IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 29th DAY OF OCTOBER, 2024

PRESENT

HON'BLE SRI SANTHOSH KUMAR SHETTY N.

JUDICIAL MEMBER

AND

HON'BLE SRI MAHENDRA JAIN, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 05/2023

BETWEEN

Prestige Estates Projects Ltd.,
A company incorporated under the
Companies Act, 1956, having registered
The Falcon House No.1,
Main Guard Cross Road,
Bengaluru-560 025. Represented by its
Authorized Signatory
Mr. Veerendra Kumar. **: Appellant**

(By Sri Mohumed Sadiqh B.A, Advocate for appellant,)

AND:

1 (a) Mr. Venkatesh S. Arbatti,
Aged about 47 years,
S/o. Sri. S.W. Arbatti,

1 (b) Rachana V. Arbatti,
Aged about 45 Years,
W/o. Mr. Venkatesh S. Arbatti,
R/at No. 309/1, 1st Floor,
3rd Cross, N.R. Colony,
Bengaluru-560 019.

2. The Karnataka Real Estate
Regulatory Authority, Bangalore
Office at ground floor,
No.1/14, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027,
Represented by its Secretary. **: Respondents**

(Sri. Kittur & Kittur Associates Advocate for R-1(a) & (b)
Sri. I.S. Devaiah., Advocate for 2nd Respondent-RERA)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 17.10.2022 passed by the 2nd respondent RERA in Complaint No.CMP/211011/0008430.

This appeal, having been heard and reserved for judgment, coming on this day, for pronouncement of judgment, the **Hon'ble Judicial member** delivered the following:

JUDGMENT

The Appellant-Prestige Estates Projects Limited (hereinafter referred to as "the Promoter" for short), being aggrieved by the impugned order dated 17.10.2022, passed by the 2nd Respondent-Karnataka Real Estate Regulatory Authority (hereinafter referred to as "the Authority" for short) in the complaint No. CMP/211011/0008430 has preferred this appeal. By the impugned order, while allowing the complaint in part, the Authority directed the

promoter to allot a car parking space to the complainant-allottee without demanding additional amount from them. For the purpose of convenience, in this appeal, the 1st respondent-complainants shall be referred to as "the allottees" for short.

2. The brief facts of the case of the allottees is that, they have booked an apartment bearing No.7045 B Type Level in the project "Prestige Bagamane Temple Bells" developed by the promoter for the sale value of Rs.28,44720/-; Prior to execution of the sale deed, the promoter had promised the allottees that car parking space would be provided to them along with the apartment and that the sale consideration was inclusive of one car parking space as per the Booking Confirmation Letter dated 05.01.2015 and executed an Agreement for Sale in favour of the allottees on 05.01.2015; subsequently, the promoter has failed to provide the allottees the parking space, despite receipt of consideration towards the same and in violation of the terms of agreement for sale, now the promoter is demanding payment of additional sum of Rs.2,50,000/- from the allottees towards value of parking space. As such, the allottees filed a

complaint before the Authority seeking direction to the promoter to allot parking space to them without insisting additional amount. By the impugned order, the Authority, in exercise of its power under Section-31 of the Real Estate (Regulation and Development Act, 2016 (hereinafter referred to as 'the Act' for short) passed the impugned order, directing the promoter to provide/allot car parking space to the allottees without demanding additional amount from them. Being aggrieved by the same, promoter has preferred the present appeal.

3. We have heard Sri Mohumed Sadiqh B.A, learned counsel for the Appellant-Promoter, Sri. Kittur, learned counsel appearing for the 1st Respondent-allottees and Sri. I.S. Devaiah, learned counsel for the Authority. Counsel for the Respondents No. 1(a) and (b), apart from his oral arguments, has filed statement of objections as well.

4. Learned counsel for the Promoter vehemently submitted that the averments made in the Sale Agreement and Construction Agreement dated 05.01.2015 with respect to allotment of car parking slot is only an

inadvertent/typographical mistake and it is not at all their intention to provide car parking slot to respondents 1(a) and (b) for the sale consideration referred to therein and that the amount of Rs.28,44,720/- mentioned in the Booking Application Form and in the sale deed is excluding the amount payable for car parking slot. He further argued that, if the allottees wants parking slot, they have to pay additional sum of Rs.2,50,000/- for the same. He drew the attention of the Tribunal to the provisions contained in Sections-2, 10, 13, 14 and 25 of the Indian Contract Act, 1872 and submitted that the Authority, without appreciating the documents on record in a proper perspective, erred in passing the impugned order which is against the law and it is liable to be set aside.

5. On the other hand, Sri. Bibhas V.Kittur, learned counsel for the respondents No.1(a) and (b), refuting each and every contentions urged by the appellant strenuously argued that, there is clear recitals in the documents particularly the Agreement of Sell and Construction Agreement dated 05.01.2015 (Annexure-B) and the Registered Sale Deed dated 05.12.2020 (Annexure-J) in

which, it has been categorically mentioned that the sale consideration amount of Rs.28,44,720/- is inclusive of car parking slot. Hence, the appellant-promoter is estopped from now contending that the terms incorporated in those documents are on accounts of inadvertent/typographical mistakes. Hence, the allottees are not required to pay additional amount of Rs.2,50,000/- for allotment of car parking slot and prays for dismissal of the appeal.

6. Sri. I.S. Devaiah., Advocate for 2nd Respondent-RERA argued in support of the impugned order.

7. In view of the above submissions made across the Bar, the points that would arise for our consideration are:

i) Whether, the appellant-promoter proves that the Authority was not justified in allowing the complaint filed by the Respondents No. 1 (a) and (b), directing the appellant-promoter allot car parking space without demanding additional amount from them?

ii) What Order?

8. **Point No (i):** Before adverting to the points in controversy, is just and necessary for us to highlight certain

un-disputed facts. The 'Agreement to Sell' and 'Construction Agreement' dated 15.01.2015 as well as the Registered Sale Deed dated 05.12.2020 which came to be executed between the parties to this proceedings. For better understanding, it is just and proper to re-produce certain covenants incorporated in the 'Agreement to Sell'. Clause (1) at page-5 and Clause-(3) at page-6 of the said agreement which reads thus:

"**1) Sale price & payment:**

1.1) The Sellers shall sell and Purchase shall purchase the Schedule-B" property for the total sale consideration mentioned in Annexure-1, with right to the Purchaser to get constructed the Schedule 'C' Apartment through the Developer. The sale consideration includes the nomination charges payable to the Developer for having nominated the Purchaser as the buyer of the Schedule 'B' property.

3. Nature of Right and usage:

3.1) (c): exclusive right to use the parking space allotted to the Schedule 'C' apartment for parking light motor vehicles;

3.2) The purchaser/s hereby acknowledge/s that the Schedule 'C' Apartment together with parking

space allotted to same, as described in Schedule 'C' hereunder, shall always be treated as a single indivisible unit for all purposes and cannot be transferred or dealt with separately. Other than the parking space/s allotted to the Schedule 'C' Apartment, the Purchaser/s shall not have any claim, right or interest whatsoever in respect of the remaining parking spaces in the Schedule 'A' Property and the Sellers/Developers shall have the right to allot the use of the same to any buyer/s of the Apartment. This is an essential condition of sale and the Purchaser/ has specifically agreed to the same".

9. It is also just and necessary to refer to the description, as mentioned in Schedule 'C' under the Agreement to Sell which reads as under:

"**Schedule 'C'**
(Description of the Apartment to be built)

Residential Apartment bearing No. 7045, situated on 4th Floor/Level, of 7 Tower/Block in 'Prestige Bagamane Temple Bells', being developed on Schedule 'A' property, measuring 648 sq.ft. super built up area, inclusive of proportionate share in all the common areas such as passages, lobbies, lifts, staircases and other areas of common use and with **one car parking space in the basement".**

10. On perusal of the admitted documents, it is clear that, even though there is no mention about allotment of car parking in the 'Booking Application Form' which is produced as at Annexure-G, the total sale consideration amount has been mentioned as Rs.28,44,720/-. Ultimately, the Registered Sale Deed came to be executed in favour of the Respondents No. 1(a) and 1(b)on 05.12.2020 in the office of the Senior Sub-Registrar, Basavanagudi, registered as document No.BSG-1-04838-2020-21, CD No.BSGD-821 which is produced as Annexure-J. It clearly indicate that, there is a clear recital/covenant as regards allotment of parking space to the respondents-allottees. It is expedient for this Court to refer to clause-5.2(a) of the sale deed under the caption **'Possession':** At page-7 of the sale deed which reads thus:

> "5.2 The Purchasers hereby confirm having taken possession of the Schedule 'C' Apartment and before taking the possession, the Purchasers have inspected and satisfied as to completion of all works in the Schedule 'C' Apartment and its fitness for occupation and the Purchasers have no claims against the Seller/Developer in respect of the

Schedule 'C' Apartment including but not limited to the following;

(a) Correctness of the area of the Schedule-'C' Apartment and the purchasers' Car Park allotted."

11. Further, in Clause (7) at page No.18 of the sale deed it has been categorically mentioned as hereunder;

"7) The Purchasers shall at all times be bound by the terms and conditions of use of the Purchasers' Car Parks as listed under;

a) The Purchasers shall be entitled to exclusively use the car parking space specifically allotted to the Purchasers for the purpose parking cars and any of other light motor vehicles including two wheelers.

b) The Purchasers shall not object to the right of the Developer to allot the car parking space for the Schedule C' Apartment anywhere within the Project. The decision of the Developer in this regard shall be final and binding on the Purchasers.

c) The car parking space earmarked to Purchasers is for exclusive use and enjoyment by Purchasers and the Purchasers shall not have the right to put up any construction in the car parking space or enclose the same or use/convert it for any purpose other than as parking space for cars and vehicles as mentioned above.

d) The Purchasers shall not permit usage of the car parking space allotted by any non resident of the

Project i.e. by a person who does not own or occupy an apartment in the Project.

e) This car parking arrangement is only a exclusive right of use granted to the Purchasers to use the Purchasers' Car Parks."

(underlines by us for emphasis)

12. Along with statement of objections, the Allottees 1(a) and (b) have produced copies of the correspondence with the promoter through E-mails in between dated 27.09.2019 and 14.10.2019, in which, the promoter, for the first time, contended that the sale value was not inclusive of car parking and that the allottees required to pay an additional amount of Rs.2,50,000/- towards independent car parking.

13. We have gone through the provisions of the Indian Contract Act, 1872, referred to by the counsel for the Promoter. It is an undisputed fact that the appellant is a reputed builder having vast knowledge in the field of real estate business undertaken by it and the company is having supporting staff including the legal advisers. Admittedly, the respondent 1(a) is an Advocate by profession. Such being the state of affairs, there is a reason to believe that both the

parties are very well aware of and having knowledge about the specific averments and the covenants incorporated in the documents referred to above and affixed their signatures. As such, there was no impediments for them to make rectifications in the documents before registration. Hence, contention of the learned counsel for the Promoter that, the recitals/covenants relating to allotment of parking space to the respondents-allottees is mentioned in the aforesaid agreements and sale deed are inadvertent and typographical mistake, is not sustainable and cannot be accepted.

14. On careful perusal of the Sale Agreement and Construction Agreement dated 05.01.2015 referred to above it is very clear that, it was mutually agreed between the parties to sell one BHK flat along with one parking space in favour of respondents-allottees for total sale consideration of Rs.28,44,720/-. Apart from that, the Registered Sale Deed dated 05.12.2020, which is a primary and Principal document for all practical purpose and to determine/decide the issue involved in this appeal, the averments made therein are required to be looked into in its entirety. There

is specific averments has been made particularly, at clause (7) of Schedule-E, regarding the car parking slot. Such, being the case, even though there was no mention about allotment of car parking space in Schedule-C at page-15 of the sale deed, as could be seen from clause (5) under the caption 'Possession' at page-7 and clause (7) of Schedule 'E' at page-18 of the sale deed, it is crystal clear that the car parking space has indeed allotted to the respondents-allottees. Hence, an inference is to be drawn that, the one BHK apartment described in Schedule-C of the sale deed, was sold to the respondents-allottee for total sale consideration of Rs.28,44,720/- is inclusive of the amount payable for parking area. Merely because the particulars about car parking is kept blank in the 'Booking Application Form' (Annexure-G), the appellant-promoter cannot both approbate and reprobate, which is contrary to the covenants/recitals of the sale deed.

15. Another important thing for consideration is that, the e-main correspondence were exchanged between the parties much prior to the date of registration of the Sale Deed. Even if the intention of the Promoter was not to sell the car

parking slot along with flat for total consideration of Rs.28,44,720/-, there was no occasion for them to insert the said clause in Schedule 'E' of the registered sale deed. As such, the evasive theory adopted by the Promoter that the recitals made in the Sale Agreement, Construction Agreement and in the Sale Deed with regard to Car Parking Slot was sheer typographical/clerical mistake is a blatant lie and cannot be accepted. As such, the Promoter is estopped from taking inconsistent stand. The term/definition 'estoppal' is defined in the Indian Evidence Act, now Bharathiya Nyaya Samhithe states that, once someone persuades someone else to act on something, they believed to be true by their actions or lack of action, they cannot later, in the suit or proceedings, deny the truth of that belief. This being the settled position of law, there is no merit in the contentions taken by the learned counsel for the Promoter. Insofar as the proviso of Section-25 of of the Indian Contract Act, it very clear that there are certain exceptions with respect to the monetary consideration. However, in the instant case, as discussed earlier, there are sufficient reasons to believe that, a sum of Rs.28,44,720/-

paid by the respondents-allottees was for allotment of 1 BHK flat, inclusive of providing car parking slot.

16. The other contention urged by the learned counsel for the Promoter is that, in the statement of accounts at Annexure-H, wherein no amount was shown with respect to payment made by the respondents-allottees regarding parking slot. But, it is relevant to note that, the Statement of Account was prepared by the Promoter-company on its own and the respondents-allottees were not the signatories to the same. As such, there is reason to believe that, the said Statement of Account was prepared to suit the convenience of the appellant-promoter. As stated earlier, as per the terms of the 'Agreement to Sell', 'Construction Agreement' and the clear recitals mentioned in clause (5) and clause (7) of Schedule-E of the Sale Deed, the appellant-promoter has agreed to provide one car park slot to the respondents-allottees, without insisting any additional payment.

17. On perusal of the impugned order (Annexure-A), it is clear that the Authority, while passing common order

relating to as many as four complaints, allowed only two complaints viz., complaints No. 8430 (subject matter of present appeal) and 7284. The other two complaints bearing 7208 and 7178 filed for Car Parking and other reliefs, were impliedly rejected. Hence, it seems fairly clear that, apart from Respondents 1(a) and (b) herein, the relief of Car Parking was provided to Sri. Pradeep G.S and his wife Usha, the complainants in complaint No. 7284. But, the appellant-promoter did not whisper anything about the final outcome of the order passed by the Authority in favour of aforesaid Pradeep and Smt. Usha. It gives strong inference that accepting their claim, car parking slot was provided to them. On that score also the relief of Car Parking claimed by the allottees cannot be denied.

18. The other contention of the appellant is that in the event if the appellant is directed to allot car park slot to the respondents- 1(a) and (b) herein, certainly, similarly placed purchasers would rush to the office of the Promoter and make their claim to allot car parking slot. But as stated supra, on perusal of the operative portion of the impugned order, it is clear that the other two flat owners in complaints

No.7178, and 7208, who were also made their claim to provide car parking slot was impliedly rejected by the Authority. It seems that feeling satisfied with the impugned order, they did not prepare any appeal. Hence, there is no reason to hold that the flood gate would be opened, if this appeal is not allowed. Added to that, if there is any such claim by other allottees, hereinafter, it can be said that, such claim is certainly barred by limitation and they are estopped from their conduct.

19. On re-appreciation of the materials on record and for the foregoing reasons, this Tribunal do not find any error apparent on the face of the record, in the findings recorded by the 2nd respondent-Authority calling interference from this Tribunal. Accordingly, we answer point No (i) in the negative holding that the Authority was justified in allowing the complaint filed by the Allottees-Respondents-1 (a) and (b) herein and proceed to pass the following:

O R D E R

i) The appeal is dismissed;

ii) The impugned order dated 17.10.2022 passed by the 1st Respondent-Authority, in complaint No.CMP/211011/0008430 is hereby confirmed;

iii) In view of disposal of this appeal all pending IAs, if any, stand disposed off;

iv) The Registry to comply with the provisions of Section-44 (4) of the RERA Act and to return the records to RERA forthwith;

No order as to the costs.

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER