

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6

DATED 26TH SEPTEMBER 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00563/2023

**COMPLAINANT..... CREATIVE ELEGANCE APARTMENTS
OWNERS ASSOCIATION
NO.24/4 & 26/1
19TH MAIN, VHBCS LAYOUT
NAGWARA
BANGALORE-560045.**

**(BY MR. AJAY J NANDALIKE, ADVOCATE
& OTHERS)**

Vs

**RESPONDENTS..... 1.CREATIVE ENVIRONS BUILDERS &
DEVELOPERS (INDIA) PRIVATE LIMITED
T-1, BHARAT RESIDENCY
NO.10, M.M. GARDEN
NEAR 80 FT ROAD
OPP. IBP PETROL BUNK
6TH BLOCK, KORAMANGALA
BANGALORE-560095.**

**(RESPONDENT NO.1 BY MR. SANJAY
NAIR, ADVOCATE & OTHERS)**

**2.JVR JOGIRAJU
FLAT NO.104
ADITI, GROUND FLOOR, PLOT NO.34
3RD MAIN, BHOOPASANDRA
BANGALORE-560094.**

**3.B. RAMAKRISHNA RAJU
FLAT NO.A-401
CREATIVE ELEGANCE APARTMENTS
9TH MAIN ROAD, VHBCS LAYOUT
BANGALORE-560045.**

**4.SAGI SATYANARAYANA RAJU
NO.132, JAKKUR PLANTATION
ADJACENT TO GKVK LAYOUT
JAKKUR, YELAHANKA**

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Karnataka Real Estate Regulatory Authority,
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3rd Cross, Mission Road, Bengaluru-560027

BANGALORE-560064.

**5.SUBBA REDDY SYAMALA
FLAT NO.B-312
CREATIVE ELEGANCE APARTMENTS
9TH MAIN ROAD, VHBCS LAYOUT
BANGALORE-560045.**

**(RESPONDENTS NO.2 TO 5
BY MR.K.S. NARAYANASWAMY,
ADVOCATE & ANOTHER)**

J U D G E M E N T

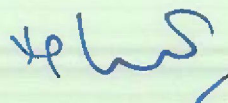
1. This complaint is filed under section 31 of the RERA Act against the project "**CREATIVE ELEGANCE**" developed by **M/s. Creative Environs Builders & Developers (India) Private Limited through its Directors** situated at Sy.No.24/4 and Sy. No.26/1, Nagawara Village, Kasaba Hobli, Bangalore North Taluk, Bangalore District for the relief of finishing the pending work in accordance with the BBMP guidelines and handover the original documents in their possession and pay a sum of Rs. 5,25,000/- as compensation.

2. This project has not been registered under RERA.

Brief facts of the complaint are as under:-

3. The present complaint is filed under Section 31 read with Section 71 of the RERA Act, 2016 as the developer has failed to complete the construction of amenities in the project and has also not handed over the possession of original documents in connection with the project. The works pending include Clubhouse, Multi-purpose Hall, The Sewage treatment plant, Garbage treatment infrastructure, Solar heated water supply and the final coat of painting. Additionally, the leakages in Schedule Apartment have also not been repaired. It is pertinent to note that the Respondent has collected huge sums of money in assuring that the above facilities will be provided.

4. It is submitted that the Deed of Declaration registered by the Respondents does not conform with the provisions of the Karnataka Apartment Ownership Act, 1972 in as much as the details of the measurements of the flats and the allotment of common area and the individual car parking space and other mandatory requirement prescribed under the KAOA is not complied by the Respondents. Furthermore, the Respondents had failed to include the bye-laws and rules and regulations along with the DoD. In order to ensure the workability of the apartment owners association, on 05/05/2018 the members of the Complainant Association have registered the Rules, Regulation and Byelaws of the



Complainant Association bearing document NO.HBB-4-00016-2018-19, in the office of the Sub-Registrar, Gandhinagar(Hebbal), Bangalore

5. Having left with no other option, in order to ensure that the apartment was maintained in a habitable condition, the Association was constrained to take over the maintenance of the Schedule Apartment and has wrote several communications and also sent letters to the Respondents to rectify the defects in the Schedule Apartment and also to complete the pending works. The Respondents have refused to take any action and have not replied to any of the communications made by the Complainant Association.

6. In addition to false promises and illegal acts, the Respondents, in violation of the sanctioned plan issued by the BBMP, have illegally constructed additional structures on the terrace of the Schedule Apartment. One of these structures which are built in violation of the sanctioned plan was proposed by the respondents to be used as Party Hall. On the complaint of a resident to the BBMP regarding the disturbance caused due to such usage, the BBMP passed an Order for demolition of the said illegal structure constructed on the Schedule Apartment.

7. Respondent No.2 has not paid maintenance charges due in respect of the Apartments owned by him to the tune of approximately Rs.5,00,000/- in respect of Flat Nos. 419, 406 and 311.

8. The present Complaint is being filed as the respondent-developer having failed to complete the construction of the facilities assured and handover the possession of the original documents pertaining to the project. The occupancy certificate for the Project was issued on 14/07/2017, which was after the Act and the Rules were notified and hence this Hon'ble Tribunal has the jurisdiction.

9. Thus the complainant has approached this Hon'ble Authority and prays for directions to the respondents finishing the pending work in accordance with the BBMP guidelines and handover the original documents in their possession and pay a sum of Rs.5,25,000/- as compensation.

10. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and have submitted their preliminary statement of objections as regards jurisdiction aspect as under:

11. The respondent No.1 submits that the allegations made in the complaint are totally false and the same has been filed with the intention of harassing the respondents and to make unlawful gains. The respondent No.1 submits

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that the Hon'ble Authority has no jurisdiction to take up this matter as per Rule 4(iv) of the KRERA Rules 2017 and as such, the complaint is liable to be dismissed.

12. The respondent No.1 submits that the entire construction of the project was completed on 20/12/2015. They had also filed application with the BBMP for Occupancy Certificate on 05/02/2016 itself enclosing completion certificate dated 20/12/2015 issued by the registered Architect. The BBMP called for certain documents and after submission of all required documents and resolution of litigations, the BBMP was requested to issue occupancy certificate through a reminder dated 2/5/2017. The BBMP while issuing the occupancy certificate has considered the application date as 2/5/2017 instead of 5/2/2016, the date on which the application for occupancy certificate was submitted. A copy of the letter dated 5/2/2016 duly acknowledged with seal from the office of the Joint Director of Town Planning (North), BBMP is produced before the Hon'ble Authority. Whereas the KRERA Rules 2017 came into force w.e.f. 10/7/2017.

13. The respondent No.1 submits that as per Rule 4(iv) of KRERA Rules, 2017 excludes the projects where all development works have been completed as per the Act, certified by the competent agency and application for issue of completion/occupancy certificates has been made as on the date of notification of KRERA Rules 2017 from registration of projects under the Real Estate (Regulation and Development) Act 2016 and thus the project did not need to be registered under the provisions of the Act and the Rules. Thus the Hon'ble Authority has no jurisdiction to entertain any complaint with regard to such projects. The respondent No.1 submits that the Complainant Association has not produced the list of its members and all the Sale Deeds which have been executed by R-1 out of its share of flats as entitled under the JDA. The respondent No.1 submits that for the reasons stated as above, the Hon'ble Authority has no jurisdiction over the present complaint and hence, the complaint is liable to be rejected.

14. The Complainant in their written submission submit that it is an Apartment Owners' Association registered under the provisions of the Karnataka Apartment Ownership Act, 1972 (herein after referred to as KAOA) which came into existence by virtue of registration of the Deed of Declaration dated 28/02/2018, bearing document No.HBB-1-03399-2017-18 stored in CD No.HBBD 194 in the office of the senior Sub-Registrar, Gandinagar (Hebbal), Bangalore.

15. The Deed of Declaration is registered in respect of the residential apartment "**CREATIVE ELEGANCE**" ("**Apartment/Apartment Complex**") consisting of 105 apartments constructed over the residential converted land situated at Nagawara Village, Kasaba Hobli, Bangalore North Taluk, Bangalore District, which is more fully described in the schedule hereunder,

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hereinafter referred to as "**SCHEDULE PROPERTY**". The Respondent No.1 is a private limited company engaged in the business of real estate, development of residential Apartments and selling the same.

16. The Respondent No.2 to 5 were the owners of the land bearing Sy.No.24/4 and Sy. No.26/1 situated at Nagawara Village, Kasaba Hobli, Bangalore North Taluk, Bangalore District on which the residential apartment "**CREATIVE ELEGANCE**" has been constructed. The Respondents No.2 to 5 had entered into a Joint Development Agreement dated 10/02/2014, duly registered as Document No.3007/2013- 14, stored in CD No. GNRD 81, in the office of Sub-Registrar, Gandhinagar with the Respondent No.1 and also executed a General Power of Attorney appointing Respondent No.1 as power of attorney holder in order to develop and to do all allied activities in respect of the Subject Land into residential apartments.

17. Accordingly, the Respondents have obtained the plan sanction from the Bengaluru Mahanagara Palike (BBMP) bearing license No.BBMP/Addl.Dir/JDNorth/LP/0171/2013-14 dated 23/01/2014. The Respondents constructed residential apartment consisting of 105 apartments in the Subject Land. Thereafter, the Respondents have entered into Agreement of Sale and Construction Agreement with prospective purchasers (Members of Complainant Association herein) during the period 2015-16 with respect to the Schedule Apartment as per the specification mentioned in the Schedule of the Agreement for Sale.

18. Subsequent to the construction of the Schedule Apartment, the Respondents have promoted the Schedule Apartment assuring various amenities and facilities. Believing their presentation, the members of the complainant Association have purchased the flats by entering into registered Sale Deeds.

19. After the sale of the Schedule Apartments, the Respondents have registered the Deed of Declaration on 28/02/2018 by virtue of the sale, the Complainant Association came into existence. It is submitted that the Deed of Declaration registered by the Respondents does not conform with the provisions of the Karnataka Apartment Ownership Act, 1972 in as much as the details of the measurements of the flats and the allotment of common area and the individual car parking space and other mandatory requirement prescribed under the KAOA is not complied by the Respondents. Furthermore, the Respondents have failed to include the bye-laws and rules and regulations along with the DoD. In order to ensure the work ability of the apartment owners association, on 05/05/2018 the members of the Complainant Association have registered the Rules, Regulation and Byelaws in the office of the Sub-Registrar, Gandhinagar (Hebbal), Bangalore.



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20. After the formation of the Complainant Association, the Respondents communicated to some of the residents of the complainant Association that they would have to start maintaining the building on their own, without transferring the maintenance of the Schedule apartment as per law. Moreover, after the sale of the units, the Respondents have deliberately not taken any action to hand over the original documents to the association, despite the association making numerous requests.

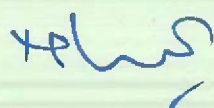
21. It is pertinent to mention here that, the Respondents wilfully have not completed the development of the various amenities and facilities as assured and promised by them. The works which are pending even as on date are mentioned as follows:

- i. Clubhouse consisting of GYM and indoor games room has not been provided in the Apartment;
- ii. Multipurpose Hall has not been constructed;
- iii. The Sewage Treatment Plant has not been completed and made operational;
- iv. Garbage treatment infrastructure is not provided;
- v. Solar heated water supply connection has not been provided;
- vi. The final coat of the painting of the Schedule Apartment has not been done;
- vii. The leakages in the Schedule Apartment have not been repaired.

22. The photographs evidencing the defects and incomplete work done by the Respondents are produced.

23. Further, even after the formation of the Complainant Association, the Respondents refused to officially hand over the maintenance of the Schedule Apartment to the Association by handing over the Original Title Documents, sanctioned plans, Occupancy Certificate and other requisite permissions. "The respondents have not handed over any documents including operational Manual of equipment like Lifts, Generators, etc. The Respondents have not furnished any details of Electrical Wiring Plan, Plumbing plan etc. Respondents are in illegal custody of the Original Documents pertaining to the Schedule Apartment Project.

24. Having left with no other option, in order to ensure that the apartment was maintained in a habitable condition, the Association was constrained to take over the maintenance of the Schedule Apartment. After taking over the maintenance of the Schedule Apartment, the Complainant Association though has written several letters to the Respondents to rectify the defects



in the Schedule Apartment and also to complete the pending works, the Respondents have refused to take any action and have not replied to any of the communications made by the Complainant Association.

25. On 07.01.2022 the Complainant Association issued a legal notice, calling upon the Respondent No.1 to rectify the defects, complete the pending works and to handover all the original documents pertaining to the Schedule Apartment. On receipt of the said Notice, the Respondent No.1 issued a reply in an untenable manner.

26. The Respondent No.1 has irrevocably undertaken to construct the Schedule Apartment in the good condition while entering into Joint Development Agreement (Annexure-C) with the Respondents No.2 to 5 but the Respondent No.1 failed to fulfill the said conditions. Further, the Respondents at the time of entering into Agreement for Sale and Construction Agreement with the members of the Complainant Association have assured and promised the members to provide all the facilities and amenities as promised under the said Agreement but failed to comply with the same. Further, the Respondents have undertaken under the Sale Deeds executed in favour of the members of the Complainant Association to hand over all the original documents of the Schedule Apartment to the Complainant Association soon after it is formed. Such a specific agreement has been breached by the Respondents.

27. The Respondent has failed to comply with the conditions imposed on the Respondents in the License/Plan Sanction issued by the joint Director, Town Planning (North), BBMP and in addition acted in violation of the said conditions.

28. In addition to above false promises and illegal acts, the Respondents, in violation of the sanctioned plan issued by the BBMP, have illegally constructed additional structures on the terrace of the Schedule Apartment. One of these structures which are built in violation of the sanctioned plan was proposed by the respondents to be used as Party Hall. One of the residents filed a complaint with the BBMP regarding the disturbance caused due to such usage. BBMP passed an Order for demolition of the said illegal structure constructed on the Schedule Apartment.

29. Being aggrieved by the inaction of the Respondents in completing the pending works, rectifying the defects and handing over of the original documents to the Complainant Association, the present Complainant is being filed amongst the following other grounds:-

- a) ~~The Respondents in order to make unlawful gains have made false representation and promises to the members of the Complainant Association and collected huge amount of money in the form of~~

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sale consideration assuring additional facilities as mentioned in the Agreement for Sale and project brochures.

- b) The Respondents have deliberately refused to rectify the defects of water leakages which are the result of substandard construction. It is pertinent to mention that two individual owner members of the Complainant Association approached the Consumer Court for such repairs and the Respondent No 1 was directed to get the repairs done. However, the respondent No1 has refused to attend to complaints of other flats.
- c) The Respondents have violated the plan sanctioned issued by the BBMP and not complied with the conditions imposed in its entirety.
- d) Once, the Apartment Owners' Association is formed as per the provisions of the KAOA, 1972 and the property is submitted to the provisions of the KAOA, 1972, the original land owners or builder will no longer have right, title and ownership over the property submitted to the provision of the Act. In the instant case, the Respondents even after the formation of the Complainant Association are in illegal possession of all the original documents pertaining to the schedule apartment project.
- e) The Respondents even after the several requests and after receipt of legal notice from the Complainant Association have deliberately failed to hand over the possession of the Schedule Documents.
- f) The Respondents were taking care of the maintenance of the Schedule Property till the formation of the Complainant Association, immediately after the formation of the Complainant Association, the Respondent without completing the pending work and rectifying the defects have claimed to have handed over maintenance of the Schedule Property by writing a letter to the Complainant Association. The writing of the purported letter merely an eye wash and the Respondents have not handed over the maintenance and as has been explained above, the Association was constrained to take over the maintenance without any proper handing over by the Respondents as per the law.
- g) The Respondents in violation of the license/approved plan have illegally constructed additional structures on the terrace of the Schedule Apartment without obtaining the permission from the competent authority, and for the said illegal acts of the Respondents, the BBMP has issued notice to the Complainant

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Association.

- h) Further, the Commissioner BBMP has passed an Order to remove the illegal structures constructed over the Schedule Property. Due to the said act of the Respondent No.1, the Complainant Association will be put to great hardship.
- i) The Respondents have obtained the Occupancy Certificate to the Schedule Apartment subsequent to the Karnataka Real Estate (Regulation and Development) Rule, 2016 came into force as such the provision of the RERA is applicable to the Schedule Apartment project.
- j) It is submitted that as the Respondents have not handed over the original documents and since the Respondents have not rectified the defects in the Apartment Complex and have not provided the promised facilities and have failed to remove the illegal structures even as of today, and therefore the cause of action is continuing and the petition is within time.

30. In view of the facts mentioned above, the complainant association humbly prays for the following reliefs:-

- i) Direct the Respondents to forthwith handover all the Original Documents described in the Schedule to the Complainant Association;
- ii) Direct the Respondents to forthwith furnish in writing, to the Complainant Association, the details that were required to be mentioned in the Deed of Declaration executed by them, but were not mentioned i.e., the share of undivided interest sold to each apartment owner, details of common areas and extent of common areas thereof, details of individual car parking space sold to the concerned apartment owner;
- iii) Direct the Respondents to complete all the pending works with respect to the Schedule Property, both that were assured at the time of sale and the ones that are mandatorily required to be provided as per BBMP; or in the alternative direct the Respondents to pay to the Complainant the entire cost of repair and completion of pending works, correspondingly;
- iv) Direct the Respondent No.1 to ensure and take appropriate action so that the Apartment Building is in

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compliance with the sanctioned plan and the complainant Association is not held responsible for violations in the Building Plan;

- v) Direct the Respondent to pay a sum of Rs. 5,25,000/- towards compensation to the Complainant towards the harassment and hardship caused to the Complainant Association;

31. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through their counsel/representative and have submitted their written submission/statement of objections as under:

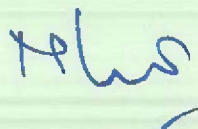
32. As directed by the Hon'ble Authority during the proceedings of the hearing on 13/12/2023, the R-1 submits that the occupancy certificate was issued on 14/7/2017 and nearly after six years, the complaint has been raised by the complainant association. The R-1 submits that this project consists of 105 flats have been occupied by their respective owners/tenants and sale deeds have been executed.

33. The R-1 submits that there are no pending works due for completion as alleged by the complainant Association. The R-1 has also maintained the building for a period of 12 months after handing over the possession to the home buyers and it is the responsibility of the complainant Association to maintain the building.

34. The R-1 submits that they have provided club house/multi-purpose hall with indoor games, gym on the terrace of the apartments building. STP and Garbage compactor/processor has already been provided, but they have been kept switched off for the reasons best known to the complainant association.

35. Further, the R-1 submits that they had never agreed to install solar water supply, but R-1 on their own have installed solar water heater on the terrace and it was left to individual flat owners to get separate connections at their own cost. It is also false that the final coat of painting of the apartment building has not been done. It was done way before the issuance of the occupancy certificate and execution of sale deeds to various flat owners who knew this. The complainant association after six years of issuance of O.C. cannot raise this issue.

36. The R-1 submits that there are no leakages and nothing needs to be repaired by them after six years of issuance of O.C. The R-1 has maintained the building for a period of 12 months after handing over the possession to



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the purchaser/s and subsequently it is always the responsibility of the purchaser/s or the association.

37. The R-1 submits that as of now the following original/copies of the documents are in their custody and they were always ready and willing to handover to the Apartment Owners' Association:-

- i) Sale Deed bearing No.2655/1970-71
- ii) Sale Deed bearing No.1636/1972-73
- iii) Absolute Sale Deed dated 16/10/2023
- iv) Betterment Paid receipt dated 13/5/2003 & 10/7/2004
- v) Registered Agreement of Sale dated 11/10/2010
- vi) Cancellation of Sale agreement dated 18/1/2016
- vii) GPA - Sridhar Bhupathi Raju to Gottumukkala Sreerama Raju dated 5/7/2020
- viii) JDA dated 10/2/2014
- ix) Supplemental agreement/sharing agreement dated 14/3/2014
- x) Addendum to the supplemental agreement/sharing agreement dated 17/11/2014
- xi) Second Addendum to the supplemental agreement/sharing agreement dated 21/10/2015
- xii) Certified copy of GPA dated 10/2/2014
- xiii) BBMP plan sanction fees intimation letter dated 2/1/2014
- xiv) BBMP plan sanction fees paid receipt dated 20/1/2014
- xv) BBMP License/Sanction Plan for construction dated 23/1/2014
- xvi) Blue prints of approved plans from BBMP
- xvii) Commencement Certificate dated 30/12/2015
- xviii) Relinquishment Deed dated 13/8/2014
- xix) E.C. from 1/4/1940 to 31/3/2004
- xx) E.C. from 1/4/2004 to 31/3/2009
- xxi) E.C. from 1/4/2009 to 31/5/2013
- xxii) E.C. from 1/4/2013 to 4/3/2014
- xxiii) Khata and Khata extract dated 2/2/2016 & 31/8/2016 (JVR Jogiraju and others)
- xxiv) Occupancy Certificate dated 14/7/2017
- xxv) Deed of Declaration dated 28/2/2018
- xxvi) KSPCB - consent to operate STP dated 21/10/2016 (copy)
- xxvii) BWSSB - sanction for water and sanitary dated 21/12/2015 (copy)
- xxviii) Conversion orders bearing Nos.BDIS/ALN/SR/(N)34/2003-04 and BDIS/ALN/SR(N)/35/2003-04 both dated 19/6/2003
- xxix) Modified conversion orders dated 11/8/2015 (2 Nos)
- xxx) Khata certificate and Khata Extract
- xxxi) Copy of BESCO power sanction letter dated 10/6/2015
- xxxii) Lift purchase bills dated 28/12/2015 (copy)
- xxxiii) STP purchase bill dated 25/3/2016 (copy)

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38. The R-1 submits that as the building was not high-rise, only NOC from KSPCB has been obtained as it was required at the point of time.

39. The R-1 submits that the individual parking slots have been mentioned in the Sale Deeds and physically marked in the parking area and used by the respective owners all these years without any issues. However, the R-1 submits that they are not having any parking area plans or allocation letters.

40. The complainant in their objections to the Affidavit filed by R-1 submit that R-1 has filed a false Affidavit. R-1 in the JDA entered into with the land owners and agreement to sell entered into with the customers had agreed to construct fully equipped Gym, Clubhouse, Indoor games and multipurpose hall. The brochures used by the R-1 also shows that the residential complex will have the above amenities. The R-1 has illegally constructed two rooms on the terrace violating the sanctioned plan and is claiming that they are clubhouse/multipurpose hall and gym, which have been termed as illegal by BBMP and cannot be taken into consideration. There are no equipment in the GYM. The Commissioner, BBMP has ordered for its demolition. There is no mention about these structures in the occupancy certificate issued by BBMP.

41. The complainant contends that as per the provision of the Act, the occupancy certificate is nothing but a certificate issued by the competent authority for occupation of the building and does not certify as to completion of all the amenities promised by the respondent-developer. The R-1 has claimed that STP and Garbage Compacter/Processor has been switched off by the complainant association, which is false. Some equipment has been placed in the basement and is falsely claiming it as STP in operation. Despite requesting the Respondents to furnish information on the same, there is no response from them.

42. The R-1 has claimed that they had not assured solar heated water supply and are not liable to provide the same. As per Notification dated 13/11/2007 issued by Energy Department, Govt. of Karnataka it is mandatory. The R-1 has placed some solar panels without any connection or water supply on the terrace to obtain occupancy certificate from BBMP. The complainant association prays the Hon'ble Authority to send an inspection team from RERA to inspect the same. The R-1 is also claiming that there are no leakages in the apartment complex. The complainant submits that two residents of Flat No.B414 and B418) approached the Consumer's Court for deficiency in service against the respondent, wherein the Court directed the respondent to repair the leakages. As the respondent refused to take responsibility, the Association has been spending large amount on plugging leakages from the terrace because of low quality construction.

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43. The complainant submits that the respondent's claim that respective parking lots have been mentioned in the sale deeds and also in the parking area is false. The complainant submits that in most of the sale deeds it has been mentioned "one parking space" without any specific identification number and the parking area is different from the layout shown in the BBMP approved plan. The actual layout of the basement with clear demarcation of parking area and other common areas has not been provided. The complainant contends that as per BBMP by-laws, parking slots cannot be sold independently and should be part and parcel of a specific unit. The DOD executed does not contain the details of flat/parking area. The details of the visitor's parking area also not provided. The R-2 to R-5 are claiming that they are having ownership of 40% of the parking area and have encroached into common areas and additional parking slots.

44. The R-3 and R-5 residing in the same residential complex are claiming ownership of part of the terrace area and have built illegal structures. As per the approved plan, the entire terrace area is common area and R-3 & R-5 have encroached it by claiming rights under JDA and are depriving the residents from using the terrace area as common area.

45. The complainant submits that the following works are yet to be completed by R-1:-

- i) Club house consisting of GYM & indoor games;
- ii) Multipurpose Hall
- iii) STP not completed and not made operational;
- iv) Garbage treatment infrastructure not provided;
- v) Solar heated water supply not provided;
- vi) Final coat of painting of the apartment has not been done;
- vii) Leakages have not been repaired.

46. The complainant submits that despite repeated request from the Association, the R-1 has not attended them. The Association was formed in 2018, but R-1 is not handing over the original documents to them. The R-1 has now come forward to give all the documents in pursuant of the orders of the Hon'ble Authority. In addition, the R-1 has to provide the following documents:

- i) Copies of the sale deeds of all the flats sold by the developer to the purchasers;
- ii) Licenses obtained to operate Lift, if any;
- iii) Copies of plans of plumbing line;
- iv) Copies of plans of electrical wiring.

47. The complainant submits that the Hon'ble Authority may appoint a team from RERA to inspect the property.

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Karnataka Real Estate Regulatory Authority,

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

48. In view of the facts mentioned above, the complainant humbly prays the Hon'ble Authority to direct R-1 to complete all the pending works as stated above; provide detailed layout plan of the basement area including number of parking slots; common areas; visitors' parking area; details of areas of each flat; parking slots assigned to each flat; extent of common areas and to deposit all the original documents mentioned in the Affidavit before the Hon'ble Authority for verification and handing over it to the complainant.

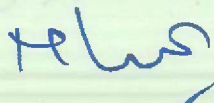
49. The R-3 in their objections filed before the Hon'ble Authority have submitted that they are not liable to handover all the original documents and to complete the pending works as they are in the custody of R-1 and R-1 is liable for completion of pending works of the scheduled property. The R-3 submits that the complaint is not maintainable as the JDA is entered into between the complainant and R-2 to R-5 was on 10/2/2014 which is prior to the RERA Act came into force and the complaint is liable to be dismissed.

50. The R-3 contends that the R-1 had entered into MOU on the basis of the JDA and that the Gym Room and other facilities sought by the complainant in the present complaint has not at all been mentioned or agreed or not forthcoming anywhere in the Sale Deed/JDA or in the MOU and hence, R-3 is not liable for the compliance.

51. The complainant has issued legal notice for compliance to R-1 and not to R-2 to R-5, as R-1 has to complete all the pending construction work. The R-3 submits that one Mallikarjun has filed a suit in O.S.No.7045/2017 before the City Civil Court (CCH-6), Bangalore against R-2 to R-5 seeking for demolition of structure and has also made the complainant as party to the said suit pending trial. The Hon'ble Court has passed an interim order of injunction. The R-3 submits that challenging the said interim order, MFA No.8664/2018 is filed before the Hon'ble High Court, Bangalore which is pending consideration. The complainant has nowhere disclosed this in their complaint. Since the interim order passed in O.S.No.7045/2017 is still in force, the Hon'ble Authority has no jurisdiction to pass any order and the complaint is liable to be dismissed.

52. The R-3 also submit that one Kailash and others have filed a Writ Petition before the Hon'ble High Court in W.P.No.21573/2014 (GM-RES) challenging the sanction plan issued by BBMP which is still pending consideration.

53. The R-3 submit that as per the inspection report dated 12/6/2024 submitted by the AEE, KRERA it is stated in Sl.No.10 that illegal structures and rooms have been built on the terrace, however the said construction are staircase rooms made as per the sanction plan of the BBMP. Hence, it



cannot be considered as illegal structure. The R-3 submit before the Hon'ble Authority that in view of the land suit in O.S.No.7045/2017 wherein the interim order has been passed, MFA No.8664/2018 and W.P.No.21573/2014 questioning the sanctioned plan filed by Kailash are still pending consideration before the Hon'ble High Court of Karnataka, the complaint is not maintainable.

54. The R-2, R-4 & R-5 submit that they adopt the statement of objections filed by the R-3 and pray the Hon'ble Authority to treat as their objections too.

55. This case was heard on 7/9/2023, 12/10/2023, 13/12/2023, 31/1/2024, 12/3/2024, 28/5/2024 and 25/6/2024. Heard arguments of both sides.

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

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

57. **My answer to the above points are as under:-**

1. Partly in the Affirmative.
2. As per final order for the following -

REASONS

58. **My answer to Point No.1:-** The complainant association has sought for reliefs of the details that were required to be mentioned in the Deed of Declaration executed by them i.e. the share of undivided interest sold to each apartment owner, details of common areas and extend of common areas thereof, details of individual car parking space sold to the concerned apartment owner, completion of pending works with respect to the scheduled property, both that were assured at the time of sale and the one that are mandatorily required to be provided as per BBMP or for direction to the respondents to pay the entire cost of repaid and completion of pending works, direction to the R-1 to ensure and take appropriate action so that the building is in compliance with the sanctioned plan and the complainant association is not held responsible for violations in the building plan and directions to the respondents to pay a sum of Rs.5,25,000- towards compensation to the complainant association towards the harassment and hardship caused.

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Karnataka Real Estate Regulatory Authority,

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

59. The Karnataka Real Estate (Regulation and Development) Rules, 2017 came into force w.e.f. 10/7/2017. A perusal of the occupancy certificate dated 14/7/2017 submitted by the complainant association and R-1, it is noticed that though the Respondent No.1 had applied for issue of occupancy certificate from the competent authority on 5/2/2016 and had obtained acknowledgement from the concerned, for the reasons better known to the competent authority, while issuing the occupancy certificate dated 14/7/2017 they have not mentioned the letter dated 5/2/2016, whereas they have referred letter dated 2/5/2017 as the date of application. The R-1 has produced the copy of the acknowledged letter dated 5/2/2016 before the Hon'ble Authority.

60. Rule 4(iv) of the Karnataka Real Estate (Regulation and Development) Rules, 2017 excludes the projects from registration of the projects under the Real Estate (Regulation and Development) Act, 2016 where all development works have been completed as per the Act and certified by the competent authority for issue of completion certificate/occupancy certificate has been made before the date of Notification of the KRERA Rules, 2017. Thus, the project need not be registered under the provisions of RERA Act and Rules.

61. At this juncture, my attention is drawn towards the decision of the Hon'ble High Court of Karnataka in Writ Petition No.18843/2022 M/s Cambian Technologies Private Limited v/s Karnataka Real Estate Regulatory Authority and Maraya Rose by UKN Residents Welfare Association in which it is held that the projects already completed or to which the completion certificate has been granted are not under its fold and, therefore, vested or accrued right if any, in no manner are affected. In terms of Sub Rule (iv) of Rule 4, those properties to which the applications are filed before the competent authority seeking occupancy certificate either partial or complete need not be registered with RERA. If no registration is required with RERA, the RERA would not get any authority to entertain any complaint against any property to which occupancy certificate is sought for either partial or complete. Here in this case, the respondent No.1 has applied for occupancy certificate on 5/2/2016 (acknowledged copy of the letter by the competent authority has been produced by R-1) and 2/5/2017 to the competent authority for issue of occupancy certificate for the project.

62. The provisions of the Act cannot be extended at this juncture, where in the respondent No.1 has obtained occupancy certificate dated 14/7/2017 and more than six years to the filing of this complaint. It is also noticed that the Deed of Declaration of Creative Environs has been executed and registered by the members of the complainant association on 5/5/2018 itself after the maintenance of the project was handed over to them by the respondents. The sale deeds produced by the complainant association contains the details of undivided share, title and interest over the land, super built up area of the apartment and car parking numbers. The

45/5

association could have called upon all its members and obtained the above details from them.

63. From the sale deeds produced by the complainant association, it is seen that the possession of the flats have been taken on 5/5/2017 and 30/3/2016, occupancy certificate has been obtained on 14/7/2017, the Deed of Declaration was executed and registered on 28/2/2018 by the respondents and the Rules, Regulations and Bye-laws annexed to the Deed of Declaration of Creative Environs executed and registered by the members of the complainant association themselves on 5/5/2018, the Hon'ble Authority is of the opinion that there is no justification for the delay of more than 5 years that the complainant association approaching KRERA seeking for reliefs as detailed above after such an inordinate delay.

64. During the process of the hearing, the Authority directed RERA Engineers to inspect the pending works as on 7th June and to submit a report. Accordingly, RERA inspection team headed by AEE, KRERA inspected the building during which the representatives of both sides were present. The promoter has constructed a hall and one room on the terrace and has claimed that it is meant for multipurpose hall subject to violation notice issued by BBMP. Equipped gym is not available. STP, Organic waste converter, solar water heaters installed are not in working condition. Some hairline cracks are seen on the surface of the terrace which may lead to leakages during rainy season. Visitor's car parking not handed over to the association. Regarding painting, as the occupancy certificate has been issued in 2017, it is left to the discretion of R-1.

65. Having regard to all these aspects, it is clear that the project CREATIVE ELEGANCE does not come within the definition of the ongoing project. Hence, the said project requires no registration with RERA. Moreover the defect liability period has also expired.

66. As regards handing over the original/copies of documents, the respondent No.1 has already submitted that he is willing to handover the documents as listed in Para No.36 above.

67. Further, the complainant association has sought relief of compensation of Rs.5,25,000/- towards the harassment and hardship caused to them, which does not come under the jurisdiction of this Hon'ble Authority. Hence, the same is not considered.

68. **My answer to Point No.2:-** In view of the above discussions, the above complaint deserves to be allowed partly. Hence, I proceed to pass the following order:-

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

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.00563/2023** is hereby allowed in part:-

1. The Respondent No.1 is directed to hand-over the 33 documents (as listed in Para No.36 of the Judgement) to the Creative Elegance Apartment Owners' Association under acknowledgement.
2. The Respondent No.1 is directed to furnish details required for DOD if not already furnished.
3. The cases of a suit in O.S.No.7045/2017 before the City Civil Court (CCH-6), Bangalore with the complainant as a party, W.P.No.21573/2014 (GM-RES) challenging the sanction plan issued by BBMP before the Hon'ble High Court are pending consideration and the interim order passed in O.S.No.7045/2017 is still in force, it would not be appropriate for this Authority to issue any further directions to the respondents at this juncture.
4. The complainant is at liberty to approach any suitable court of law for redressal of their grievances.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA