



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 1243 OF 2024 (GM-RES)

BETWEEN:

1. SRI DINESH M
S/O SRI G. MUNISWAMY
AGED ABOUT 49 YEARS
RESIDING AT NO.21 1ST FLOOR
2ND CROSS, KASTURI NAGAR LAYOUT
NEAR MAGADI ROAD
BANGALORE - 560 023

...APPELLANT

(BY SRI DINESH M.,- APPELLANT - PARTY-IN-PERSON)

AND:

1. M/S PROVIDENT HOUSING LTD.,
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MS. SONALI SYLVIA
A COMPANY INCORPORATED
UNDER THE PROVISIONS OF
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE
AT 130/1, ULSOOR ROAD
BANGALORE - 560 043
2. KARNATAKA REAL ESTATE
REGULATORY AUTHORITY

Digitally
signed by
VEERENDRA
KUMAR K M
Location:
High Court of
Karnataka



2ND FLOOR, SILVER JUBILEE BLOCK
UNITY BUILDING, CSI COMPOUND
BENGALURU - 560 027
REPRESENTED BY ITS SECRETARY

...RESPONDENTS

(BY SRI JOSEPH ANTHONY, ADVOCATE FOR R-1
SRI RAJASHEKAR K., ADVOCATE FOR R-2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE OR
QUASH THE ORDER DATED 15/06/2023 MADE IN
W.P.NO.15133/2020 PASSED BY THE LEARNED SINGLE
JUDGE & ETC.

THIS APPEAL, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN
AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal impugning a
judgment dated 15.06.2023 [**the impugned order**] passed by the
learned Single Judge in Writ Petition No.15133/2020 (GM-RES).



2. Respondent No.1, M/s. Provident Housing Limited [**The Developer**] had filed the said writ petition impugning an order dated 28.05.2020, passed by the Karnataka Real Estate Regulatory Authority [**KRERA**], whereby it was directed to pay compensation at the rate of 2% of the amount paid by the appellant from April, 2017 till delivery of possession. Additionally, KRERA also directed the Developer to execute the sale deed in respect of the flat in question within a period of one month and also to pay the cost quantified at Rs.5,000/-. The said order was passed pursuant to the complaint filed by the appellant alleging failure on the part of the Developer to register the project named 'The Tree by Provident' and deliver possession of the apartment booked by the appellant in the said project.

3. The Developer had challenged the said order on the ground that KRERA did not have any jurisdiction to pass the said order. It claimed that the project in question (The Tree by Provident) which is located at Herohalli Village, Yeshwantpura Hobli, Bangalore North Taluk, was a completed project (not an ongoing project) and therefore was exempted from registration under the Karnataka Real Estate (Regulation and Development) Act, 2016 [**the Act**].



The Developer claimed that it had obtained the completion certificate/occupancy certificate prior to Section 3 the Act coming into force and thus was exempt under Rule 4 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 [**the Rules**]. The Developer further claimed that the complaint made by the appellant under Section 31 of the Act, was not maintainable.

4. The Developer had applied for occupancy certificate on 10.04.2017 and the same was granted on 12.12.2017. The learned Single Judge held that although the said certificate was issued after 01.05.2017, it would relate back to the date of application, that is 10.04.2017. Since Section 3 of the Act, which provides for registration of projects, came into effect from 01.05.2017, the same would be inapplicable for the project in question. Accordingly, the order dated 28.05.2020 passed by KRERA was set aside.

5. The appellant had booked a residential flat in the project in question ('The Tree by Provident') on 23.01.2015 and he paid the booking amount of Rs.2,00,000/- (Rupees Two Lakhs only). Thereafter, on 11.02.2015, the appellant and the Developer entered into a Sale Agreement and Construction Agreement and the appellant paid the entire agreed sale consideration amount of



Rs.55,27,569/- (Rupees Fifty-five lakhs Twenty-seven thousand Five hundred and Sixty-nine only) in terms of the said agreement. The appellant claims that in terms of the agreement, the Developer was required to complete the project and construction on or before 30.07.2017, however, it failed to do so. Aggrieved by the same, the appellant preferred a complaint (CMP/191025/0004556) before the KRERA, which was allowed in terms of the order dated 28.05.2020.

6. The Developer had resisted the said complaint on several grounds including that, it was not liable to pay any compensation since it was exempted from registration under Rule 4(1)(iv) of the Rules.

7. The learned KRERA did not accept the said contention. It found that the project was not completed prior to the Act coming into force. It found that since the project was not completed, the Developer was not eligible for exemption under Rule 4(1)(iv) of the Rules as claimed. Accordingly, the KRERA also found merit in the contention that the builder had failed to complete the project and hand over possession within the time as agreed. Accordingly it directed that compensation for the delay be paid at the rate of 2% above the MCLR of SBI commencing from April, 2017 till the



possession of the flat in question is delivered. Additionally, the Developer was also directed to execute the sale deed for the flat in question within a month from the said date and further to pay the cost quantified at Rs.5,000/-.

8. The Developer contends that the project in question was completed prior to 01.05.2017 – the date on which Section 3 of the Act came into force – therefore it was not required to register the project. It is relevant to refer to Section 3 of the Act, which is reproduced below.

3. Prior registration of real estate project with Real Estate Regulatory Authority.—(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—



(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

9. As noted above, Section 3 of the Act came into force on 01.05.2017. There is no dispute that the Developer had not obtained the occupancy certificate/completion certificate prior to 01.05.2017. Notwithstanding the same, the learned Single Judge has held that the project was not ongoing, as the application for occupation certificate/completion certificate had been made prior to 01.05.2017. The completion certificate was issued on 12.12.2017. However, since it related to an application that was made in April 2017, the said certificate would relate to the date of the application.



10. The principal dispute centers around the question whether the project in question was an ongoing project on the date when Section 3 of the Act came into force.

11. It is relevant to refer to Rule 4(1) of the Rules, which requires for the disclosures to be made by the promoters of the ongoing projects. The said Rule is set out below.

4. Additional disclosure by promoters of ongoing projects.—

(1) Upon the notification for commencement of sub-section (1) of Section 3, promoters of all ongoing projects which have not received completion certificate shall, within the time specified in the said sub-section, make an application to the Regulatory Authority in the form and manner as specified in Rule 3.

Explanation:—For the purpose of this rule "**Ongoing project**" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules, namely:—

(i) in respect of layouts where the streets and civic amenities sites and other services have been handed over to the Local Authority and Planning Authority for maintenance;

(ii) in respect of apartments where common areas and facilities have been handed over to the registered Association consisting of majority of allottees;

(iii) where all development works have been completed as per the Act and certified by the competent agency and sale/lease deeds of sixty percent of the apartments/houses/plots have been registered and executed;

(iv) where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate; occupation certificate; and



(v) where Partial occupancy certificate is obtained to the extent of the portion for which the partial Occupancy Certificate is obtained.

12. As apparent from the plain language of the explanation to Rule 4(1), the term 'ongoing projects' would include all projects where development is going on and for which completion certificate has not been issued, but excludes such projects which fulfill any of the criteria as set out.

13. According to the Developer, all development works had been completed and certified by the competent agency. And, the application for issuance of completion certificate had been made prior to Section 3 of the Act coming into force. The Developer essentially relies on Clause (iv) and (v) of the explanation to Rule 4(1) of the Rules. It is material to note that the said clause commences with the words "where all development works have been completed". The expression "development works" is defined under Section 2(t) of the Act as under.

2(t) "**Development works**" means the external development works and internal development works on immovable property;

14. It is also relevant to refer to Section 2(w) of the Act, which defines the term 'External Development Works'.



(w) “**external development works**” includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

15. The appellant states that in the present case all development works have not been completed and therefore the benefit of exclusion under Rule 4(1) of the Rules was not available to the Developer.

16. Admittedly, the Developer had not handed over possession of any flat in the project to any person immediately on obtaining the completion certificate.

17. The learned counsel for the Developer relied upon a possession slip that was issued on 13.12.2018, which indicates that possession of one of the apartments (Apartment No.TTP-B1-1A-207) located on 2nd Floor of Block "1A" of the project in question had been handed over to its purchaser. However, this does not establish that the project was completed prior to 01.05.2017.

18. The appellant has relied on a email letter dated 23.02.2018 issued by the Developer to all the apartment owners. It is apposite to set out the relevant exact of the said communication.



"Having completed the basic structure, we have now commenced the interior work inside each block & apartments. As you would appreciate, it's the intricate interior works like Flooring, Skirting, Grouting, Electrical, UPVC, Joinery, CP & Sanitary fittings, Plumbing etc. which is time consuming and require dedicated skilled professionals for proper co-ordination and execution of the said works. The skilled work force has not only to be co-ordinated keeping in mind the related & interdependent works, but also essentially required to be equally monitored by sub teams of qualified supervisors. The timely flow of supply of required fittings & fixtures like door frames & shutters, windows, UPVC, glasses, tiles, electrical items, sanitary items, transformers, electrical panels, DG sets, lifts, fire items, etc, are market dependent and also play a major role in keeping up with the schedule of completing these tasks in time.

the Tree by Provident saw some diversions from the stated path, due to combination of various factors. However, we wish to assure you all that adequate measures have now been taken and the revised time lines as indicated below have been arrived at after due deliberation and re assessment of the inventory/resources and the decisive correction measures needed. In April/ May 2018, we will call our esteemed customers for a walk through of their individual apartments. We wish to intimate our customers that the structure with all the internal work including painting will be completed tentatively by JULY 2018. Once the infrastructure is completed, we would be applying for the necessary clearances/sanctions/permissions/NOCs from the concerned statutory authorities (CIEG, Lift NoC etc.). The sequence of the statutory sanctions with tentative timeline is as follows:

- Fire NoC - Received
- CEIG (Chief Electrical Inspector to Govt) - Expected by July 2018.
- Lift NoC - Expected by July 2018
- Occupancy Certificate - Received
- BESCOM NOC - Sanction Received and Connections by June / July 2018
- Registration/possession to commence by July/August 2018

As on date, superstructure of 7 towers has been completed. The basic structure of Exterior, Stair case, Basement, Towers, STP, Club house, etc., work is in progress. The latest images and the



progress pictures of Provident the Tree are being shared below for your reference."

19. The appellant, party-in-person, has also drawn our attention to an email dated 30.11.2018 sent by the Developer to the appellant, calling upon the appellant for a joint inspection of the flat in question. The said email is set out below.

"From: CRM Provident [crm@providenthousing.com]
Sent: 30 November 2018 16:44
To: dinesh@mdcon.co.in
Subject: Joint Inspection 2A-904 - The Tree

Dear Mr. **M. Dinesh**,

Greetings from Provident Housing !!!

With reference to your request, we take immense pleasure in informing you that your **flat joint Inspection** is scheduled on the below date.

Request you to please be available on **10th December 2018 @ 4.00 pm** for the Inspection and please do not to get children & senior citizens due to safety reasons, however your Interior personnel can accompany you for taking measurements.

Please contact our Project in charge **Mr. Prabhakar @ 8884539191 & Mr. Harsha @ 7022891208** on reaching the site who shall guide you on this process.

Please carry a copy of this mail and your Identity proof for a hassle free inspection.

We thank you for your support and co-operation.

Please feel free to revert for any further clarification.

Nagaraj Vanalli |Deputy Manager - CRM

Puravankara Limited
130/1, Ulsoor Road, Bangalore 560 042
Website: www.puravankara.com



20. It is relevant to note that the Developer had advised the appellant not to get any children or senior citizens for inspection of the flat due to safety reasons. This indicates that as on 30.11.2018, the site was not considered as safe for the children and senior citizens. Thus, it is difficult to accept the project was complete – that is, all development works were complete and the flat was in a condition to be used for the purpose for which it was built.

21. The affidavit filed by the Developer states that sanction for the power connection was obtained on 13.09.2017 and the electricity was made available only on 27.09.2019. The permission to operate the lifts was granted on 14.12.2018. Thus as on 01.05.2017, the building in question did not have any power supply connection and the lifts were not operational or the approval to operate lifts was granted. The flat booked by the appellant is located on the ninth floor. Undisputedly, it would not be accessible without the lifts being operational.

22. Both the parties have relied upon various communications in support of their rival contentions.



23. It is apparent from the above that there are several disputed questions which arise in the matter. The question whether all external works and internal works were completed as to enable the respondent to claim that it was not 'an ongoing project' and fell outside the scope of the explanation to Rule 4 of the Rules, 2017, is a contentious question.

24. We find that the learned Single Judge has not examined any of the communications or other materials, which were placed on record and are relevant for deciding the said question, whether the buildings were completed and fit for occupation. In view of the above, the impugned order is not sustainable.

25. Undisputedly the Developer had an adequate statutory remedy of appeal before the Real Estate Appellate Authority under Section 44 of the Act. In this view, it was not apposite for the learned Single Judge to have entertained the said writ petition which involved several disputed questions of fact.

26. The present appeal is, accordingly, allowed and the impugned order is set aside.



27. We, however, clarify that it is open for the Developer / writ petitioner to avail its statutory remedy. If any such appeal is filed within a period of four weeks from date, the same shall be considered by the Appellate Authority uninfluenced by the question of delay.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

KMV
List No.: 1 Sl No.: 12