the agreement holders. As per the directions issued by the RERA, the interest of all the apartment owners, purchasers and agreement holders can only be protected under the KAOA 1972.

10.30. The entire community of apartment owners is held at ransom by a few people who have



formed the Co-operative Society, putting at risk the life and liberty of those apartment owners, more so, when the apartment building is a multi-storied building, some of the blocks comprising of 13 floors, there is a requirement to provide uninterrupted power, lift facility, water etc., as also to maintain the cleanliness of the common areas like the corridors, lifts, the safety equipment like fire fighting equipment, etc. apart from maintenance of water storage tanks, sewage treatment plants, water treatment plants, etc., which need to be done in a time-bound manner so as to safeguard the life and liberty of the said apartment owners who are residing in the said premises.

10.31. As an example, it is pointed out that the annual maintenance contract for the lifts has not been extended, resulting in the lifts not working on



many occasions, there being old people as well as younger children residing in the apartment complex. The access by them to their respective apartments gets adversely affected when the lifts are not functioning. Furthermore, if there is any defect in the lifts which is not noticed and handled by the original equipment manufacturer of the lift, this being only one of the problems, there are several other problems as indicated above, which need to be looked at in a humane manner and a solution found. The developer and a few of the agreement holders whose apartments have not been constructed are putting at risk the life and liberty of the rest of the apartment owners who are in possession and occupation of Towers B, C and D and a portion of Tower E.

10.32. The RERA, by its order dated 17.05.2024, has directed the promoter to cooperate with the



Association of Allottees as and when required for transfer of the entire project, which includes the entire built-up area/flats, common areas, and title of the project to the Association of Allottees. This so-called Association of Allottees, which is now a Co-operative Society, consists only of a few agreement holders. There is no title to any apartment vested in the name of those agreement holders, nor do they have possession of the apartments. These agreement holders are seeking to hijack the entire project to the detriment of the apartment owners who are in possession and occupation of their respective apartments.

10.33. Petitioner No.59 - Society comprising a large number of apartment owners, the Co-operative Society has written to the Registrar of Societies to de-register Petitioner No.59 - Society, so that there is no opposition to the Co-operative



Society in handling matters at their whims and fancies to the detriment of the apartment owners.

10.34. The actions of respondents Nos. 9 to 15 have only helped the developer in delaying the project. Even though the petitioners are not concerned much with the apartment as such, which are yet to be constructed, the common areas and common amenities are also not complete, which the developer is not completing on account of this litigation by the Co-operative Society which to the petitioners appears to be collusive to only safeguard the interest of the developer to the detriment of the apartment owners.

10.35. The Co-operative Society is also seeking to cause confusion insofar as the maintenance of the project is concerned. There is no right vested with the Co-operative Society to



maintain the entire apartment complex. Only a few of the apartment owners and agreement holders are members of the Co-operative Society. When the entire community is not represented in the Co-operative Society, the question of the Co-operative Society maintaining the entire apartment complex and or causing a demand for monthly maintenance charges, is completely unsustainable.

10.36. The District Registrar of Societies has passed the impugned order dated 31.08.2024 supra without adhering to the principles of natural justice, without providing an opportunity to petitioners and or petitioner No.59 - Society. The action of the Registrar of Societies is also adversely affecting the interest of the apartment owners.

10.37. He relies upon the decision of a coordinate bench of this court dated 15.02.2019 in **Mr.**



Praveen Prakash And Others Vs. State Of Karnataka And Others¹, more particularly para no. 6 thereof, which is reproduced hereunder for easy reference:

6. I have considered the submissions made by learned counsel for the parties. Since, respondent No.4 is a Association of the owners of flat situate in a apartment for which a specific enactment viz., Karnataka Apartment Ownership Act 1972 has been enacted. Therefore, the Registration of the Association if any, has to be made under Section 3 of the Karnataka Societies Act. It is well settled in law that a specific provision of law will always override the general provisions of law. Since the specific provisions as made by the Registrar, therefore, respondent No.4 assertion ought to have registered under Karnataka Apartment Ownership Act, 1972.

10.38. By relying on ***Praveen Prakash's*** case, it is submitted that this court has come to a categorical conclusion that an Association can only be registered under the KAOA 1972 for the purpose of maintenance of an apartment

¹ W.P.No.34660/2017



complex and a Society registered under Section 3 of the KSRA 1960 cannot maintain an apartment complex.

10.39. He relies upon the decision of the division bench of this court dated 06.11.2019 in **VDB Celadon Apartment Owners Association Vs. Praveen Prakash²**, more particularly para nos. 7 to 12 thereof, which are reproduced hereunder for easy reference:

7. On a plain reading of Section 3 of the said Act of 1960, it is clear that the object of administering, maintaining and running the buildings and apartments and to carry on the day-to-day work relating to all the aspects of the buildings/apartments, common areas and common facilities will not be covered by any of the clauses (a) to (g) of Section 3 of the said Act of 1960. Even according to the case of the appellant, Clauses 5.1 and 5.2 are its dominant objects. In fact, on the earlier date, we had granted time to the appellant to take instructions whether it proposes to apply for deletion of certain objects which are a part of the bye-laws of the appellant Association.

8. Today, the learned counsel appearing for the appellant, on instructions, states that if the said two objects are deleted, the

² W.A.No.974/2019



registration of the appellant under the said Act of 1960 cannot be maintained.

9. *Thus, the main object of the appellant was to do something which could have been done by an Association formed in accordance with the provisions of the said Act of 1972. In fact, the documents of sale executed by the developer in respect of the flat/apartment contain a stipulation that the purchasers of the flats shall form an Association/Society/Condominium in accordance with the provisions of the said Act of 1972. That is how the learned Single Judge by modifying the impugned order dated 15th February, 2019, has clarified that steps can be taken to register the appellant Association under the provisions of the said Act of 1972.*

10. *Thus, after having perused the dominant objects of the appellant Association, we find that the said objects are not covered by Section 3 of the said Act of 1960, and therefore, the appellant could not have been registered under the said Act. We find no error in the view taken by the learned Single Judge when he had proceeded to cancel registration of the appellant.*

11. *As observed by the learned Single Judge, the impugned order as well as this order will not prevent the persons who are members of the appellant Association from taking steps for formation and registration of an Association/Condominium under the provisions of the said Act of 1972 inasmuch as the sale deeds executed in favour of the apartment owners contemplate formation of such Association..*



12. Subject to what is observed above, the writ appeals are dismissed. All pending applications do not survive for consideration and are accordingly disposed of.

10.40. The above Writ Appeal in **VDB Celadon Apartment Owners Association** was filed challenging the aforesaid order dated 15.02.2019 in W.P. No. 34660 of 2017 passed by a coordinate bench of this court in **Praveen Prakash's** case Supra. On appeal, the Hon'ble division bench of this court dismissed the writ appeal and while doing so, has categorically observed that on a plain reading of Section 3 of the KSRA 1960, the object of administering, maintaining and running the buildings and apartments and to carry on the day-to-day work relating to all the aspects of the buildings/apartments, common areas and common facilities will not be covered by any of the clauses (a) to (g) of Section 3 of the KSRA 1960. The object of the Society was to do



something which could only be done by an Association formed in accordance with KAOA 1972.

10.41. The division bench, taking note of the stipulations in the agreement that the purchaser of the apartments shall form an Association in accordance with the provisions of KAOA 1972, a Society under KSRA 1960, could not be registered. Thus, he submits that there is a categorical finding of the division bench of this court in **VDB CELADON APARTMENT OWNERS ASSOCIATION's** case supra that it is only an Association under the KAOA 1972, which can maintain the common areas and common amenities and not any other entity, be it a Society under the KSRA 1960 or a Co-operative Society under the KCSA 1959.

10.42. He relies upon another judgment of the Co-Ordinate Bench of this Court in



MR.ARUNKUMAR.R VS STATE OF KARNATAKA³ more particularly para 4, 5 and 21 thereof, which are reproduced hereunder for easy referece:

4. As can be noticed from the submission made by the learned counsel for the petitioners as well as the learned counsel appearing for the proposed 4th respondent Society, the promoters of 4th respondent are intending to register a Co-operative Society under the provisions of the Act of 1959 to maintain and NC: 2024:KHC:7684 manage the residential apartment complex namely "DS-Max Star Nest" referred to above. The permission is granted in this regard by the Registrar of Cooperative Societies vide permission dated 21.09.2023.

5. The petitioners are before this Court contending that the petitioners and some of the flat owners who are intending to register the 4th respondent Society having purchased the flats in the aforementioned Property are governed by the provisions of the Karnataka Apartment Ownership Act, 1972 (for short the 'Act of 1972'). It is the contention of the learned counsel for the petitioners that the persons who have purchased the residential flats as per the terms of the sale deed have bound themselves to form an association under the provisions of the Act of 1972. It is further contended that the promoters and the persons supporting them cannot form a Co-operative Society, having an object to

³ WP.NO.25528/2023 DD 23.02.2024



maintain and manage the residential apartment under the Act of 1959.

21. Learned counsel for the respondent No.4 would submit that they will take effective steps to maintain and manage the property till the association is registered under the Act of 1972. Some of the petitioners who are before the Court would also agree that they would cooperate in arriving at a solution till the registration is completed under the Act of 1972.

10.43. He submits that the above decision is popularly known as **DS Max's case** by the name of the developer in the said matter and he submits that the coordinate bench considered the aspect of registration of a Co-operative Society by certain of the owners for the purpose of maintenance and managing the residential apartment complex viz., DS Max Star Nest.

10.44. The proposal to form a Co-operative Society was challenged by certain of the apartment owners, contending that it's only an Association under KAOA 1972 that could maintain the



common areas, and a Co-operative Society cannot be so formed.

10.45. The coordinate bench of this court, considering the rival contentions has categorically come to a conclusion by referring to KAOA 1972 and the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 [hereinafter referred to as '**KOFA 1972**'] has come to a conclusion that a Co-operative Society can be formed only if there is any commercial business unit or venture and without any such commercial unit, no Co-operative Society could be formed for the purpose of maintenance of the common areas and common amenities and in that background, prohibited the Registrar of cooperative societies from registering the proposed Cooperative Societies to manage and maintain the residential apartment complex, and issued a



direction to the builder/developer to comply with all the requirements under law and to cooperate with the petitioners and members of the proposed Co-operative Society (i.e., the owners of the apartment) to form an Association under KAOA 1972 and until then, an interim arrangement for maintenance had been worked out by this court.

10.46. The said judgment of the learned Co-ordinate Bench in WP No. 25528 of 2023 [**ARUNKUMAR AND OTHERS -V- STATE OF KARNATAKA AND OTHERS**] was taken on appeal before the Division Bench in **STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD. -V- STATE OF KARNATAKA AND OTHERS**⁴ which came to be disposed of vide the order dated 18.06.2024. He relies upon paragraphs 15 to

⁴ WA No. 564 of 2024



20 thereof, which are reproduced hereunder for easy reference:

15. *The provisions of KOF Act, 1972 is applicable when the premises is used or intended to be used for residence or office or show room or shop or godown forming part of the building. In other words, premises forming part of the building is used for residential as well as commercial purposes. Then Section 10 of the KOF Act, 1972, mandates the promoter to file an application to the Registrar for registration of the Co-operative Society.*

16. *The narrow dispute in the present appeal is, whether association is to be formed under the Act of 1972 or Co-operative Society, is to be formed under the KOF Act, 1972.*

17. *It is seen from the record that the sale deeds would indicate the entire project is for residential and no part of the project is used or intended to be used towards commercial purpose. That apart, the parties in the sale deed have agreed to abide by the provisions of the Karnataka Apartment Ownership Act, 1972, and to form an Association.*

18. *The contention of learned counsel for the appellant that in view of the project being registered under the provisions of RERA in compliance of Section 11(4)(e), (f), (g) of RERA, a Co-operative Society is to be formed, is not acceptable. The said provisions of RERA would mandate the builder to enable formation of Association or Society or Co-operative Society, as the case may be, of the allottees. As the project under consideration consists only residential units, the said*



provisions only mandate formation of association of the allottees under the applicable laws. The law applicable in the present case is the Karnataka Apartment Ownership Act, 1972.

19. *The contention of learned counsel for the appellant that, even if the project consists only residential houses/flats, conversion of the flats for commercial or use of such flats for commercial purpose is not prohibited, in such circumstances, provisions of KOF Act, 1972, would be attracted and in compliance of Section 10 of the said Act, the Co-operative Society is to be formed is farfetched and is rejected.*

20. *Learned Single Judge after considering the relevant provisions under the statutes i.e., Act of 1972 and KOF Act, 1972, has held that the property does not include commercial unit to attract KOF Act, 1972. The conclusion of the learned Single Judge is on analysis of the relevant provisions under both the enactments. The order of learned Single Judge does not suffer from any error on fact or law. No ground is made out to interfere with the order of learned Single Judge.*

10.47. The submission is that the Hon'ble Division Bench upheld the decision of the learned single judge, dismissed the writ appeal and while doing so came to a conclusion that KOFA 1972



would be applicable only when the premises is used for residence or office or showroom or shop or godown forming part of the building i.e., only if the building is used for both residential and commercial purposes. If there are only residential apartments, KOFA 1972 would not apply and therefore, no Co-operative Society could be registered as per Section 10 of the KOFA 1972 and as such, came to a conclusion that it is only KAOA 1972 which would apply and rejected the contention that even if the entire project consists of residential apartments a Co-operative Society could be formed.

10.48. By relying on the above judgment, he submits that it being very clear by two judgments of coordinate bench of this court and two judgments of the division bench of this court that only an Association under KAOA 1972 could be formed



and it also clearly held that no Society under the KSRA 1960 or a Co-operative Society under the KCSA 1959 could be formed for the purpose of maintenance of common areas and common amenities in a residential apartment complex. The RERA could not have directed the Registrar of Co-operative Societies to register a Co-operative Society, viz., respondent No. 8, and thereafter for respondent No. 8 to try and hijack the project, both as regards maintenance of common areas as also as regards the completion of the project.

10.49. His submission is that it is only an Association under KAOA 1972 which can do so, and all the impugned orders which have been passed either by RERA or the Registrar of Co-operative Society, as also the Registrar of Societies would have to be quashed with a direction to all the



owners and the developer to register themselves as a Association under KOA 1972.

11. Sri. Pradeep Kumar, learned counsel for Respondent Nos.7 to 15 submitted that:

11.1. The Project Commune 1 is an ongoing RERA-registered real estate project. The project not being completed, some of the agreement holders having formed themselves into an association, viz., Commune Buyers Welfare Association - Respondent No.7 had filed a complaint in CMP/210223/0007613 under Section 31 of RERA 2016 seeking for a direction to the promoter to complete the project with all amenities, hand over possession with the occupancy certificate as also to initiate proceedings under Section 35 of the RERA 2016 for forensic audit citing significant delay and financial irregularities.



11.2. In the said proceeding, a direction had been issued by RERA directing the complainants therein; to form themselves in a Co-operative Society and as such, the said Co-operative Society was registered inasmuch as by order dated 05.07.2022 the RERA had observed as under:

"The request of the complainants to permit the takeover of the project under Section 8 of the Act, shall be considered during the next hearing, the Allottees Association is required to register itself as a Co-operative Society and submit a formal application under Section 8 of the Act, and serve it on the respondent so as to place it for further consideration of the authority."

11.3. An Association of the owners having approached the RERA, it is the RERA who had directed the allottees to register as a Co-operative Society and submit an application under Section 8 of the RERA 2016. It is the direction of the RERA which has been followed by respondent No. 8 and a Co-operative Society



registered thereafter; an application under Section 8 of the RERA 2016 has been submitted.

- 11.4. The said order having been passed in complaint No.7613/2020 on 05.07.2022 on registration of the Co-operative Society complaint in No. CMP/22116/0010348 had been presented by the Co-operative Society. The RERA vide its order dated 03.01.2023 has considered the judgment in ***Praveen Prakash's*** case supra, as also the judgment in ***VDB, Celadon Apartment Ownership Association*** supra, and has come to the conclusion that a Society registered under the KSRA 1960 is not the appropriate Association to manage the affairs of the apartment complex. It rejected the contention of the Registrar of Co-operative Society that a minimum of 200 allottees are required to register a Co-Operative Society in



an urban area and was of the opinion that insofar as projects of construction of residential apartments even if the number is less than 200, if the project is abandoned, stalled or incomplete or delayed, the allottees can form themselves into a Co-operative Society. The non-registration of a Co-operative Society on that ground would jeopardise the rights of the allottees. The allottees are being prevented from obtaining any orders from the RERA or any other authority.

11.5. The RERA exercised powers under Section 32 of RERA 2016, directing the Registrar of Co-operative Societies and its subordinate officers to take steps to register the application of Commune 1, Owners Co-operative Society Limited under the Co-operative Societies Act.

11.6. In pursuance thereof, a registration certificate has been issued by the Registrar of Co-



operative Societies on 11.08.2023, and the Society has taken up the role of safeguarding the interest of the agreement holders as well as the purchasers. His submission is that the Co-operative Society is a body corporate registered as per the directions of the RERA and as such would act in the interest of as also for the benefit of not only the agreement holders who are yet to be conveyed their respective apartments, but also the apartment owners in whose favour conveyance has already been affected and who have been put in possession. It is always open for the said owners to join the Co-operative Society and participate in the affairs of the Co-operative Society. The present members of the Co-operative Society and or the Co-operative Society have no objection for all the apartment owners or agreement holders to join the Co-operative Society.



11.7. The original date of completion of the project was slated to be 30.12.2014, which was extended from time to time and even as on the date of filing of the writ petition or even as on today, the project is not completed, there being a delay of nearly 11 years as on today, the petitioners had not taken any steps as, regards such delay. It is the respondents who have taken steps to bring the developer to terms and comply with his obligations. When the Co-operative Society had obtained some favourable orders, the petitioners filed a suit and thereafter the present writ petition. Therefore, he counter-alleges that it is the petitioners who are hand in glove and have colluded with the developer, and it is the actions of the petitioners which has benefited the developer.



11.8. His submission is that Towers B, C and D have also not been completed in all respects. There are several aspects of the said Towers which are to be completed, and the contention of the petitioners that Towers B, C and D are completed, Tower E is more or less completed, is completely false.

11.9. His submission is that an order having been passed by the RERA by exercising powers under Section 32 thereof, the same is an appealable order. The petitioners have an alternative efficacious remedy in terms of Section 31 and 44 of the RERA 2016, as also in terms of Section 106(a) of the KCSA 1959. The said provisions are reproduced hereunder for easy reference:

31. Filing of complaints with the Authority or the adjudicating officer. —

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer,



as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be 1 [prescribed].

44. Application for settlement of disputes and appeals to Appellate Tribunal.—

(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed: Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.



(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal: Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

106. Appeals to other authorities. -

(1) Subject to the provisions of section 108A, an appeal shall lie under this section against an order of the Registrar.



- 11.10. By relying on Sections 31 and 44 of the RERA 2016, his submission is that an order having been passed by RERA, any person aggrieved can challenge the same before the Appellate Authority in terms of Sections 31 and 44, and a writ petition is not maintainable.
- 11.11. Insofar as the registration of the Co-Operative Society by placing reliance on Section 106(a) of the KCSA 1959, his submission is that an order passed by a Registrar registering a Co-operative Society is appealable under the KCSA 1959, and as such, a writ petition is not maintainable. During the pendency of the above matter, the petitioners having withdrawn the prayers challenging the registration of Respondent No.7, Co-operative Society, also having given up their challenge to the order dated 05.07.2022 in Complaint No.7613 of 2020, as was the order dated 03.01.2023 and



17.05.2024 in CMP/22116/0010348 passed by the RERA, the actions taken in furtherance thereof viz., the registration of the Co-operative Society, cannot be challenged or continued to be challenged after such deletion. This, he submits, is for the simple reason that it is by virtue of the order dated 17.05.2024 that the RERA had directed the Registrar of Co-operative Societies to register respondent No. 8 - Co-operative Society. The action of the Registrar of Co-operative Societies being in furtherance of a quasi-judicial order, a challenge to the registration cannot be maintained without a challenge to the order under which the registration was made.

11.12. Petitioner No. 59 - Society is also one which is registered under the KSRA 1960. By applying the ratio of the division bench of this court in W.A.No.974 of 2019 in **VDB Celadon's** case,



he submits that petitioner No.59 - Society registered under the KSRA 1960 cannot also have one of its objects, maintenance of common areas and common amenities. Thus, by relying on the very same decision as that relied upon by the petitioners, he submits that petitioner No.59's registration is bad in law and such registration is required to be cancelled. The petitioners had not taken any steps against the developer regarding the non-completion of the proceedings. The date for completion being 30.12.2014, the petitioners have kept quiet despite the delays and inaction on the part of the developer. As such, they do not have any *locus standi* to now question the actions on the part of the Co-Operative Society in filing proceedings against the developer and the order passed therein. The Co-operative Society has been registered as per the direction of the



RERA; no other Society, Association, or the like can be formed. It is for the petitioners 1 to 58, as well as any other owners, to join and become a member of the Co-operative Society.

11.13. His submission is also that an order under Section 8 of the RERA 2016 having been passed, the same can only be appealed and challenged by way of an appeal under Section 44 and not by a writ petition.

11.14. The judgments in ***SHANTHARAM PRABHU vs. DAYANAND SHANTHARAM PRABHU***⁵ case and ***STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD*** case are not applicable to the present facts. ***SHANTHARAM PRABHU's*** case pertains to a dispute before the RERA 2016 came into force; the same pertains to a sale executed in the year 2014.

11.15. On the coming into force of the RERA 2016, under Section 11(4)(e), an Association of

⁵ CRP NO.96/2021 c/w CRP NO.64/2021



Allottees could be formed, which could take up the issue against the developer. The judgment in ***SHANTHARAM PRABHU*** case, dealt with the applicability of the KOFA 1972 or KAOA 1972 as regards the management and maintenance project. The same did not relate to or consider the invocation of statutory remedies, under Section 8, 11(4)(d), 11(4)(e), 17 or 31 of RERA 2016. These rights have been invoked by the Association of Allottees before the RERA 2016. The RERA had directed the registration of the Co-operative Society when the Registrar of Co-operative Societies did not register; a further positive direction was issued to the Registrar of Co-operative Societies. He refers to the decision of the Hon'ble Apex Court in ***Forum of People's Collective Efforts And Another Vs. State of West Bengal And Another***⁶, more particularly, paragraphs 115,

⁶ (2021) 8 SCC 599



116, 130, 131, 132, 133, 174 to 179 which are reproduced hereunder for easy reference:

115. Article 254. Inconsistency between laws made by Parliament and laws made by the legislatures of States.—(1) *If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.*(2) *Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State.”]* contains provisions for inconsistencies between laws made by Parliament and by the legislatures of the States. Clause (1) of Article 254 stipulates that where a State law “is repugnant” to a parliamentary law which Parliament is competent to enact or to a provision of an existing law “with respect to one of the matters enumerated in the Concurrent List”, then the law made by Parliament is to prevail



and the law made by the legislature of a State shall "to the extent of the repugnancy" be void. The provisions of clause (1) are subject to clause (2). Clause (1) also provides that in the event of a repugnancy between a law enacted by the State Legislature with a provision of a law made by Parliament which it is competent to enact or to a provision of an existing law with respect to a matter enumerated in the Concurrent List, the law enacted by Parliament is to prevail whether it was enacted before or after the State law or, as the case may be, the existing law. Clause (1) of Article 254 is, however, made subject to clause (2) which envisages that if a State law on a matter enumerated in the Concurrent List contains a provision which is repugnant to an earlier law of Parliament or an existing law with respect to the subject-matter, the law made by the legislature of the State will prevail in the State if it has been reserved for the consideration of the President and has received such assent. Despite the grant of Presidential assent, Parliament is not precluded from enacting any law with respect to the same matter in future including a law adding to, amending, varying or repealing the law made by the legislature of the State.

116. *Some of the salient features of Article 254 may be noticed at this stage:*

116.1. *Firstly, Article 254(1) embodies the concept of repugnancy on subjects within the Concurrent List on which both the State Legislatures and Parliament are entrusted with the power to enact laws.*

116.2. *Secondly, a law made by the legislature of a State which is repugnant to parliamentary legislation on a matter enumerated in the Concurrent List has to yield to a parliamentary law whether enacted before or after the law made by the State Legislature.*

116.3. *Thirdly, in the event of a repugnancy, the parliamentary legislation shall prevail and*



the State law shall "to the extent of the repugnancy" be void.

116.4. *Fourthly, the consequence of a repugnancy between the State legislation with a law enacted by Parliament within the ambit of List III can be cured if the State legislation receives the assent of the President.*

116.5. *Fifthly, the grant of Presidential assent under clause (2) of Article 254 will not preclude Parliament from enacting a law on the subject-matter, as stipulated in the proviso to clause (2).*

130. *A two-Judge Bench of this Court in *Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356]* ("*Innoventive Industries*"), dealt with the provisions of the *Maharashtra Relief Undertakings (Special Provisions) Act, 1958 vis-à-vis the provisions of IBC. Speaking through R.F. Nariman, J., the Court held that IBC is an exhaustive code on the subject-matter of insolvency in relation to corporate entities, referable to List III Entry 9 of the Seventh Schedule which deals with "bankruptcy and insolvency". On the other hand, the subject covered by the Maharashtra legislation fell within List III Entry 23 which deals with "social security and social insurance; employment and unemployment". IBC was held to prevail after adverting to the earlier line of precedent, the Court formulated the three tests of repugnancy in the following terms : (SCC p. 460, para 51)**

51.6. Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct



collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

51.7. Though there may be no direct conflict, a State law may be inoperative because the parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject-matter as the parliamentary law to any extent, it must give way. One test of seeing whether the subject-matter of the parliamentary law is encroached upon is to find out whether the parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the parliamentary statute. Negatively put, where parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

51.8. A conflict may arise when parliamentary law and State law seek to exercise their powers over the same subject-matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the State legislation or part thereof is identical with that of the parliamentary legislation, so that they cannot both stand



together, then the State legislation will be said to be repugnant to the parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject-matter of parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy."

131. *Our journey of tracing the precedents of this Court, commencing from Zaverbhai [Zaverbhai Amaldas v. State of Bombay, (1955) 1 SCR 799 : AIR 1954 SC 752 : 1954 Cri LJ 1822] up until Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] indicates a thread of thought dwelling on when, within the meaning of Article 254(1), a law made by the legislature of a State can be considered to be repugnant to a provision of a law made by Parliament with respect to one of the matters in the Concurrent List which Parliament is competent to enact. The doctrine of repugnancy under Article 254(1) operates within the fold of the Concurrent List. Clause (1) of Article 254 envisages that the law enacted by Parliament will prevail and the law made by the legislature of the State shall be void "to the extent of repugnancy". Clause (1) does not define what is meant by repugnancy. The initial words of Clause (1) indicate that the provision deals with a repugnancy between a law enacted by the State Legislature with:*

- (i) a provision of a law made by Parliament which it is competent to enact; or*
- (ii) to any provision of an existing law; and*
- (iii) with respect to one of the matters enumerated in the Concurrent List.*

132. *The initial part of clause (1) alludes to a law enacted by a State Legislature being "repugnant" to a law enacted by Parliament or to an existing law. The concluding part of*



clause (1) provides for a consequence, namely, that the State law would be void "to the extent of the repugnancy" and the parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court which have elaborated on the context of clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression "repugnant" while providing that a law enacted by the legislature of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:

132.1. *The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behaviour or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other.*

132.2. *The second situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a parliamentary enactment not because of an actual conflict with the absolute terms of a parliamentary law but because the nature of the legislation enacted by Parliament is such*



as to constitute a complete and exhaustive Code on the subject.

132.3. *The third test of repugnancy is where the law enacted by Parliament and by the State Legislature regulate the same subject. In such a case, the repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject.*

133. *The distinction between the first test on the one hand with the second and third tests on the other lies in the fact that the first is grounded in an irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List. The conflict between the two statutes gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression "to the extent of the repugnancy" postulates that those elements or portions of the State law which run into conflict with the Central legislation shall be excised on the ground that they are void. The second and third tests, on the other hand, are not grounded in a conflict borne out of a comparative evaluation of the text of the two provisions. Where a law enacted by Parliament is an exhaustive code, the second test may come into being. The intent of Parliament in enacting an exhaustive code on a subject in the Concurrent List may well be to promote uniformity and standardisation of its legislative scheme as a matter of public interest. Parliament in a given case may intend to secure the protection of vital interests which require a uniformity of law and a consistency of its application all over the country. A uniform national legislation is considered necessary by Parliament in many cases to prevent vulnerabilities of a segment of Society being exploited by an asymmetry of*



information and unequal power in a societal context. The exhaustive nature of the parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject. The third test of repugnancy may arise where both Parliament and the State legislation cover the same subject-matter. Allowing the exercise of power over the same subject-matter would trigger the application of the concept of repugnancy. This may implicate the doctrine of implied repeal in that the State legislation cannot coexist with a legislation enacted by Parliament. But even here if the legislation by the State covers distinct subject-matters, no repugnancy would exist. In deciding whether a case of repugnancy arises on the application of the second and third tests, both the text and the context of the parliamentary legislation have to be borne in mind. The nature of the subject-matter which is legislated upon, the purpose of the legislation, the rights which are sought to be protected, the legislative history and the nature and ambit of the statutory provisions are among the factors that provide guidance in the exercise of judicial review. The text of the statute would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the Concurrent List. Often times, a legislative draftsman may utilise either of both of two legislative techniques. The draftsman may provide that the parliamentary law shall have overriding force and effect notwithstanding anything to the contrary contained in any other law for the time being in force. Such a provision is indicative of a parliamentary intent to override anything inconsistent or in conflict with its provisions. The parliamentary legislation may also stipulate that its provisions are in addition to and not in derogation of other laws. Those other laws may be specifically referred to by name, in which event this is an indication that the operation of those specifically named laws



is not to be affected. Such a legislative device is often adopted by Parliament by saving the operation of other parliamentary legislation which is specifically named. When such a provision is utilised, it is an indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law. Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically elucidating specifically any other legislation. In such cases where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can coexist. Where, however, the competing statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament. The primary effort in the exercise of judicial review must be an endeavour to harmonise. Repugnancy in other words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises for determination.

174. *From our analysis of the provisions of the RERA on the one hand and of WB-HIRA on the other, two fundamental features emerge from a comparison of the statutes. First, a significant and even overwhelmingly large part of WB-HIRA overlaps with the provisions of the RERA. These provisions of the RERA have been lifted bodily, word for word and enacted into the State enactment. Second, in doing so, WB-HIRA does not complement RERA by enacting provisions which may be regarded as in addition to or fortifying the rights, obligations and remedies created by the Central enactment. The subject of the provisions of the State enactment is identical, the content is identical. In essence and substance, WB-HIRA*



has enacted a parallel mechanism and parallel regime as that which has been entailed under RERA. The State Legislature has, in other words, enacted legislation on the same subject-matter as the Central enactment. Not only is the subject-matter identical but in addition, the statutory provisions of WB-HIRA are on a majority of counts identical to those of RERA. Both sets of statutes are referable to the same entries in the Concurrent List — Entries 6 and 7 of List III — and the initial effort of the State of West Bengal to sustain its legislation as a law regulating "industry" within the meaning of List II Entry 24 has been expressly given up before this Court (as we have explained, for valid reasons bearing on the precedents of this Court).

175. *In assessing whether this overlap between the statutory provisions of WB-HIRA and RERA makes the former repugnant to the latter within the meaning of that expression in clause (1) of Article 254, it becomes necessary to apply the several tests which are a part of our constitutional jurisprudence over the last seven decades. Repugnancy can be looked at from three distinct perspectives. The first is where the provision of a State enactment is directly in conflict with a law enacted by Parliament, so that compliance with one is impossible along with obedience to the other. The second test of repugnancy is where Parliament through the legislative provisions contained in the statute has enacted an exhaustive code. The second test of repugnancy is based on an intent of Parliament to occupy the whole field covered by the subject of its legislation. In terms of the second test of repugnancy, a State enactment on the subject has to give way to the law enacted by Parliament on the ground that the regulation of the subject-matter by Parliament is so complete as a code, so as to leave no space for legislation by the State. The third test of repugnancy postulates that the subject-*



*matter of the legislation by the State is identical to the legislation which has been enacted by Parliament, whether prior or later in point of time. Repugnancy in the constitutional sense is implicated not because there is a conflict between the provisions enacted by the State Legislature with those of the law enacted by Parliament but because once Parliament has enacted a law, it is not open to the State Legislature to legislate on the same subject-matter and, as in this case, by enacting provisions which are bodily lifted from and verbatim the same as the statutory provisions enacted by Parliament. The overlap between the provisions of WB-HIRA and RERA is so significant as to leave no manner of doubt that the test of repugnancy based on an identity of subject-matter is clearly established. As the decision in *Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356]* emphasises, laws under this head are repugnant even if the rule of conduct prescribed by both the laws is identical. This principle constitutes the foundation of the rule of implied repeal. The present case is not one where WB-HIRA deals not with matters which form the subject-matter of the parliamentary legislation but with other and distinct matters of a cognate and allied nature. WB-HIRA, on the contrary, purports to occupy the same subject as that which has been provided in the parliamentary legislation. The State law fits, virtually on all fours, with the footprints of the law enacted by Parliament. This is constitutionally impermissible. What the legislature of the State of West Bengal has attempted to achieve is to set up its parallel legislation involving a parallel regime.*

176. *But the submission which has been articulately presented before the Court on behalf of the State of West Bengal is that Section 88 of the RERA itself allows for the existence of State statutes by enacting*



Sections 88 and 89, which stipulate that its provisions shall be in addition to and not in derogation of the provisions of any other law for time being in force and override only inconsistent provisions. For the purpose of the present discussion, we may accept the hypothesis of the State of West Bengal that the expression "any other law for the time being in force" does not, in the context of Section 88, imply the applicability of the provision only to laws which had been enacted before RERA. Conceivably, as the judgments of this Court construing similar expressions indicate, the trend has been to broadly configure the meaning of the expression by extending it to laws which were in existence and those which may be enacted thereafter. In other contexts, such an interpretation has not been accepted but, for the purpose of the discussion, we will proceed on the hypothesis which has been put forth by the State of West Bengal that "law for the time being in force" within the meaning of Section 88 would also include subsequent legislation. The submission is that since Section 88 allows for the existence of other laws by adopting the "in addition to and not in derogation of" formula, Parliament did not intend to exclude State legislation even though it is identical to that which has been enacted by Parliament. This submission is also sought to be buttressed by advertent to Section 92 of the RERA, under which only the Maharashtra Act was repealed.

177. *Now, in assessing the correctness of the submission, it is necessary to construe Section 88 in its proper perspective. Unless this is done, the Court would be doing violence to the intent of Parliament and to the constitutional principles which are embodied in Article 254. Parliament envisaged in Section 88 of the RERA that its provisions would be in addition to and not in derogation of other laws for the time being in force. True enough, this provision is an indicator of the fact that*



Parliament has not intended to occupy the whole field so as to preclude altogether the exercise of legislative authority whether under other Central or State enactments. For instance, Section 71 of the RERA specifically contemplates [in the proviso to sub-section (1)] that a complaint in respect of matters covered by Sections 12, 14, 18 and 19 is pending in the adjudicating fora constituted by the Consumer Protection Act, 1986. The person who has moved the consumer forum may withdraw the complaint and file an application before the adjudicating officer constituted under RERA. The effect of Section 88 is to ensure that remedies which are available under consumer legislation, including the Consumer Protection Act, 2019, are not ousted as a consequence of the operation of RERA. Of course, it is also material to note that both sets of statutes, namely, the Consumer Protection Act(s) and RERA, have been enacted by Parliament and both sets of statutes have to be, therefore, harmoniously construed. Section 88 of the RERA does not exclude recourse to other remedies created by cognate legislation. Where the cognate legislation has been enacted by a State Legislature, Section 88 of the RERA is an indicator that Parliament did not wish to oust the legislative power of the State Legislature to enact legislation on cognate or allied subjects. In other words, spaces which are left in RERA can be legislated upon by the State Legislature by enacting a legislation, so long as it is allied to, incidental or cognate to the exercise of Parliament's legislative authority. What the State Legislature in the present case has done is not to enact cognate or allied legislation but legislation which, insofar as the statutory overlaps is concerned is identical to and bodily lifted from the parliamentary law. This plainly implicates the test of repugnancy by setting up a parallel regime under the State law. The State Legislature has encroached upon the legislative authority of Parliament



which has supremacy within the ambit of the subjects falling within the Concurrent List of the Seventh Schedule. The exercise conducted by the State Legislature of doing so, is plainly unconstitutional.

178. *The statutory overlaps between WB-HIRA and RERA cannot be overlooked, as noted above. But quite apart from that, there is an additional reason why the test of repugnancy engrafted in clause (1) of Article 254 is attracted. This is because several provisions of the WB-HIRA are directly in conflict and dissonance with RERA. Where a State enactment in the Concurrent List has enacted or made a statutory provision which is in conflict with those which have been enacted by Parliament, it may in a given case be possible to excise the provision of the State statute so as to bring it into conformity with the parliamentary enactment. But the present case, as we shall demonstrate, involves a situation where valuable safeguards which are introduced by Parliament in the public interest and certain remedies which have been created by Parliament are found to be absent in WB-HIRA. This is indicated from the following provisions:*

178.1. *Section 2(n) of the RERA contains a statutory definition of the meaning of "common areas". Parliament has defined the expression to mean what is set out in sub-clauses (1)(i) to (iii) which includes open parking areas. The WB-HIRA contains a definition of the expression "common areas" in Section 2(m). While this definition is in pari materia, WB-HIRA has enacted the definition of the expression "car parking area" in Section 1 to mean such area as may be prescribed in exercise of the rule-making power. The rules framed by the State Government define the expression to mean an area either enclosed or uncovered or open excluding open car parking areas reserved as common areas and to*



exclude all types of car parking areas sanctioned by the competent authority.

178.2. *Section 2(y) of the RERA defines the expression "garage" so as not to include an unenclosed or uncovered parking space such as open parking area. On the other hand, Section 2(x) of WB-HIRA defines the expression "garage" to mean garage and property space as sanctioned by the competent authority.*

178.3. *Section 6 of the RERA provides for an extension of a registration under Section 5 on an application by the promoter due to force majeure. The explanation exhaustively defines force majeure to mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the development of the real estate project. The provisions of Section 6 of the WB-HIRA, in contrast, while defining force majeure also incorporate "any other circumstances prescribed", thereby giving a wider discretion to the regulatory authority or the State to give extensions of registration to real estate projects in a manner which may prejudicially affect the interest of home buyers.*

178.4. *Section 38(3) of the RERA empowers the real estate regulatory authority in a monopoly situation to make a suo motu reference to the Competition Commission of India. No such provision is made in the State enactment. Hence, a valuable safeguard to protect home buyers in RERA has been omitted. Section 38(3) of the RERA is in the following terms:*

"38. (3) *Where an issue is raised relating to agreement, action, omission, practice or procedure that—*



(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power or monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India."

178.5. *Section 41 of the RERA is a pivotal provision under which the Central Government is to establish a Central Advisory Council. The Minister of the Central Government dealing with housing is to be the ex officio Chairperson. The membership of the Central Advisory Council is stipulated in Section 41(3). Section 41 provides as follows:*

41. Establishment of Central Advisory Council.—(1) *The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.*

(2) *The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.*

(3) *The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban*



Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector."

178.6. *The functions of the Central Advisory Council are provided in Section 42 of the RERA, which reads as follows:*

42. Functions of Central Advisory Council.—(1) *The functions of the Central Advisory Council shall be to advise and recommend the Central Government—*

- (a) on all matters concerning the implementation of this Act;*
- (b) on major questions of policy;*
- (c) towards protection of consumer interest;*
- (d) to foster the growth and development of the real estate sector;*
- (e) on any other matter as may be assigned to it by the Central Government.*



(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1)."

178.6. *The functions of the Central Advisory Council are provided in Section 42 of the RERA, which reads as follows:*

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(a) on all matters concerning the implementation of this Act;

(b) on major questions of policy;

(c) towards protection of consumer interest;

(d) to foster the growth and development of the real estate sector;

(e) on any other matter as may be assigned to it by the Central Government.

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

178.7.WB-HIRA, *on the other hand, provides for the Constitution of a State Advisory Council under Section 41, which is in the following terms:*

41. Establishment of State Advisory Council.—*(1) The State*



Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the State Advisory Council.

(2) The Minister to the Government of the State of West Bengal in charge of the Department dealing with Housing shall be the ex officio Chairperson of the State Advisory Council.

(3) The State Advisory Council shall consist of representatives of the Finance Department, Department of Industry, Commerce & Enterprises, Department of Urban Development and Municipal Affairs, Department of Consumer Affairs, Law Department, five representatives of the Real Estate Regulatory Authorities to be selected by rotations, and any other State Government department as notified.

(4) The State Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector."

178.8. *Section 42 of WB-HIRA, which defines the functions of the State Advisory Council, is as follows:*

"42. Functions of the State Advisory Council.—*(1) The functions of the State Advisory Council shall be to advise and recommend the State Government—*



(a) on all matters concerning the implementation of this Act;

(b) on major questions of policy;

(c) towards protection of consumer interest;

(d) to foster the growth and development of the real estate sector;

(e) on any other matter as may be assigned to it by the State Government.

(2) The State Government may specify the rules to give effect to the recommendations of the State Advisory Council on matters as provided under sub-section (1).

The State Legislature while enacting WB-HIRA has replaced the Central Advisory Council, which has a major policy-making role, with the State Advisory Council. Though the functions of the State Advisory Council are similar, its power is to advise and recommend to the State Government in distinct contrast to the functions of the Central Advisory Council, which is to make policy recommendations to the Central Government on the subjects contemplated in clauses (a) to (e) of Section 42. As a consequence, the advisory role of the Central Government, based on the recommendations of the Central Advisory Council, has been completely eroded in the provisions of WB-HIRA.

178.9. *While Section 70 of the RERA contains a provision for compounding of offences, but WB-HIRA does not contain any such provision.*

178.10. *Section 71(1) of the RERA provides that the regulatory authority shall appoint adjudicating officers for the purpose of adjudging compensation under Sections 12, 14, 18 and 19. The adjudicating officer is required to be a person who is or has been a District Judge. WB-HIRA does not contain any provision for appointment of*



adjudicating officers for the purpose of adjudging compensation. Under Section 40(3) of WB-HIRA, this power is entrusted to the regulatory authority and not to a judicial person or body. The fact that an appeal against the orders of the regulatory authority lie to the Appellate Tribunal and thereafter to the High Court cannot gloss over the fact that the valuable safeguard of appointing judicial officers as adjudicating officers for determining compensation under RERA has not been enacted in WB-HIRA.

178.11. *Section 80(2) of the RERA provides that no court inferior to a Metropolitan Magistrate or JMFC shall try an offence punishable under the Act. No such provision is contained in WB-HIRA.*

179. *The above analysis indicates an additional reason why there is a repugnancy between WB-HIRA and RERA—the above provisions of the State enactment are directly in conflict with the Central enactment. Undoubtedly, as Article 254(1) postulates, the legislation enacted by the State Legislature is void “to the extent of the repugnancy”. But the above analysis clearly demonstrates that in material respects, WB-HIRA has failed to incorporate valuable institutional safeguards and provisions intended to protect the interest of home-buyers. The silence of the State Legislature in critical areas, as noted above, indicates that important safeguards which have been enacted by Parliament in the public interest have been omitted in the State enactment. There is, in other words, not only a direct conflict of certain provisions between RERA and WB-HIRA but there is also a failure of the State Legislature to incorporate statutory safeguards in WB-HIRA, which have been introduced in RERA for protecting the interest of the purchasers of real estate. In failing to do so, the State Legislature has transgressed the limitations on its power and has enacted a law which is repugnant to parliamentary legislation on the same subject-matter.*



11.16. He submits that the RERA 2016 being a central legislation enacted under the concurrent list, it shall prevail over any inconsistent provisions of pre-existing state enactments like KOFA 1972 or KAOA 1972 by virtue of Article 254 (1) of the Constitution of India. Hence, he submits that the RERA 2016 has an overriding effect over KOFA 1972 and/or KAOA 1972. Hence, all the judgements which have been relied upon by the petitioners, which did not consider the RERA 2016 and its applicability, would not enure to the benefit of the petitioners.

11.17. Since the provision of RERA 2016 has been invoked, there will be repugnancy with KOFA 1972 and KAOA 1972, which is required to be considered by this court. The decision in ***Shantharam Prabhu's*** case not having considered the aspect of the statutory rights under RERA 2016, would not be applicable.



Section 31 of the RERA 2016 permits only a voluntarily registered consumer association to collectively represent the interest of the allottees, which would not be required to come within the purview of KAOA 1972 or KOFA 1972.

11.18. He refers to the decision of the Hon'ble Apex Court in ***Hibiscus Condominium Vs. Managing Director, M/S Sobha Developers Ltd. & Anr.***⁷, more particularly para nos. 9 and 10 thereof, which are reproduced hereunder for easy reference:

9. On a conjoint reading of the various relevant provisions of the 1972 Act and the Bye-laws of the Condominium referred above, we are of the view that the appellant-body has come into existence as per the mandatory provisions under the 1972 Act. It is clear from the objects of the said Act, that it is an Act to provide ownership of an individual apartment in a building and to make such apartment heritable and transferable property. In view of the mandatory provisions of the 1972 Act the appellant cannot be said to be a voluntary registered association for the purpose of filing a complaint before the competent authority

⁷ Civil Appeal No.1118/2016



under the provisions of the Act. The Explanation to Section 12 of the Act makes it clear that, the recognised consumer association as referred under Section 12(1)(b) of the Act means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. By applying the said Explanation, the appellant cannot be said to be a voluntary consumer association so as to maintain a petition. Further, it will not fall within the definition of 'consumer' as defined under Section 2(1)(d) of the Act. The term 'voluntary' has been defined in Black's Law Dictionary IX Edn. as under :

"voluntary, (14c) 1. Done by design or intention voluntary act. 2. Unconstrained by interference; not impelled by outside influence voluntary statement. 3. Without valuable consideration or legal obligation; gratuitous voluntary gift. 4. Having merely nominal consideration voluntary deed. Voluntariness".

The term 'voluntary' as defined in Oxford Dictionary reads as under :

"2. Of an action: performed or done of one's own will, impulse, or choice; not constrained, promoted, or suggested by another. Also more widely, left to choice, not required or imposed, optional. Of an oath, a confession, etc: voluntarily made or given; not imposed or prompted by a promise or threat. Of a conveyance, a disposition etc.: made without money or other consideration being given or promised in return. Growing wild or naturally; or spontaneous growth. Volunteer

3.



4.a. Assumed or adopted by free choice; freely chosen or undertaken; (of work) unpaid b. Brought about by one's own choice or deliberate action; self-inflicted, self-induced. C. Of a Society, association, etc.: entered into a free choice. Also consisting of volunteers.

5. Done by deliberate intent; designed, intentional

6. Of the will: free, unforced, unconstrained.

7. Of a person: acting from personal choice or impulse, willingly, or spontaneously, in a specified capacity. Also, endowed with the faculty of willing. B. Serving as a volunteer soldier. Also, composed of such volunteers.

8. Freely or spontaneously bestowed or made; contributed from personal choice or impulse or from generous or charitable motives.

9.

10. Of an institution, organisation, etc.: maintained or supported solely or largely by voluntary contributions. Also more widely, existing through voluntary support, not established by statute; in the UK, (of a school) built by a voluntary institution but maintained by a local education authority. B. of, pertaining to, or advocating voluntarism in respect of Church, schools, etc."..

In essence, a voluntary consumer association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. The appellant association which consists of members of flat owners in a



building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of 1972 Act, cannot be said to be a voluntary association to maintain a complaint under the provisions of the Act.

10. *The learned counsel appearing for the respondents also relied on the very same judgment in the case of Moulivakkam Trust Heights Flats Affected Buyers Association etc.1 In the aforesaid decision, a Full Bench of the National Commission has taken a view that even a Residents' Welfare Association, if registered under a statute will qualify as a consumer association under the provisions of Section 12 of the Act provided, it qualifies as a voluntary association.*

11.19. He submits that an Association which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of KAOA 1972 cannot be said to be a voluntary association to maintain a complaint, under the provisions of the Consumer Protection Act, 1986. The Hon'ble Apex Court has come to the conclusion that a Residents Welfare Association, if registered under a statute, will qualify as a Consumer Association under the provisions of Section 12 of the



Consumer Protection Act as a Voluntary Association. Therefore, by juxtaposing Section 12 of the Consumer Protection Act with Section 31 of the RERA 2016, he submits that an Association registered under KAOA 1972 not being a voluntary registered association cannot maintain a proceeding under RERA 2016 and it is for that reason that the owners of the apartments have voluntarily come together to register an Association of Allottees which was later on as per the directions of the RERA registered as a Co-operative Society.

11.20. He relies upon a decision of the Hon'ble Apex Court in ***Subbhechha Welfare Society Vs. M/S Earth Infrastructure Pvt. Ltd.***⁸, more particularly para no. 7 thereof, which is reproduced hereunder for easy reference:

7. To maintain a complaint under the provisions of the Act complainant must be either a 'consumer' within the meaning of

⁸ Civil Appeal No.9961-9962/2017



Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act. The word 'consumer' is defined under Section 2(1)(d) of the Act which reads as under : "2. Definitions.-(1) In this Act, unless the context otherwise requires,- (d) "consumer" means any person who,- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose; Explanation,-For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self employment;"



11.21. By relying on ***Subbhechha Welfare Society's*** case, he submits that if a recognised consumer association is made to file multiple complaints in respect of several consumers having a similar cause of action, it would defeat the purpose of registration of the Society, and as such, a single complaint could be filed. Since the members have a similar and or same cause of action. The association under KAOA 1972 would not have locus under Section 31 of the RERA 2016.

11.22. He relies upon the decision of the Hon'ble Apex Court in ***GOPAL KRISHAN & ORS VS. DAULAT RAM & ORS***⁹, more particularly, para 13 thereof, which is reproduced hereunder for ready reference:

13. *The language of Section 63(c) of the Act uses the word 'OR'. It states that each Will shall be attested by two or more witnesses who have seen the Testator sign or affix his mark on the Will OR has seen some other*

⁹ (2025) 1 SCR 93



persons sign the Will in the presence and by the direction of the Testator OR has received a personal acknowledgment from the Testator of his signature or mark etc. What flows therefrom is that the witnesses who have attested the Will ought to have seen the Testator sign or attest his mark OR have seen some other persons sign the Will in the presence of and on the direction of the Testator. The judgment relied on by the 10\SLP(C)NO.25645/2018 learned Single Judge in the impugned judgment, i.e., Kanwaljit Kaur (supra) holds that the deposition of the attesting witness in the said case had not deposed in accordance with Section 63(c) of the Act, where two persons had undoubtedly attested the Will, but the aspect of the 'direction of the testator' was absent from such deposition. In the considered view of this Court, the Learned Single Judge fell in error in arriving at such a finding for the words used in the Section, which already stands extracted earlier, read -"or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a...". That being the case, there is no reason why the 'or' employed therein, should be read as 'and'. After all, it is well settled that one should not read 'and' as 'or' or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P Singh's treatise, 'Principles of Statutory Interpretation' tells us that the word "or" is normally disjunctive while the word "and" is normally conjunctive. Further, it is equally well settled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to



ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present.

11.23. By referring to **Gopal Krishan's** case, he submits by applying the grammatical rule of statutory interpretation, the usage of the word 'and' in KOFA would have to be read as 'or' or vice-versa. Thus, whether the apartment complex is used only for residential purposes or for residential or commercial purposes, a Co-operative Society could be registered as per Section 10 of the KOFA 1972.

11.24. He submits that if the plain and ordinary meaning is given to the KOFA, the absurdity that it will only apply if a commercial unit is part of the project can be eschewed, and on that ground, he submits that the decision in



VDB Celadon is not a correct proposition of law.

11.25. He relies upon the decision of the Hon'ble Apex Court in **Newtech Promoters And Developers Pvt. Ltd. Vs. State Of Uttar Pradesh And Ors.**¹⁰, , more particularly para no. 85 thereof, which is reproduced hereunder for easy reference:

85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the courts are not supposed to embark upon an 53 inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.

11.26. By relying on **Newtech Promoters** case, he again submits that when the words of the statute are clear, plain and unambiguous, the

¹⁰ Civil Appeal No.6745/2021



meaning which gives effect to the enactment has to be given to those words by the courts and as such, the Association of Allottees under Rule 2(1)(b) of the RERA Rules cannot be an Association of apartment owners under Section 3(d) of the KAOA 1972. Section 11(4)(e) of the RERA 2016 requires the formation of an Association or Society or Co-operative Society, as the case may be, of allottees, hence, a Co-operative Society registered under the KCSA 1959 is permissible.

11.27. An apartment owner under Section 3(b) of the KAOA 1972 is defined as a person who owns both an apartment and a share in the common areas, which could only be considered post completion of the project and conveyance of title. If the project is not completed, nor is a sale deed or conveyance executed, the allottee cannot be an apartment owner under Section



3(b) of KAOA 1972. Therefore, a mere allottee who is not an owner cannot be a part of an Association under KAOA 1972. The same being practically impossible, the legal niceties sought to be contended by the petitioner cannot be considered.

11.28. He relies upon the decision of the Hon'ble Apex Court in ***Dushyan Janbandhu Vs. M/S Hyundai Autoever India Pvt. Ltd.***¹¹, more particularly para nos. 16 and 17 thereof, which are reproduced hereunder for easy reference:

16. *Having considered the factual background in which the Section 11(6) petition has been filed, we are of the opinion that it is an abuse of process. It was clearly intended to threaten the appellant for having approached the statutory authorities under the PW Act and the ID Act. There is no basis for invoking clause 19 of the agreement and demanding compensation of Rs. 14,02,822/- when that fact situation did not arise.*

17. *The Section 11(6) petition has two facets. The first relates to disputes that were anyway pending before the statutory authorities, and they related to non-payment of wages and legality and propriety of termination which are non-arbitrable. The second facet relates to the*

¹¹ (2025) 12 SCR 492



alleged violation of clause 19 relating to non-disclosure obligation, which was not raised in the show cause notice, inquiry report, chargesheet and termination order and as such is non-existent.

11.29. By relying on ***Dushyant Janabandhu's*** case, his submission is that, like an employer, a builder, would impose unilateral contractual conditions, and one such condition in the present matter is as regards the registration of an association of the KAOA, which registration can only happen after the apartments are conveyed in favour of the allottees. Thus, the developer cannot restrict the allottees to form a Co-operative Society before the conveyance to agitate their rights under the RERA 2016. After the completion of the project, insofar as the maintenance is concerned, an Association could be formed under KAOA, but during the pendency of completion of the project, an association under the KAOA 1972 cannot be



formed or registered, that the only remedy available to the allottees is the registration of an Association of Allottees as a Co-operative Society as directed by the RERA.

11.30. He refers to decision of the Hon'ble Apex Court in ***Kerala State Electricity Board & Ors. V. Thomas Joseph Alias Thomas M.J. & Ors.***¹², more particularly para nos. 63, 64, 65, 78, 79, 80, which are reproduced hereunder for easy reference:

63. *Thus, reliance on Regulation 153(15) of the Code 2014 framed under Section 50 of the Act 2003 by the respondent (consumers) is thoroughly misconceived, as the same does not conform to the provisions of the Act 2003. In any event, Regulation 153(15) travels much beyond Section 126 and Section 51 50 resply of the Act 2003. It is settled law that the regulation making power cannot be used to bring into existence substantive rights, which are not contemplated under the Act 2003.*

64. *At this stage, it is apposite to state about the rule making powers of a delegating authority. If a rule goes beyond the rule making power conferred by the statute, the same has to be declared invalid. If a rule*

¹² Civil Appeal No.9252-9253/2022



supplants any provision for which power has not been conferred, it becomes invalid. The basic test is to determine and consider the source of power, which is relatable to the rule. Similarly, a rule must be in accord with the parent statute, as it cannot travel beyond it.

65. *Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised. The doctrine of ultra vires envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect. Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be noncompliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*



78. A delegated power to legislate by making rules or regulations 'for carrying out the purpose of the Act', is a general delegation without laying down any guidelines; it cannot be exercised so as to bring into existence the substantive rights or obligations or disabilities not contemplated by the provisions of the Act 2003 itself. The Court, considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power as has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute.

79. It is important to keep in mind that where a rule or regulation is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the Court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific 57 provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring the same to be invalid.

80. Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details.

11.31. By referring to **Kerala State Electricity Board's case**, his submission is that if the Rule



goes beyond the rule-making power conferred by the statute, the same would have to be declared invalid. If a Rule supplants any provision for which power has not been conferred, it becomes invalid and as such, Rule 9 of the KOFA Rules 1974 enables promoters/ developers to insert clauses in the agreement of sale and sale deed requiring the apartment purchaser to join association under the KAOA, which would deprive the members of the Association and of the Association the benefits of RERA 2016 since what is required under RERA 2016 is a voluntarily registered Consumer Association. The aforesaid Rule 9, therefore, enables developers to circumvent their obligation and operate beyond the parent statute and as such, Rule 9 is ultra vires and legally unsustainable. Section 3(f) of KAOA provides powers for the amendment of the



definition of common areas and facilities, which could be done at the unilateral discretion of the developer. This power to amend under Section 3(f) of KAOA is contrary to the requirement of RERA 2016 which makes it clear that whatever has been promised by the developer would have to be made available to the allottee and the developer cannot unilaterally amend any of those promises which would include the promise in respect of common areas and facilities.

11.32. Section 3(f) of KAOA 1972 conflicts with Section 2(n) of the RERA 2016, which provides an exhaustive and non-modifiable statutory definition of common areas. The validity of the said provision has been upheld in the ***Forum for People's Collective Efforts*** case supra. The Hon'ble Apex Court at Para 178.1, having clearly come to a conclusion that the definition



of common areas is a binding statutory definition, which cannot be overridden even by the State Government through subordinate legislation. When the State Government, by exercising rulemaking power, cannot amend the common areas, the question of a promoter unilaterally amending the common areas in the Deed of Declaration by exercising power under Section 3(f) of the KAOA 1972 is not permissible. On that basis also, he submits that the requirement for registration of an Association under KAOA 1972 would be contrary to the mandate of RERA 2016.

11.33. As regards the allegations made against respondents Nos . 7 to 15, he submits that all those allegations are baseless. Respondent No.7 being an Association, respondent No.8 being a Co-operative Society, respondent Nos . 9 to 15 being the office bearers of the Co-



operative Society representing the allottees, all of them are acting in the interest of the allottees who have been deprived of an apartment for nearly 11 years. The actions taken by the Co-operative Society are in the interest of the allottees who have paid monies for their apartments, which have not been completed. The petitioners claiming to be apartment owners in whose favour deeds of conveyance have been executed are not as much affected as the allottees whose apartments are yet to be constructed. He therefore submits that the action taken by the Registrar of Co-operative Societies in registering the Co-operative Society, the action taken by the Registrar of Societies for cancellation of the registration of the Petitioner's Society are proper and correct.



11.34. At the present point of time, there being no conveyance of the apartments in favour of the allottees, they not being owners, an association under the KAOA 1972 can neither be formed nor registered. Such an Association, even if registered, cannot maintain a proceeding under RERA 2016. Therefore, none of the reliefs which have been claimed for by the petitioners can be granted. The Co-operative Society ought to be permitted to continue with its endeavours in getting the construction completed. The decisions which have been relied upon by the petitioners, all relating to aspects under KAOA 1972 and KOFA 1972 without reference to the RERA 2016, would not be applicable, and it would be for this court to consider all these aspects and come to the rescue of the allottees whose interest has been adversely affected by the developer.



12. Insofar as WP No.5479 of 2023 is concerned, he submits that

12.1. The said Writ Petition has been filed by some of the allottees seeking a direction to the Respondent to register the Co-operative Society, he submits that the said relief has been rendered infructuous, on account of the Co-operative Society having been registered.

12.2. He submits that now that the Co-operative Society has been formed, there is a requirement of a direction to be issued to the to the Sub-Registrars to refrain from registering sale deeds, for the Karnataka Real Estate Regulatory Authority to take over the project, for the developer and its Directors to deposit all the amounts which have been collected, to declare that the mortgage created by the developer in favour of respondent No.12 is



illegal and initiate under valuation proceedings which are all consequential orders which are required to be granted.

12.3. His submission is that the reliefs which have been sought for in W.P.No.5479 of 2023 are required to safeguard the interest of the allottees.

13. Sri. Rishabha Raj, learned counsel for respondent No.12 in W.P.5479 of 2023, submits that insofar as respondent No.12 is concerned, it is a lender who had lent certain monies to the developer in terms whereof certain apartments had been mortgaged. The amounts being repaid by the developer, the respondent No. 12, have released the mortgage rights and terminated the secured interest. As of date, it is submitted that there is no right of respondent No. 12 in respect of the project or any of the apartments. All allegations against respondent No.12 are denied. The actions taken by respondent No.12 is as per the agreement between



respondent No.12 and the developer, which cannot be found fault with.

14. Sri. Yogesh D. Naik, learned Additional Government Advocate for respondent Nos.5, 7, 8 & 13 in W.P.No.27341 of 24, submits that:

14.1. Insofar as the prayers sought for against Respondent No. 4 in W.P.No.27341 of 2024 with the withdrawal of Prayer Nos.1, 2 and 4 would also not be maintainable. He also reiterates that prayer No.3 as regards quashing the registration certificate of the Co-operative Societies, the same being made in terms of the order passed by RERA, the challenge to the said order being withdrawn, prayer No.3 is not sustainable and in this regard, he invokes the doctrine of waiver on account of the voluntary withdrawal of the challenge made to the statutory orders.



14.2. Insofar as the reliefs which have been sought for in W.P.No.5479 of 2023, he submits that all those reliefs are covered by the final order passed in complaint No.CMP/210223/0007613 and CMP/221116/0010348, which reads as under:

1. *This Authority vide order dated 05.07.2022 in the complaint CMP No. 210223/0007613 directed the complainants to register itself as a Co-operative Society and to submit a formal application under Sec.8 of the RERA Act. The complainant has filed this petition under sec 8 praying for grant of various reliefs including takeover of the project.*
2. *The complainant through a memo filed before this Authority has brought to our notice that the allottees have approached the Registrar of co-operative Society for registration of the Association of the Allottees as a co-operative Society and has filed their proposal on 12.09.2022 before the assistant registrar of co-operative Society, zone 3 Bengaluru Urban district. The complainant has brought to the Authority's notice that the Assistant Registrar of co-operative Society has sought guidelines and clarifications from the Additional Registrar (housing and others) on the points below.*
3. *It is apparent that, as a result the registration is withheld indefinitely*



awaiting the guidelines and clarifications on the above points from the additional registrar of co- operative societies.

4. *The proposal is filed on 12.09.2022. However, the process initiated till date which is causing hindrance to the complainant allottees. The allottees approached this Authority for redressal of their grievances when the promoter failed to complete the project as per the terms of agreement to sell.*
5. *From the materials placed on record, it is apparent that the sale of apartment units in the project commenced from the year 2012 and is not completed till date.*
6. *The complainant has brought to our notice several violations made by the promoters including creation of a mortgage without consent of the agreement holders. The complainant is the association of the allottees who have paid consideration under agreement for sale towards purchase of apartments units in the project. It is also noted that the respondents are violating the directions of this Authority.*
7. *This project is registered with RERA. The Registration number is PRM/KA/RERA/1251/308/PR/171015/00 0813.*
8. *The promoters of the project have delayed the construction and completion of the project for several years. The allottees grievances are required to be addressed as per the provisions of RERA. The allottees to get their grievance redressed 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 co-operative 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 ruled that the association formed and 5 registered under the Karnataka Society registration act 1960 is not the appropriate association to be formed to manage the affairs of the apartment complexes. Formation of association of allottees is an essential requirement for all apartment projects having 8 or more apartment units and hence cannot insist to have minimum numbers of 200 allottees to register the allottees Society. In the projects which are abandoned, stalled, and incomplete or delayed, the allottees association are required to approach this Authority to get their grievances redressed. The associations approaching this Authority for takeover of the project are required to be registered entity to avail the legal rights and entitlements. The eligibility criteria for an allottee e eligibility criteria f is only an agreement for purchase of a unit as per the Act. The allottees under section 8 of RERA has the right to seek take over for completion of the projects, of which the registration is revoked by this Authority. Such take over can be done only by a Society duly registered inter as Cooperative Society. The takeover is required when the project is abandoned, stalled of inordinately delayed and none of such project shall have occupancy certificate. In view of the above and as



per the act the registrar of co-operative societies are required to register the applicant allottees/owners co-operative societies without insisting and stipulating conditions such as occupancy certificate, minimum members not below 200, share capital of not less than Rs. 4,00,000/ and allottees to be local residents etc. These conditions are s. 4,00,000/- and a contrary to the provisions of the Act. If the registration is denied on the grounds contrary to the Act, that shall jeopardise the rights of the allottees. The administrative delays shall further cripple the allottees from achieving any remedies for their grievances. CFICIAL C The concerned authorities are mandated to assist in the implementation of the RERA Act which is a central enactment so as to ensure that the legislative objectives are achieved.

9. *It is mandate of the RERA Act, that all the state instrumentalities shall function in coordination to achieve the objectives of the Act.*
10. *Section 32 empowers the Authority to make such recommendation to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector for the protection of interest of the allottees and others.*
11. *Hence, the following order is passed.*

ORDER

In exercise of the powers conferred under section 32 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing



No.CMP/210223/0007613 CMP/221116/0010348 is hereby allowed and recommends to the Registrar of Co-operative Society and their subordinate offices to take steps to register the application of Commune 1 Owners Co-operative Societies Act.

14.3. As regards the formation and incorporation of the Cooperative Society, he submits that by way of the 97th Amendment to the Constitution, Article 19(1)(c) has been introduced in the Constitution recognising the right of citizens to form Associations or Unions, including Co-operative Societies. Correspondingly, Article 43B has been introduced in the chapter relating to Directive Principles of State Policy, which mandates that the State shall endeavour to promote voluntary formation, autonomous functioning, providing democratic control and professional management of Co-operative Societies. Thus, the Co-operative Society having been formed



by the Association of Allottees is an exercise of the rights under Article 19(1)(c) as regards which the State is to provide necessary facilities in terms of Article 43B.

14.4. He also relies upon the ***Forum for People's Collective Efforts*** decision of the Hon'ble Apex Court and submits that the RERA 2016 has an overriding effect on all other enactments, including KAOA 1972 and KOFA 1972. He submits that there is a conflict between Section 3(m) of the KAOA 1972 and Section 2(n) of the RERA 2016, which are reproduced hereunder for easy reference:

3(m) "*limited common areas and facilities*" means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

2(n) "*common areas*" mean— (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the stair cases, lifts,



staircase and lift lobbies, fire escapes, and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces; (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy; (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use; (vii) all community and commercial facilities as provided in the real estate project; (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

14.5. By referring to Section 3(m) of KAOA 1972, he submits that the concept of limited common areas and facilities is recognised under the KAOA 1972. However, under RERA 2016, there is no such concept. All areas are common areas and facilities which cannot be limited to any particular person or group of persons. Thus, he submits that as of today, RERA 2016 would be



applicable till the completion of the project and execution of a conveyance, thereafter it would be KAOA 1972 which would be applicable for the purpose of maintenance by the apartment owners, there being no lis or dispute between the apartment owners and the developer at that point of time. As regards any dispute, as aforesaid, the same cannot be agitated by an Association formed under KAOA, but could be agitated by a Co-operative Society registered under the KCSA 1959.

14.6. He submitted that there is again a conflict between Section 3(f) of KAOA 1972 and Section 2(n) of RERA 2016. Section 3(f) provides for amendments to common areas, whereas Section 2(n) does not provide for any such amendment.

14.7. He relies on Sub-Section (2) of Section 4 of RERA 2016 and submits that there is a



mandate for the promoters to develop and submit comprehensive documents with the application for project registration including sanction plan, proposed facilities, precise location details, demarcation of project land boundaries specification of the apartments, Number, type, carpet area of the apartments, number of garages, etc. Thus, a promoter is required to disclose each and every detail of the project at the time of submitting the application for registration, and it is these details which are disclosed which would be final and binding on all concerned. No change could be made in relation thereto subsequent to such registration. For the purpose of such registration, there would be no requirement of execution of any deed of declaration under the KAOA 1972 or otherwise. Once a project is registered under RERA 2016, all the parties are



governed by such registration, which includes the details and specifications of the apartment. These details and specifications not being capable of being changed, he reiterates that there is a conflict between the RERA 2016 in terms of Section 2(n) and Section 3(f) and 3(m) of the KAOA 1972 and as such, KAOA 1972 cannot govern the relationship between the promoter-developer on the one hand and the allottees on the other.

14.8. He relies upon RERA Bill, 2013 and Clause 11(4)(c) thereof, which reads, "the promoter shall take steps for the formation of an Association or Societies or Co-operative Societies, as the case may be, of the allottees, or a federation of the same, under the laws applicable".

14.9. He submits that a select committee had been formed to submit a report on the aforesaid Bill.



The committee submitted a report on July 30, 2015, recommending certain modification to Clause 11(4)(c) as under:

"Formation of Association of Societies or Co-operative Societies may be left for the allottees to decide, and the role of the promoter should be limited to providing enabling support".

14.10. The Committee further recommended establishing a time limit for Association formation, noting that many local laws lack such provisions. In that view of the matter, when RERA 2016 was passed, the words "the promoter shall take steps" were changed to "the promoter shall enable". Thus, leaving the decision to the allottees and not imposing an obligation on the promoter. However, it was mandated that such an Association would be required to be formed within three months after the majority of the allottees have booked their units in cases where local laws are silent.



- 14.11. The requirement of formation of the Association within three months of booking is different from the requirement under the KAOA 1972 where it is only the owners of the apartment who can form an Association under the KAOA 1972 and not persons who have booked the units. On inquiry as to who is required to form the Association within the said three months of the majority of the allottees booking their units, he submits that the allottees themselves may come together to form such an Association/Society.
- 14.12. He again reiterates that an Association under KAOA 1972 can only be formed by the owners after conveyance or by the developer along with the developer being the owner of the land or by the developer and the owner of the land in the case of a joint development agreement.



14.13. He supports the case of the Co-operative Society by stating that it is the Karnataka Co-operative Societies Act 1959, which is the only applicable State law for forming an Association of Allottees in RERA-registered projects; the KSRA 1960, the KAOA 1972, or the KOFA 1972 provide for such registration of an Association. He refers to Section 88 and 89 of the RERA 2016, which are reproduced hereunder for easy reference:

88. *Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.*

89. *Act to have overriding effect.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force*

14.14. By referring to the KSRA 1962, he submits that the provision of RERA 2016 overrides the



provisions of any other enactment in case of inconsistency. Thus, he submits that there being an inconsistency as regards the formation of the Society under RERA 2016, which is required to be so formed within three months from the date on which the majority of the units are booked, to that under the KAOA 1972 where only after conveyance, the owners can form the Association, It is the RERA 2016 which will prevail over KAOA 1972 and as such, the apartment owners should be permitted to register a Co-operative Society.

14.15. He also reiterates the submission of Sri.Pradeep Kumar by submitting that an Association under the KAOA 1972 does not meet the requirement of a voluntary Consumer Association. By referring to the decision in ***SOBHA HIBISCUS CONDOMINIUM's*** case, depriving such an



Association from initiating proceedings under Section 31 of the RERA 2016.

14.16. His submission is that the RERA 2016 recognizes a Co-operative Society in terms of Section 2(zr) of RERA 2016, which is reproduced hereunder for easy reference:

***2(zr)** Words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.*

14.17. He juxtaposes the same to Section 2(c) of the KCSA 1959 and submits that it is a Co-operative Society under 2(c) of the KCSA 1959, which is recognised under Section 2(zr) of RERA 2016. He distinguishes the term allottees from owners by representation by referring to Section 2(d) of the RERA 2016, which reads as under:



2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

14.18. By referring to Section 2(d) of RERA 2016, he submits that allottees could be persons to whom apartments have been allotted, which is different from Section 3(b) of KAOA 1972, which is reproduced hereunder:

3(b) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration;

14.19. Section 3(b) of KAOA 1972 requiring ownership, Section 2(d) of RERA 2016 requiring allotment. He also relies upon the decisions relied upon by



Sri.Pradeep Kumar. In ***Forum for People's Collective Efforts*** case, ***Sobha Hibiscus*** case, ***Subbhechha Welfare Society's*** case. He refers to one other judgment of the Division Bench of this Court in ***RAMKY ONE NORTH APARTMENT OWNERS COOPERATIVE SOCIETY LTD. VS. MR.A.V.BHASKAR REDDY***¹³. Relying on ***Ramky One's*** case, he submits that this court has recognised a Co-Operative Society that consists solely of residential unit owners. On that ground, he submits that writ petition W.P.No.27341 of 2024 is required to be dismissed. W.P.No.5479 of 2023 has been rendered infructuous in view of the final order of the RERA and as such, W.P.No.5479 of 2023 is also required to be dismissed.

¹³ CCC.NO.260/2025 DD 15.04.2025



15. Sri.Venkatesh R.Bhagat, learned counsel who appears for the developer in both the matters, would submit that

15.1.The developer has no objection to allowing W.P.No.27341 of 2024. The developer has always been ready and willing to register the Association under KAOA 1972. He submitted that the draft of the Deed of Declaration (**DOD**) had been kept ready. During the pendency of the above matter in pursuance of the interim orders passed by this court, it is only the petitioners who had approached the developer for registration of the DOD. The respondents Nos. 8 to 15 have not and have clearly indicated that they do not wish to form an Association under KAOA 1972.

15.2. Insofar as the completion of the building etc. and the other allegations made against the developer, he submitted that the developer has



always been ready and willing to complete the project. However, it is on account of the dispute between the petitioner, Society and the respondent, Co-operative Society, that the matter could not be taken forward. The final order passed by the RERA is also proposed to be challenged by the developer, and as such, he submits that the developer will abide by any orders passed by this court.

16. In W.P.No.27341 of 2024, heard Sri. Rajshekhar S. learned counsel for the petitioners, Sri. Yogesh D. Naik, learned Additional Government Advocate for respondent Nos. 1 to 3 and 5, Sri. Pradeep Kumar P.K., learned counsel for respondent Nos.7 to 15, Sri. Venkesh R. Bhagat for respondent No.6.
17. In W.P.No.5479 of 2023, heard Shri Pradeep Kumar P.K. for the petitioners, learned Additional Government Advocate for respondent Nos.1 to 5, 7 and 8 and 13,



Sri. Gautam Ullal, learned counsel for respondent No.6,
Sri. Venkatesh R. Bhagat, learned counsel for
respondent Nos.9 to 11 and Sri. Rishabha Raj, learned
counsel for respondent No.12.

18. Perused papers in both matters.
19. The points that would arise for the consideration of this
Court are:

- 1. Whether an Association of Allottees contemplated under the RERA 2016 would include an Association formed under KAOA 1972 or would the Association of Allottees be different from an Association under KAOA 1972?**
- 2. Whether an Association under KAOA 1972 can be formed by allottees before conveyance in their favour by the developer?**
- 3. Whether there is any conflict between KAOA 1972 and KOFA 1972 on the one hand and RERA 2016 on the other? If so, which enactment would prevail?**
- 4. Whether an Association under KAOA 1972 can initiate proceedings under the RERA 2016, more so, in relation to Section 31 of the RERA 2016?**



5. Whether prayer No.3 in W.P.No.27341 of 2024 would be maintainable after the deletion of prayer (i) and (ii) in the said petition?
6. Whether the Registrar of Societies could initiate proceedings against the petitioner No.59-Society for cancellation of such registration, and or issue a direction to the said Society not to carry on maintenance of common areas and common amenities?
7. Whether a direction could be issued by this court directing the developer and all the apartment owners and agreement holders to form an Association under KAOA 1972?
8. Whether the writ petition in W.P.No.5479 of 2023 is rendered infructuous on account of the final order passed by the RERA?
9. What order?
20. I answer the above points as under:
21. **Answer to Point No. 1: Whether an Association of Allottees contemplated under the RERA 2016 would include an Association formed under KAOA 1972 or would the Association of Allottees be different from an Association under KAOA 1972?**

And



Answer to Point No.2: Whether an Association under KAOA 1972 can be formed by allottees before conveyance in their favour by the developer?

21.1. Both the above points being related to each other are taken up for consideration together.

21.2. The crux of the matter in the present petition is, who is to represent the interest of allottees, in whose favour no sale deed has been executed, that is to say, the allottees being those in whose favour an allotment letter or an agreement of sale has been executed, there being no sale deed which has been executed.

21.3. The issue involved in the present matter is one which will normally be faced when a real estate project is implemented in phases, with the initial phases being completed early, and in such cases, as regards the completed



apartments, the developer was to execute registered sale deeds. Insofar as the buildings which are to be constructed subsequently, in subsequent phases, there being a time lag between the initial phases and subsequent phases, there could be a situation where due to substantial time lag, the interest of the persons in whose favour sale deeds have been executed and the interest of persons in whose favour only allotment letters or agreements for sale have been executed would clash and there would be a requirement to balance the interests of all.

21.4. In the present case, as could be seen, there are five towers which are required to be constructed from Towers A to E. It is contended by the petitioners that Towers B, C and D have been constructed. Towers A and D are yet to be constructed. It is further contended that during



the pendency of the above petition, Tower E has also been completed, and it is only Tower A which remains to be constructed. The petitioners are residents of Tower B, C and D who contend that their respective apartments have been constructed, sale deeds have been executed and registered in their favour, they have no substantial grievance against the developer, and what they want is proper maintenance of the apartments and common areas sold to them.

21.5. The contention of the respondent Nos.7 to 15 is that they have purchased apartments in Tower A and E, as also in Tower B, C and D. The entire project is not complete in all respects and it is for that reason that they had approached the RERA with a complaint against the developer.



21.6. The RERA being of the opinion that an association registered under the KSRA 1960 is not one which could be said to be an Association of Allottees in terms of RERA 2016 directed them to register a Co-operative Society under the KSCA 1959. The Registrar of Co-operative Society not having registered the same, a positive direction came to be issued in pursuance of which the Co-operative Society had been registered, as such, the Co-operative Society has taken up the claims and complaints against the Developer.

21.7. It is in this background that the following entities emerged as players in this, for lack of a better word, 'drama', the first being the developer, second being a Society formed by the purchasers of the apartments in whose favour sale deeds have been executed, viz., the petitioners, third being an Association of the



Allottees whose apartments have not been completed, who also registered under the KSRA 1960, fourth the Co-operative Society which had been formed as per the directions of the RERA and fifth, the RERA itself.

21.8. The Association of Allottees has not been defined. However, Subsection (3) of Section 19 makes a reference to the Association of Allottees. An allottee has been defined under clause (d) of Section 2 of the RERA 2016, which reads as under:

2(d) "allottee" *in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;*

21.9. A perusal of the above provision would indicate that an allottee in relation to a real estate



project would mean a person to whom a plot, apartment or building, as the case may be, has been allotted, sold, (whether as freehold or leasehold or otherwise transferred by the promoter) including a person who subsequently acquires the said allotment. Thus, in a sense, an Association of Allottees would be an Association of such persons who are Allottees, Allottee having been defined under Clause (d) of Section 2 above.

21.10. Section 19 deals with the rights and duties of allottees which is reproduced hereunder for easy reference:

19. Rights and duties of allottees.—

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.



(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.



(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or Society or Cooperative Society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

21.11. A perusal of the above provision would indicate that an Allottee would be entitled to obtain the information relating to the project, know the stage-wise time schedule of completion, and claim possession of the apartment, plot or building, with the Association of Allottees being entitled to claim possession of the common



areas. The manner and methodology of formation of the Association of Allotees is as contained under clause (e) of Sub-section (4) of Section 11 of the RERA 2016, which is reproduced hereunder for easy reference:

11 (4) The promoter shall—

(a)xxxx

(b)xxxx

(c)xxxx

(d)xxxx

(e) *enable the formation of an association or Society or co-operative Society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:*

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

21.12. In terms whereof, the obligation is on the promoter to enable the formation of an 'Association' or 'Society' or 'Co-operative Society', as the case may be of the Allottees or a Federation of the same under the laws applicable and unless the local laws otherwise



prescribe, such Associations shall be formed within a period of three months of the majority of the allottees having booked their plot or apartment or building, as the case may be.

21.13. Thus, even clause (e) of Sub-section (4) of Section 11 does not specify the nature of the Association, but only indicates that the promoter shall enable the formation of an Association, Society or Co-operative Society. It is this which has caused the confusion inasmuch as an Association could be one under KAOA 1972, a Society could be one under KSRA 1960, and a Co-operative Society could be one under KSCA 1959. It is in that background that the petitioners contend that an Association under KAOA 1972 is required to be formed to handle the maintenance of the building and not a Co-operative Society under KSCA 1959.



21.14. Respondent Nos. 7 to 15 contending that there is not only maintenance of a building which is being considered and acted upon, but also the claim against the developer for not complying with its obligation, which has been taken up. The submission in this regard is that an Association under KAOA 1972 can only be formed by the owners of the respective apartments after the registration of all the apartments is complete, the project not being complete, registration of the apartments not being complete, no Association under KAOA 1972 can be formed. It is this factual background which has given rise to a legal conundrum which is required to be interpreted by this court.

21.15. If it is to be held that an Association could be a Society under the KSRA 1960, the Division Bench of this court in **VDB CALEDON'S** case



and **DS MAX'S** case has categorically come to a conclusion that a Society registered under the KSRA 1960 cannot have as one of its objectives maintenance of an apartment complex and the Division Bench of this court having come to a conclusion in the above matters that it is only an Association under the KAOA 1972 which can maintain an apartment complex. A Society registered under the KSCA 1959 is mentioned in the KOFA 1972. However, this court, in **STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD**, has come to a conclusion that a Co-operative Society can only be formed if in the building there are both residential and commercial properties i.e., if there are no commercial properties in the said building, a Co-operative Society cannot be formed for the purpose of maintenance of the building.



21.16. The decisions in **VDB CALEDON, DS MAX, STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD** and **SHANTHARAM PRABHU** case were all rendered in a situation where the RERA 2016 was not made applicable, and what was under consideration in all three matters is as to who can maintain an apartment complex in the absence of RERA 2016 being applicable.

21.17. As indicated in the proviso to clause (e) of Sub-section (4) of Section 11, in the absence of local laws, the Association of Allottees by whatever name called, shall be formed within a period of three months of the majority of Allottees having booked their plots or apartments or building, as the case may be and towards this end, the promoter is required to enable such formation of Association of Allottees. The requirement being to form the



Association of Allottees within three months of the majority of the Allottees having booked their plot, apartment or building would categorically take away an Association under KAOA 1972 since such Association under KAOA 1972 cannot be formed without a deed of declaration by all the owners of the property, the ownership arising only after registration of a sale deed in their favour.

21.18. Section 5 of the KAOA 1972 is reproduced hereunder for easy reference:

5. Ownership of apartments.-

(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) Each apartment owner shall execute a Declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose.

21.19. A reading of Sub-Section (2) of Section 5 would indicate that each apartment owner shall



execute a declaration that he submits his apartment to the provisions of the Act and Deed of the Apartment in relation to his apartment in the manner as prescribed for such purposes.

21.20. The Association of Apartment Owners is defined under Clause (d) of Section (3) of KAOA 1972 as under:

***(d) "association of apartment owners"** means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration.*

21.21. A perusal of the above would indicate that such association would mean all the apartment owners acting as a group in accordance with the bye-laws and declaration. Thus, as indicated supra, an Apartment Owner would have to execute a declaration, such ownership would be determined only on the basis of a registered sale deed in favour of such person



and the Association would be of Apartment owners, thereby clearly indicating that an Allottee would not be a owner and therefore, could not subject his apartment to a declaration and thereby not form an Association.

21.22. In view of the above, on account of the decisions of the Division Bench of this court, a Society cannot maintain an apartment, and an Association of Owners cannot be formed under the KAOA 1972, unless there are registered sale deeds in favour of the owners, a Co-operative Society cannot be registered under KOFA 1972 without there being a commercial unit in the building.

21.23. This brings us back to the question as to what is the composition and or nature of the Association of Allottees as contained under



clause (e) of sub-Section (4) of Section 11 of the RERA 2016.

21.24. Again, as indicated supra, in all the decisions of the Hon'ble Division Bench of this court, when the issue as regards maintenance of the apartment complex was considered, they were considered without reference to RERA 2016.

21.25. I have also while considering this issue in ***Shantaram Prabhu's*** case supra, dealt with the applicability of KOFA 1972 and KAOA 1972, however, while doing so I have clearly stated therein that RERA 2016 has not been considered and this would have to be considered at an appropriate time in an appropriate matter and manner, which has arisen in the present case.

21.26. In the present matter, the applicability of RERA 2016 is required to be considered since it is the



Association of Allotees who are required to approach the RERA for necessary orders and it is the Association of Allotees who can lay claim to common areas and amenities with the Allotees being able to lay claim only as regards the apartment, flat or building allotted to the said Allottee in personam. The functioning of the Association of Allotees is not inasmuch as maintenance of the building, but is more as regard to the claim made by the Allotees through their Association against the promoter/developer as regards any discrepancies and or deficiencies in implementation of the project. Thus, the decision in **STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD**, which was dealing with maintenance and held that unless a commercial unit was present in the building, a Co-operative Society cannot be registered



under KOFA 1972 would not be applicable to a project, which is being implemented in different phases where the Association of Allottees intends to take up their grievance against the promoter/developer. Hence, by logic of elimination and deduction, the Association of Allottees, which intends to take up their grievance against the promoter, would not be covered by the above decision. It is clear that the Association of Allottees under clause (e) of sub-Section (4) of Section 11 would not include an Association formed under KAOA 1972, would not be a Society under the KSRA 1960, but can however be a Co-operative Society formed of the owners of the Allottees who are yet to acquire ownership in order to agitate their claim against the promoter/ developer.

21.27. Hence, I answer point No.1 by holding that the Association of Allottees contemplated



under RERA 2016 would not include an Association formed under KAOA 1972 or a Society under KSRA 1960.

21.28. I answer point No.2 by holding that the Association of Allottees contemplated under KAOA 1972 cannot be formed by Allottees before conveyance in their favour by the developer, no declaration being capable of being submitted by them.

22. Answer to point No.3: Whether there is any conflict between KAOA 1972 and KOFA 1972 on the one hand and RERA 2016 on the other? If so, which enactment would prevail?

22.1. Though several submissions have been made by all the counsels in this regard and there are several decisions which have been cited in this regard, all the decisions which have been cited



are ones either relating to KAOA 1972, KOFA 1972 and the interplay between them. None of those decisions deals with all four enactments, i.e., KAOA 1972, KOFA 1972 and RERA 2016, as well as the interplay between them.

22.2. As indicated supra, in **SHANTARAM PRABHU'S** case, this court had also observed that the aspect of RERA 2016 was not considered therein, since the project in question was not a project subject to RERA 2016, since the same had been implemented prior to RERA 2016 coming into force. Insofar as projects which have been implemented prior to RERA 2016 coming into force and or project as regards which, RERA 2016 is not applicable, then in such a situation, in so far as maintenance is concerned, it's KAOA 1972 which would be applicable and insofar as dispute between the allottee and the developer



is concerned, it is KOFA 1972 which is applicable.

22.3. With the promulgation of RERA 2016, once a project is made subject to RERA 2016, it is the rights and obligations under RERA 2016 which would prevail and which would be applicable to the Allottee, Association of Allottees, Owner of the apartment, as well as the promoter/developer.

22.4. Again, as indicated supra, KAOA 1972 would only be applicable as regards maintenance of the apartment complex with the owners subjecting their respective apartments and their common interest by way of a declaration, viz., the deed of declaration, by executing the said deed of declaration and the forms in support thereof, which would be registered with the Registrar of Assurances.



- 22.5. The said deed of declaration also contains the manner and methodology of establishing an Association of Owners and the bye-laws applicable thereto. Thus, looked at from any angle, an Association under KAOA 1972 can only be formed by the Owners of the apartments and not by the allottees.
- 22.6. KOFA 1972 has been dealt with in detail in **SHANTARAM PRABHU's** case, and the conflict, if any, between KAOA 1972 and KOFA 1972 has been considered therein. It has been categorically held that until the completion of the building, the KOFA 1972 would be applicable. After the completion of the building and execution of sale deeds, insofar as maintenance is concerned, the KAOA 1972 would be applicable.
- 22.7. With the entry of RERA 2016, RERA 2016 addresses the inter se rights, duties, liabilities,



etc., between an Allottee-owner and the promoter/developer. RERA 2016 would, in most cases, be applicable until the project's completion, and for a few matters, even after the project's completion.

22.8. RERA 2016 deals with the relationship and inter se disputes as aforesaid, which was earlier dealt with to a limited extent by KOFA 1972. In my considered opinion, RERA 2016 would prevail over KOFA 1972, regarding any project that has been subjected to RERA 2016, more so since RERA contains non-obstante provisions, indicating that it prevails over any other law.

22.9. As regards KAOA 1972 and RERA 2016, KAOA 1972 can only come into being if all the owners subject their apartments and common areas to a deed of declaration in accordance with KAOA 1972.



- 22.10. Insofar as the construction phase is concerned, until the completion of the construction, KAOA 1972 would have no role to play, and as such, it is RERA 2016, which would address all those issues.
- 22.11. **Hence, I answer point No.3 by holding that there is no conflict between KAOA 1972 and RERA 2016, inasmuch as RERA 2016 is applicable pre-ownership, KAOA 1972 is applicable post-ownership. Insofar as KOFA and RERA 2016 are concerned, there is a conflict. However, RERA 2016 would override KOFA 1972, and it is the rights and remedies which are provided under RERA 2016 which would override those under KOFA 1972.**
- 22.12. **On the completion of the building, RERA 2016 being applicable in respect of certain of the aspects, KAOA 1972 being related to**



maintenance, RERA 2016 also providing warranty as regards the construction which has been done, there could be some overlap between RERA 2016 and KAOA 1972, but however, at that stage, it could be the Association under KAOA 1972 which could agitate its rights under RERA 2016, Since an Association under KAOA in 1972 can, as held by the division bench of this court in *VDB CALEDON* and *DS MAX'S* case, be the competent Association to handle all aspects relating to the maintenance of the building.

23. **Answer to Point No.4: Whether an Association under KAOA 1972 can initiate proceedings under the RERA 2016, more so, in relation to Section 31 of the RERA 2016?**

23.1. Some of the aspects touching upon this point have been dealt with in point Nos . 1 to 3. I have clearly and categorically come to the



conclusion that no Association can be formed under KAOA in 1972 unless ownership is transferred to the Apartment Owners. Proceedings under RERA 2016 are normally initiated with regard to any defaults on the part of the promoter/developer.

23.2. Section 31 of the RERA 2016 reads as under:

31. Filing of complaints with the Authority or the adjudicating officer.—

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].



- 23.3. Reading of Sub-section (1) of Section 31 would indicate that any aggrieved person may file a complaint with the Authority or the Adjudicating Officer and as per the explanation to Sub-section (1) of Section 31, the person shall include the Association of Allottees or any voluntary Consumer Association registered under any law for the time being in force.
- 23.4. The contraventions of the RERA 2016, Rules and regulations are more often than not relating to the construction, implementation and completion of the project and are filed against the Promoter/Developer.
- 23.5. The Hon'ble Apex Court in ***Hibiscus Condominium's*** case has held that an Association under KAOA 1972 is not a voluntary Association but is an Association which has come into being on account of the compulsory requirement or mandate thereof under the



KAOA 1972 and rejected a claim made by such an Association under KAOA 1972 against the Developer.

23.6. As per the explanation to Sub-section (1) of Section 31, a person would include an Association of Allottees or any voluntary consumer Association. As held in ***Hibiscus Condominium's*** case, an Association under KAOA 1972 would not be a voluntary consumer Association and as held supra, an Association under KAOA 1972 cannot be formed without ownership being transferred, i.e., without the project being completed and as such, an Association of Allottees would be an Association of persons who are Allottees of the apartments where registration of sale deed has not occurred.

23.7. **Thus, I answer point No.4 by holding that firstly, an Association under KAOA 1972**



cannot be formed without the ownership being transferred, which more often than not is done only after the project is complete.

23.8. **An Association under KAOA 1972 being formed out of a compulsory mandate under KAOA 1972 such an Association is not a voluntary Consumer Association as held by the Hon'ble Apex Court in the *HIBISCUS CONDOMINIUM'S* case and as such, an Association under KAOA 1972 even if formed by the owners, (Allottees in whose favour, sale deeds have been executed) before the project is complete under Section 31 of the RERA 2016.**

24. **Answer to point No.5: Whether prayer No.3 in W.P.No.27341 of 2024 would be maintainable after the deletion of prayer (i) and (ii) in the said petition?**



- 24.1. Prayer Nos.(i) and (ii) in W.P.No.27341 of 2024 have been extracted hereinabove, which have been deleted subsequently in terms of the order dated 10.12.2024.
- 24.2. Prayer No.(i) petitioners had sought for the quashing of the registration certificate dated 20.11.2020 issued by the District Registrar of Societies registering the Respondent No.7-Cooperative Society.
- 24.3. Prayer No.(ii) petitioners seeking for quashing of the order dated 05.07.2022 in complaint 7613 of 2020 and order dated 03.01.2023 and 17.05.2024 in CMP 221116/0010348, clubbed with CMP 210223/0007613, by virtue of which, firstly, there was a direction to register a Co-operative Society, secondly, on account of Registrar of Co-operative Society in not registering the Co-operative Society, a positive direction was issued to so register.



24.4. These two prayers having been deleted, what remains are the ancillary relief seeking for quashing of the registration certificate of the respondent No.7- Cooperative Society, which is not maintainable since such registration has been granted in furtherance of the orders of the RERA 2016.

24.5. As held by the Division Bench of this Court in **VDB CALEDON** and **DS MAX**, a Society registered under the KSRA 1960 cannot carry on any of the objects of maintenance of an Apartment Complex or the building. Thus, irrespective of the deletion of Prayer (i), the law laid down by the Hon'ble Division Bench will continue to hold fort and respondent No.7, which has been registered under the KSRA would not be entitled to carry on any maintenance activities.



24.6. Insofar as the prayer to quash the notice dated 15.07.2024 and order dated 31.08.2024 at Annexures-W and Z respectively, petitioner No.59, being a Society registered under the KSRA 1960, cannot also have as its objective maintenance of the apartment building and it is for that reason that the notice dated 15.07.2024 at Annexure-W has been issued, which cannot be found fault with. So also the order dated 31.08.2024 at Annexure-Z, cancelling the registration of petitioner No.59, which was involved in the maintenance of the apartment complex/building, which it could not have, cannot be faulted with.

24.7. Respondent No.3 could have, however, instead of cancelling the registration of Petitioner No. 59, restricted the order only to a prohibition to Petitioner No.59 from carrying out any maintenance activities of the apartment



building. Be that as it may, there being no other objective of petitioner No.59 except to maintain the apartment building known as 'Commune', no fault can be found with the order of respondent No.3, the same being in terms of the decision of the Division Bench of this Court in **VDB CALEDON, DS MAX** and **SHANTARAM PRABHU** case.

24.8. Insofar as Prayer No.(v) is concerned, the petitioner No.59-Association itself being involved in activities which it could not viz., management of common areas and common amenities, the question of issuing directions to the Registrar of Co-operative Societies and Registrar of Societies to desist from intervening with the affairs of petitioner No.59- Association, pertaining to task of management of common areas and common amenities, would not at all arise. The same, in fact, would be contrary to



the applicable law for the very same reasons as mentioned above.

24.9. Prayer No.(vi) being for issuance of directions to the Developer to take steps necessary for formation of Association under KAOA 1972, would also not arise for the reason that the ownership of the apartments is yet to be transferred. Allotment having already been made, unless all the allottees are to join, the question of directing a private developer to register an Association under KAOA of all the owners of the building would not arise. It will always be left open to the owners of the various apartments to come together with the Developer to form an Association under the KAOA in 1972 for the purpose of maintenance of the apartment complex.



24.10. Insofar as direction sought for in prayer No.(vii), if and when a deed of declaration signed by all the owners and the developers/ promoter were to be submitted, the Sub-registrar would be bound to register such a deed of declaration and as such, no direction would have to be issued, until such submission.

24.11. Prayer No.(viii) being an omnibus prayer to direct all the respondents to extend support and cooperation for formation of an Association of Apartment Owners again cannot be issued for the very same reasons as stated in my answer to prayer No.(vi) and (vii). Such an Association of Owners can be formed only after sale deeds are executed in favour of the respective owners and they come together to form an Association under KAOA in 1972, of course, since a declarative affidavit has been



executed by all the Allottees at the time of entering into an agreement of sale, they would be bound to be part of a Deed of Declaration under KAOA 1972 and register themselves as an Association under KAOA 1972.

25. **Answer to Prayer No. 6: Whether on the registration of the Co-operative Society, could the registrar of Co-operative Society initiate proceedings against the petitioner No.59-Society for cancellation of such registration and or issue direction to the said Society not to carry on maintenance of common areas and common amenities?**

25.1. Many of the aspects relating to this issue have also been covered in answers to the points above. The aspect of registration of respondent No.8-Cooperative Society and the complaint made by the Cooperative Society with the Registrar of Societies, exercising jurisdiction under KSRA 1960, as regards petitioner No. 59, Society has in fact nothing to do with the cancellation of such registration except insofar



as the complaint is concerned. As dealt with hereinabove and as held by this court in **VDB CELADON APARTMENT OWNERS ASSOCIATION, DS Max, STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD and SHANTARAM PRABHU** case, a Society registered under the KSRA 1960 cannot have as one of its objects maintenance of an apartment complex. It is only the Association under and KAOA 1972 who can carry out maintenance activity. Thus, irrespective of who is the complainant on the aspect of a Society carrying out maintenance activity of an apartment complex being brought to the notice of the Registrar of Societies, the Registrar of Societies would be required to take necessary action in that regard. It is only fortitude that in the present case, Respondent



No.8-Co-operative Society has instituted a complaint with the Registrar of Societies.

25.2. The allegation in this regard is that on account of the dispute between members of the Petitioner No.59-Society and the members of the Respondent No.8-Co-operative Society, the complaint has been filed and registered. If not for the said complaint, no action could be taken by the Registrar of Societies. This again is academic in nature, inasmuch as whether it was Respondent No.8-Co-operative Society or any member of the Co-operative Society or anyone else, if had brought to notice of the Registrar of Societies regarding the above, the Registrar of Societies was required to take necessary action as regards the activities of the Petitioner No.59-Society carrying out maintenance Activity of an Apartment Complex.



25.3. Hence, I answer Point No. 6 by holding that as held by this court in the decisions in **VDB CELADON APARTMENT OWNERS ASSOCIATION, DS Max, STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD and SHANTARAM PRABHU** case, a Society registered under the KSRA 1960 cannot carry out any maintenance activity of an apartment complex, even if it may be only that of common areas and common amenities. This aspect if brought to the notice of the Registrar, it would be a bounden duty on part of the Registrar of Societies to take such action as is required under law, including the cancellation of registration of such a Society.

26. **Answer to point No. 7: Whether a direction could be issued by this court directing the Developer and all the apartment owners and agreement holders to form an Association under KAOA 1972?**



26.1. Again many of the aspects relating to and touching upon this point have been dealt with in answer to the earlier points. The facts are not in dispute inasmuch as sale agreements having been executed, declaratory affidavits have been executed by the allottees that they will subject their respective apartments to a Deed of Declaration under KAOA 1972. Some of these agreements of sale have resulted in sale deeds and the apartments have been conveyed to the respective purchasers. Some of these sale agreements have continued to be at the agreement stage, and the conveyance deed is yet to be executed in favour of such purchasers.

26.2. The petitioners are before this court, contending that since it is only an association under the KAOA 1972 that can carry out maintenance activities of common areas and



common amenities, a direction would be required to be issued to the developer and all the apartment owners to form an Association under the KAOA 1972.

26.3. In answer to the points above, I have categorically opined that though it is the association under KAOA 1972 which is required to carry out maintenance activities, an association under KAOA 1972 can only be formed by the owners of the apartment, mere agreement holders cannot form such an association under KAOA 1972. In the present case, the members of petitioner No.59-Society claim to be owners, whereas members of Respondent No. 8 Cooperative Society claim that some of them are owners under a deed of conveyance, but a majority of them claim to be only agreement holders or Allottees. Thus, no direction could be issued to the agreement



holders to form an association under KAOA 1972 since the formation of such an association of agreement holders is not permissible under KAOA 1972. There would be an obligation on the part of the owners of the apartments after conveyance deeds are executed to subject themselves to a Deed of Declaration and registration in terms of KAOA 1972. Until such a conveyance deed is executed in favour of all the owners, no such Association could be registered under KAOA 1972, albeit, the developer who is also the landowner can along with the persons in whose favour registered sale deeds have been executed can form such an association under KAOA 1972, since there is a developer who continues to be the owner of the apartments which have not been conveyed.

26.4. In the event of there being a Joint Development Agreement, then the owner of the land, the



developer and the persons in whose favour conveyance is affected can subject themselves to the KAOA 1972. However, there cannot be a partial declaration making it subject to KAOA 1972 of few of the owners, All the owners would have to get together to form such an association under KAOA 1972.

26.5. Thus, I answer point No. 7 by holding:

- i) If the developer would also be a landowner, and no sale deeds have been executed in favour of anyone, the developer could subject the entire apartment complex to KAOA 1972 and register an association along with bylaws.
- ii) If the development is on the basis of a Joint Development Agreement with the land being owned by someone else, then it is the landowner along with the developer who can subject the entire



project to the KAOA 1972 if there is no deed of conveyance executed in favour of any of the allottees.

- iii) In the event of any sale deed or deed of conveyance being executed in favour of any of the allottees, then in both the cases above, the owner of the apartment in whose favour a registered sale deed has been executed would also have to join the deed of declaration for the purpose of forming an Association.
- iv) In all three situations above, all the apartments would have to be subjected to the deed of declaration, including all common areas and amenities.
- v) The above obligation being in terms of the declaration already executed by the agreement holders at the time when the agreement was executed in their favour,



this is a contractual obligation on the part of all the parties. There could be no direction in the nature of a mandamus issued by this court directing private parties to subject themselves to a deed of declaration under KAOA 1972.

27. **Answer to point No. 8. Whether the Writ Petition in No.5479 of 2023 is rendered infructuous on account of the final order passed by the RERA?**

27.1. The reliefs which have been sought for in W.P. 5479 of 2023 have been extracted hereinabove. This writ petition has been filed by three of the allottees who wish to register a Cooperative Society. The said Cooperative Society not having been registered, the directions have been sought for. It is also contended that the registration of the Cooperative Society was required in terms of the orders passed in CMP/210223/0007613. During the pendency of



the above matter, one other complaint filed by the allottees in CMP 221116/0010348 has been disposed of by the RERA, and the directions issued have been extracted hereinabove. By way of the said order, the RERA had directed the Registrar of Co-operative Societies to take steps to register the application of Respondent No.8, of which the petitioners in WP No. 5479/2025 are members. In furtherance of the said direction, the Registrar of Co-operative Societies has registered Respondent No.8 in WP No.27341/2024. Thus, insofar as the first and second prayers are concerned, the above petition in WP No. 5479/2023 has been rendered infructuous.

27.2. Insofar as prayer (c) is concerned, the submission of Sri.Venkatesh Bhagat, learned counsel for the Developer is that no sale deeds would be registered by the developer. The said



submission answers the grievance of the petitioners and there would be no requirement for the sub-registrar to be restrained from registering any sale deed when the developer, who is also the owner of the land, has categorically stated that the developer would not alienate any of the properties.

27.3. As regards the prayer (d) seeking for Karnataka Real Estate Regulatory Authority to take over the project, the Cooperative Society having been formed to take over the project, it would now be the obligation of the Cooperative Society to take over the project and complete it in all respects. Hence, prayer (d) cannot be granted.

27.4. Prayer (e) and (f) are relating to deposit of the amounts made by the purchasers. These reliefs arising out of the rights and obligations created under the RERA 2016, it would be for the



petitioner to agitate these contentions before the RERA.

27.5. Insofar as prayer (g) is concerned, Respondent No.12 has categorically stated that the dues of the developer have been paid to Respondent No. 12, the mortgage has been redeemed and Respondent No.12 would not exercise any right over any of the properties subject matter of the above petition, as such, the question of declaring the mortgage between Respondent No.9 and 12 to be illegal would not arise, more so when the said transaction has been entered into between the parties in the usual course of business and the amounts advanced by Respondent No.12 is stated to have been used by Respondent No.9 for the purpose of completion of the project.

27.6. Again, insofar as Prayer No. (h) is concerned, the agreement of sale which were executed by



Respondent No. 9 in favour of Respondent No.12 of 42 apartments was a security towards the loan advanced by Respondent No. 12 to Respondent No.9. The said transaction having come to an end, there would be no requirement for this court and the agreement of sale having been cancelled, there would be no requirement for this court to pass any orders in terms of a prayer (h).

27.7. Thus, the prayers which have been sought for in WP No. 5479 of 2023, firstly have been rendered infructuous as indicated above. Secondly, cannot be agitated before this court but would have to be agitated before RERA. Thirdly, some of the prayers have become redundant apart from being infructuous. As such, I answer point No. 8 by holding that the reliefs sought for in WP No. 5479 of 2023, having either been rendered infructuous or



redundant, as indicated supra, are not required to be considered or granted.

28. **GENERAL DIRECTIONS:**

28.1.As indicated supra, the present litigation has arisen on account of a new enactment, namely RERA 2016 being introduced. Prior to that, it was the KAOA 1972 or KOFA 1972, which were applicable to any aspect relating to an apartment complex.

28.2.KOFA 1972 was relating to any dispute between the allottee and the developer. Rights of both parties having been enumerated in the KOFA 1972, the aggrieved party could agitate any grievance under the said Act.

28.3.KAOA 1972 provides for an association of apartment owners; such an association could be formed only by the owners of the apartment, as indicated Supra.



28.4. Apart from KAOA and KOFA, any person aggrieved could always approach the civil court of competent jurisdiction to seek for such relief as may be permissible, unless there is an alternative dispute resolution provided for contractually.

28.5. With the advent of RERA 2016, the said Act encapsulates various rights and obligations of the allottee, Developer and the public, as also provides for a grievance-redressal mechanism under the said Act. RERA 2016, though provides for an Association of allottees, there is no methodology which has been prescribed under RERA 2016 as to how the said association can be formed, what would be the legal status thereof, as also under what enactment such Association has to be registered.



28.6.It is in that background that the petitioners are contending that a Society could be registered for maintenance of an apartment complex, a Cooperative Society like Respondent No.8 could not be registered for maintenance, and the Cooperative Society cannot agitate the rights under RERA 2016, as also maintain the common areas and amenities.

28.7.This has given rise to a situation where, though a Cooperative Society of the allottees can be registered under the KSCA 1959, the said Cooperative Society cannot carry out maintenance activity. Petitioner No.59, being a Society registered under the KSRA 1960, cannot carry out maintenance activity. No Association of owners can be formed under KAOA 1972 since several of the apartments have been conveyed by a registered deed and several of the apartments are still at the



allotment stage. Thus, giving rise to a Catch22 situation where there is no one who can maintain the apartment, common areas and common amenities, while the Cooperative Society is agitating the rights of the allottees as against the Developer/Promoter.

28.8. Under RERA 2016 the common areas are required to be owned by the Association of owners. Again an Association under KAOA 1972 would not have the requisite legal characteristics to be registered as owner of such common areas. The Cooperative Society having requisite characteristics if formed within three months of the majority of the apartments being sold, the said Cooperative Society could also be the owner of these common areas and amenities.

28.9. In my considered opinion, both the Union Law Commission as also the State Law Commission



would have to look into these aspects and to bring about clarity by way of legislation apart from the interpretation that has been made by this court in the present circumstances.

28.10. Though there is an obligation imposed on the Promoter/Developer to enable the registration of an Association of Allottees, which has to be done within three months of the allotment of the majority of the apartments, it is only the Promoter/Developer who has all the details. The Allottees who do not know each other cannot come together to form such an Association. In that background, it would probably be required that an Association is formed at the time of the launch of the project, with all allottees joining in as and when allotment is made.

28.11. Hence, the Registrar Judicial is directed to forward a copy of this order to the Union Law



Commission and State Law Commission for information and consideration.

29. **Answer to point No. 9: What Order?**

29.1. In view of my answers to the various points above, at the cost of repetition, it being clear that it is an association under KAOA 1972 that can carry out the maintenance activities of the apartment complex. Such an association could be formed only by owners as indicated supra. In the present case, such an association under KAOA 1972 not being capable of being formed, such an Association would have to be formed only after conveyance of all apartments in favour of the respective allottees, the owners coming together to form such an association under KAOA 1972.

29.2. The petitioner No.59-Society has also respondent No.7-Association being Societies registered under KSRA 1960 would not be



entitled to carry out any maintenance activities in view of the decisions of this court in **VDB CELADON APARTMENT OWNERS ASSOCIATION, DS Max, STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD and SHANTARAM PRABHU** case. Thus, they would have to be restrained from carrying out any such maintenance activities.

29.3. The cooperative Society now having been formed, the builders/developers would have to execute necessary deed of conveyance in respect of the common areas and amenities in favour of the Cooperative Society within a timebound manner, i.e., within a period of 120 days from the date of receipt of this order.

29.4. Respondent No.8-Cooperative Society having been formed by the allottees to agitate the rights of the allottees against the promoters on



account of non-completion of the apartment complex, improper works being carried out, etc., the Cooperative Society would be well within its right to agitate those issues before the appropriate forum since the aims and objects of a Cooperative Society would include such agitation of rights by the Cooperative Society representing all its members, it being an Association of Allottees under RERA 2016.

29.5. The KSCA 1959 enables a Cooperative Society to carry out maintenance activities of the apartment complex, including those of common areas and common amenities. It is only KSRA 1960 which does not provide for such an object. Though this court in **STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD** has held that for the purpose of Cooperative Society under KOFA 1972, a commercial unit would have to be part of the



development, I am of the considered opinion that the Division Bench of this court, while considering such restriction, was only considering KOFA 1972 and not RERA 2016. The enablement of registration of Cooperative Society for carrying out the maintenance activity and agitation of the rights of the allottees would have to be considered with reference to RERA 2016 and not KOFA 1972 since most of the rights which could be agitated under KOFA 1972 would have to be agitated by the Allottees now under RERA 2016 and not under KOFA 1972.

29.6. Several of the provisions in RERA 2016 containing ***non-obstante provisions***, RERA 2016 would override KOFA 1972. Apart from this, RERA 2016, being a central enactment that occupies the field relating to disputes between allottees and developers/Promoters,



would override KOFA 1972, a State enactment, in order to maintain uniformity across the country. Taking into account these aspects and factors, I am of the considered opinion that the decision of the Division Bench of this court in ***STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD***, holding that a co-operative Society can only be registered in respect of KOFA 1972 if there is a commercial unit, would no longer be applicable after RERA 2016 has come into force, more so since RERA 2016 was not considered in ***STARNEST APARTMENT OWNERS CO-OPERATIVE SOCIETY LTD***. This would also have to be taken into consideration with reference to the proviso to clause (e) of Subsection (1) of Section 14, which requires that such an Association is required to be formed within a period of 3 months of the majority of the



allottees having booked their plot or apartment. Thus, the Association of allottees in terms of clause (e) of subsection (1) of Section 14 could be an Association or Society or co-operative Society but if such an Association were required to carry out maintenance activity also, then it could only be a Co-operative Society under the KSCA 1959 and such a Co-operative Society is required to be formed within a period of three months or the majority of allottees having booked their plots or apartments.

29.7. In the present case, it is not in dispute that majority of allottees have booked their apartment, the construction has not been completed despite the period fixed having lapsed and several of the allottees have formed themselves into a Cooperative Society, Respondent No. 8, which has been registered in pursuance of direction of the RERA.



29.8. In view of my above discussion, it is clear that a Cooperative Society could both agitate the rights of the allottees vis-a-vis the Promoter/Developer, as also carry out maintenance activities of an apartment, including that of common amenities and common areas. Thus, in this situation, I am of the considered opinion that Respondent No. 8-Cooperative Society, which has been registered in the present case, can carry out maintenance activities in respect of the apartment complex.

29.9. The grievance of the petitioner in 27341/2024 is completely unwarranted.

29.10. In the above circumstances, I pass the following:



NC: 2025:KHC:23360
WP No. 27341 of 2024
C/W WP No. 5479 of 2023

ORDER

- i. Both Writ petitions WP No. 27341 of 2024 and 5479 of 2023 stand dismissed in terms of the observations made hereinabove.
- ii. No costs.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

SS/LN
List No.: 1 Sl No.: 62