

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH AT NEW DELHI****IN****APPEAL NO. 54 OF 2018****IN THE MATTER OF:**

H.P. RAJANNA

...APPELLANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

**OBJECTIONS TO THE REPORT DATED 18.03.2021****MOST RESPECTFULLY SHOWETH:**

1. That the Appellant is filing the objections herein to the report dated 18.03.2021 filed by Joint committee in compliance of the Hon'ble Tribunal's Order dated 08.09.2020. At the outset it is submitted that the report is liable to be rejected inasmuch as it has not looked into the issues which Hon'ble Tribunal directed the committee to look into. Further the Joint Committee has misrepresented facts to give clear findings about the legality of the project in question. It submitted with great respect that the present report is a trumped-up report for the following reasons. In substance it is more or less a replication of the earlier report but in a different form and with minor changes. The joint committee has overlooked the findings and observations of the order dated 8.9.2020 while giving its findings in the report.
2. Therefore, for the sake of brevity the appellant *inter-alia* reiterates the stand taken in additional objections dated 26.08.2020 (page 769 to 829), preliminary objections dated 19.08.2020 (page 1 to 37), written submissions of BBMP dated 27.08.2020 (page 831 to 849) as Appellant's objections to the present report also. Additionally, the appellant relies upon the observations in the order dated 08.09.2020 as part of the objections to the present report.

### **Preliminary Objections and Submissions**

3. The Appellant is making following preliminary objections to the report:

- i. Firstly, the very constitution of the nine member (9) Joint committee is in breach of the clear direction at paragraph 20 of the order dated 08.09.2020 passed by this Hon'ble Tribunal, in that, this Hon'ble Tribunal specifically directed the CEOs of the BDA and BBMP will be the nominees of the committee for the respective organizations, the Member Secretary as regards the KSPCB and state wetland Authority, Regional Director/Scientist E of the CPCB, Chief Engineer of the Irrigation and flood control department and Collector of the Revenue Department Government of Karnataka. In breach of this direction, the inspection and preparation of the report is done by Superintending Engineer of BDA and Joint Director of Town Planning department of BBMP; State Wetland Authority and flood control department is not even a party to the report; Assistant engineer is represented for Minor Irrigation department; Scientist-D on behalf of CPCB. It is therefore submitted that the report of joint committee cannot be accepted and liable to be rejected.
- ii. Secondly, admittedly, vide paragraph 18 of the order dated 08.09.2020 it is categorically observed that:

*"The committee has taken the BBMP approval as conclusive **without independent evaluation**. The BBMP itself has stated that its approvals are against law. **SEIAA, Karnataka does not claim to have made independent evaluation as required.**"*

The above observations must be read with page 4 of the said order wherein it is stated that:

*"BBMP also submitted that zoning regulations are framed under the Karnataka Town and Country Planning Act, 1961 (1961 Act) and **thus grant of building plan was in violation of Section 505 of the Karnataka Municipal Corporations Act, 1976 (KMC Act, 1976)**, which requires adherence to the 1961 Act. Further submissions was that the project was in violation of EC conditions prohibiting use of Kharab land (common land meant for general public use)."*

Notwithstanding this, the present report is in patent breach thereof, than in compliance of the above said observations at paragraph 18 of the order dated 8.9.2020 and this can be discerned from a bare perusal of the report itself.

- iii. Upon a objective reading of the present report it can be discerned that the report argues the case of the project proponent to somehow show that the project can be cleared rather than furnishing a report based on independent evaluation and by taking into account the observations made in the order dated 08.09.2020. Hence, report is palpably vitiated and thus no reliance can be placed upon such a report.
- iv. Thirdly, the report is against the reply/counter affidavit of the BBMP, their written submissions dated 27.8.2020 (page 831 to 841).
- v. Fourthly, admittedly, the consent to establish (CFE) for the project is withdrawn vide order dated 06.07.2020 and this was concealed before this Hon'ble Tribunal by the project proponent till today as well as it was not placed on record by the statutory authorities as on 08.09.2020 (last order of the Tribunal)<sup>1</sup>. Thus, said vital fact was not within the knowledge of this Hon'ble Tribunal as well as the Appellant and consequently did not find a place in the last order dated 08.09.2020. Therefore, in the absence of consent to establish the question of project being permitted is legally impermissible.
- vi. Fifthly, the report does not disclose that admittedly, the Karnataka Real Estate Appellate Tribunal (K-REAT) has stayed the entire project and/or RERA Registration Certificate vide its order dated **11.02.2021** in **Appeal No (K-REAT). 355 of 2020** and irrefutably the said order is extended from time to time and it is in force even till today and further restrained from violating Section 3 of the RERA Act, 2016. Therefore, the project proponent is precluded from advertising in any form from advertising the project, receiving any instalment amounts from prospective purchasers of

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<sup>1</sup> See Annexure-11 of the present report

the apartments muchless proceed with constructions. These material facts and Court orders are concealed by the project proponents as well as in the report. Notably, without independent evaluation the report states at page 20 (SL No.13 and 18, in respect of phase 1 and phase 2 respectively) that the project has other statutory approvals including the RERA registration of the project and stated compliance of Section 4(2) (d) of RERA Act, which is patently false. This can be discerned from the said RERA Tribunal's order dated 11.2.2021. Copy of the said order along with copy of Sections 2, 3, 4 and 21 of RERA Act, 2021 is produced as **Annexure-1 (Colly).**

Legally speaking, the effect of stay of RERA Registration for the entire project/any given project means that the entire project must come to a grinding halt and there's no question of relying on other statutory permissions including revival of EC to proceed with the project. At any rate, the project cannot proceed and this can be discerned from Sections 4(2) (d) read with 2(zq), Section 21 read with 2(i) of RERA Act, 2016. Hence, it is clear that the project is fraught with large scale illegalities and statutory violations of provisions of multiple enactments (Central Acts and Planning laws).

Notably, the project proponent has concealed the said orders in their two separate applications for urgent hearing. By asserting that the project proponent will miss the RERA deadline, which is patently false. The said applications are M.A. No. 88 of 2021 dated 19.03.2021 and M.A. No. 114 of 2021 dated 14.05.2021.

**Point-wise submissions of the Appellant against the report**

4. That the Joint Committee has given misleading findings about the issues raised in the said order dated 08.09.2020.
  - i. The finding that M/s Wonder Projects Development Pvt. Ltd has not violated any buffer zone norms and has maintained a buffer of more

then 75 meters from the lake periphery to Block -I and Block II is patently false and misleading statement for the following reason and particularly in the light of the observations in paragraph 18 of the order dated 08.09.2020 wherein it is held that "*Even if the project is beyond the buffer zone of the drain, it has to be ensured that there is no other development activities in the said zone*":

That the Joint Committee has given the finding about no construction from Block -1 and Block -II towers within the buffer zones and therefore did not consider other constructions coming within the prohibited buffer zones of lake, namely, the constructions like:

- a) Driveway's within the 50 meters on either side of the buffer zones of the inter-connecting primary nala between the two lakes (upstream lake/Kasavanahalli lake and downstream Kaikondarahalli lake) wherein the said nala bisects the block-1 and block-2 and flows into the downstream Kaikondarahalli lake [This can be discerned from the development plan of the BDA]
- b) Creation of infrastructure for Common areas
- c) Construction of boundary wall along side the lake
- d) Constructions/creation of storm water drains on the periphery of the project and within the lake buffer zone and right next the lake itself. [This can be discerned from conceptual plan submitted before SEIAA, Annexure-2]

It is submitted that as per the direction by this Hon'ble Tribunal in ***Forward Foundation v. State of Karnataka and Ors., (2016) SCC Online NGT 1409*** the buffer / green zone would be treated as *no development zone* for all intent and purpose. It is noteworthy that the Hon'ble Supreme Court has only restored the buffer zone distance in terms of master plan in the matter of ***Mantri Techzone Pvt. Ltd v. Forward Foundation and ors., 2019 SCC OnLine SC 322***, and

have not disturbed any other directions of this Hon'ble Tribunal. Further the finding recorded that during inspection no construction of permanent or temporary nature or no boundary wall was noted clearly shows that the Committee has not looked into the development plan wherein several activities are proposed within the 50 meters of primary nala/feeder canal as well as 75 meter buffer from the lake plus creation of storm water drains right next the lake.

Notably, report ignores that patent violations of constructions of the feeder canal itself which is completely prohibited and is in violation of Sections 24(1) (b) read with 2 (j) (ii) of Water Act, 1974, in that, the feeder canal connecting the two lakes and flowing through the project site is a "**water stream**" and cementing it is a clear case of impeding the natural flow of water and tantamount to removal of rajakaluve. This is breach of doctrine of public trust and violative of constitutional mandate *qua* protection of natural resources. Unfortunately, all this is happening under the nose of the regulatory authorities. This is sufficient to show that authorities are concealing serious statutory violations in the report. To say the least, the report lacks credence.

- ii. The finding of the committee that the built up area of the project is less than 1,50,000 Sq. Mts after calculation of area as per directions in *Goel Ganga* Judgement is a patent case of non-application of mind and not based on committee's own and independent evaluation/calculation. In this regard it is submitted that the Joint committee for the purpose of calculation of total built up area has relied on the letter of BBMP and SEIAA. It can be discerned from para 4 of the order dated 8.9.2020 that the BBMP has already stated before this Hon'ble Tribunal in the reply dated 05.09.2018 at page 390 that the area including FAR + non-FAR is 2,35,076.81 square meters. It is pertinent to mention that as on 20.08.2020 the counsel appearing for Respondent No. 5/BBMP

has reiterated the stand in their reply affidavit vide para 1 of the written submissions (page 831). Admittedly, the committee did not examine the comparative table of the BBMP (page 839 of the written submissions dated 27.8.2020). Further the Joint Committee did not examine the conceptual plan (page 1049) submitted by project proponent before SEAC. It is submitted that as per conceptual plan the value of FAR and non-FAR areas works-out as following:

**Common Values of Project**

Total FAR achieved	93423.70 Sq Mts
Parks and open spaces	4833.73
Civil amenities	2524.18
<b>Total</b>	<b>100781.61 Sq Mts</b>

**PHASE-2**

Parking	17605.05
FAR deductions	18,442.05
Lift and Ramps	837.0
Shafts	706.0
<b>Total</b>	<b>37,590.1Sq Mts</b>

**PHASE-1**

Parking	13,835.20 Sq Mts
FAR deductions	14,688.20
Shafts	696.0
Lifts and Ramps	853.0
<b>Total</b>	<b>30,073.2 Sq Mts</b>

**Grand Total:**

**Common Values of Project +Phase-1 + Phase-2**

- 100781.61 Sq mts + 37590.1 sq mts + 30073.2 Sq Mts

**Total** **1,68,444.91 Sq Mts**

**Other components of constructions**

280 KLD + 210 KLD (STP) + Deep recharge wells all along the lake buffer zone boundary + all around the boundary of project site on all sides (storm water drainage systems). Therefore the conclusion of the Joint Committee that the built up area of the project is less than 1,50,000 sq Mts is factually incorrect.

- iii. The finding of the Joint Committee that minimum buffer of 50 meter is left from the project is false and misleading and contrary to material on record because the committee has considered the construction of residential tower as construction and not other ancillary activities within the buffer of the drains and the lake. The committee has not considered that construction like drive way, park of the project is coming within the buffer or not.
- iv. About Kharab land: the joint committee's findings at page 13 and 14 is nothing but repetition of the earlier report that is paraphrased. Further, relying on Section 288 (1) (c) of KMC Act, 1976 at page 14 of the report is completely misplaced and is an attempt to mislead the Tribunal. As against this, the appellant reiterates from the Hon'ble Tribunal's order dated 8.9.2020, that is, para 10 (D), (F) (page 9) read with findings of the Tribunal at para 16 (d) (page 19 and 21) and para 18 (page 27). Furthermore, as part of the public trust doctrine, the Kharab lands is a natural resource belonging to community at large as also the buffer zones are also natural resources covered under the public trust doctrine. In the present case Kharab lands is shown inside the nala area and that comes within the definition of water stream under the wide ranging inclusive definition of Section 2 (j) of Water Act, 1974. Thus, constructions of nala and in this case it is also the area of kharab lands is nothing but encroachment of water stream and thereby impedes the natural flow of water as explained above. Hence,

relying on Section 288 (1) (c) of KMC Act, 1976 at page 14 of the report is completely misplaced and is an attempt to misled the Tribunal.

- v. On the issue of reconciliation of the joint report in OA No. 281 of 2019 and 602 of 2019 the committee is *ad nauseam* misleading this Hon'ble Tribunal by stating that no construction is being done on lake buffer or Nala buffer area. It is submitted that project proponent is undertaking the following constructions within the buffer zone of the water body-
- a. In respect of the buffer zone of the Kaikondarahalli Lake: The Project Proponent has sought to create a ramp and a driveway.
  - b. In respect of the buffer zone of the Primary Rajakaluve: The Project Proponent has sought to construct a 12m drive way.
  - c. In respect of the buffer zone of the Secondary Rajakaluve passing through Survey No. 57: The Project Proponent has sought to construct 12 metres wide drive way and installation of gas bank/infrastructure for LPG piped line.
  - d. In respect of the buffer zone of the Secondary Rajakaluve passing through Survey No.61/1: The Project Proponent has sought to construct a 8 metre wide Fire Driveway, the installation of an Organic Waste Converter and the installation of a gas bank/infrastructure for the LPG piped gas line.
  - e. Compacting and concretisation thorough out the buffer zones.
- The joint committee has completely shut their eyes on the above mentioned activities of the project in the buffer area.
- vi. Violation of Wetland Rules: As for this contention, the joint committee's finding is at page 11 and 12 of the report and it is of the view that the project has not violated the wetland rules. As against this, the appellant relies on paragraph 9, 10 (B) of the order dated 8.9.2020 read with the findings at paragraph 16 (page 19), 16(c)

(page 20), 20 (page 28), read with Annexure-9 of the present report that is the letter dated 25.2.2021 wherein it is stated that "*The mean High Flood Level is not measured*" notwithstanding this, the mandate under Rule 4 (iv) of Wetland Rules is that mean high flood level must be calculated and it must be demarcated. Hence, the finding at page 12 of the report is factually incorrect and also flood control department and state wetland authority are not party to the report and the entire exercise undertaken is to sweep the illegalities under the carpet and give a clean chit to the project.

- vii. As regard findings at page 20 and 21 of the report: In this regard the appellant reiterates the preliminary submissions regarding the stay order dated 11.2.2021 that is in force till today passed by the RERA Tribunal and violations thereof. Hence, approval at serial number 13 (for phase 1) and 19 (for phase 2) is incorrect statement of facts.

5. The Appellant further submits that urgent actions are required to protect the *eco-fragile* Kaikondrahalli lake which is already facing threats because of activities from the construction projects around the lake. One recent news report talks about the death of five ducks in one week. And the Appellant is also placing on record the statement of the BBMP commissioner about the conduct of their own officials while granting statutory permissions certificates. The copy of news article reported in Times of India Bengaluru dated 7.4.2021 and 11.09.2020 is produced and annexed as **Annexure A-2 (Colly)**.

#### **PRAYER**

Wherefore, it is humbly prayed that this Hon'ble Tribunal be pleased to reject the report and allow the appeal.

RITWICK DUTTA RAHUL CHOUDHARY  
COUNSEL FOR THE APPLICANT

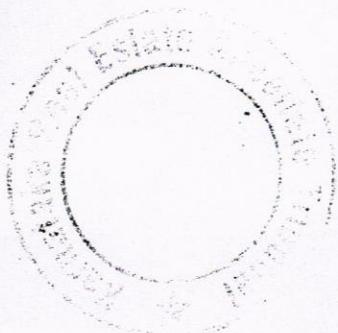
Date: 11.06.2021

Annexure A-1 (Colly)

TYPICAL NO (K.K.M.) - 353/2020

(Contd...)

Office Notes	Orders of Court
<p>Appellant: Sri Ashok B. Patil, Adv</p> <p>R<sub>1</sub> : RERA</p> <p>R<sub>2</sub> : M/s Wonder Projects Pvt Ltd.</p> <p>List this appeal for orders regarding maintainability on 11-02-2021.</p> <p>AAJ 11/2/21 Received 1 set of Appeal Papers AAJ 11/2/21</p>	<p>Hon'ble Chairman/Hon'ble Judicial Member/ Hon'ble Admn. Member</p> <p><b>11.02.2021</b></p> <p>Heard Sri Ashok B. Patil, learned Counsel appearing for the appellant on interim prayer.</p> <p>One Mr. Ravi, learned Counsel appeared for respondent No.1/RERA on 18.11.2020, but subsequently none appeared for RERA.</p> <p>Learned Counsel for the appellant submits that RERA registration certificate granted by the Interim Authority on 29.03.2018 valid for the period from 12.03.2018 to 01.04.2023 and extension of the said certificate by the Chairman of the RERA alone on 18.08.2020 in respect of Phase-I and RERA registration certificate granted by the Chairman of RERA alone on 25.05.2019 valid for the period from 25.05.2019 to 30.08.2024 and its extension granted by the Chairman of the RERA alone in respect of Phase-II of the Project of respondent No.2/promoter are in contravention of the provisions of Section 4(2)(d) r/w Section 2(zq) and Section 3 and Section 21 of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act').</p> <p>He further submits that environment clearance certificate issued by the State Environment Impact Assessment Authority (SEIAA) in respect of Phase-I and Phase II of the Project of respondent No.2/promoter was set aside by the principal Bench of NGT at New Delhi and in the Appeal preferred by the promoter, the Hon'ble Apex Court declined to interfere with the said order of the NGT and remanded the matter back to</p> <p style="text-align: center;"><b>B</b></p>



Appel No (K-KEFI) - 355/2020

(Contd...)

Office Notes

Orders of Court

NGT for re-consideration of the issue afresh with a further restraint order that there shall not be further construction of the Project.

Learned Counsel submits that in spite of bringing the above aspect to the notice of the RERA and seeking stay of RERA registrations and their extension, the RERA failed to grant interim order though has got the said power under Section 36 of the Act.

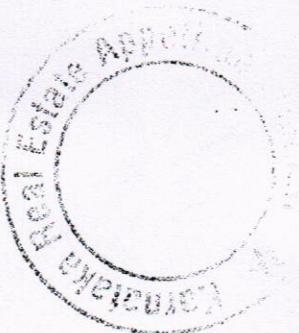
Learned Counsel submits that the promoter has been constantly violating the provisions of the RERA Act.

After hearing the learned Counsel appearing for the appellant and perusing the Appeal and documents, we prima facie found that RERA certificate issued by Interim Authority in respect of Phase-I and its extension granted by Chairman of RERA alone and RERA certificate issued by Chairman of RERA alone in respect of Phase-II and its extension granted by Chairman of RERA alone are in violation of Section 4(2)(d) r/w Section 2(zq), Section 3 and Section 21 of the Act.

Hence, keeping open the question regarding maintainability, we stay the RERA registration certificates issued in respect of Phase-I and Phase II of the Project of the 2nd respondent and in view of the same we direct the promoter not to carry out any activities in violation of the provisions of the RERA Act till next date of hearing.

Learned Counsel for the Appellant is permitted to take return of one set of Appeal papers and serve respondent No.1 by hand and file an acknowledgment in the Office of this Tribunal for having served and pay required costs

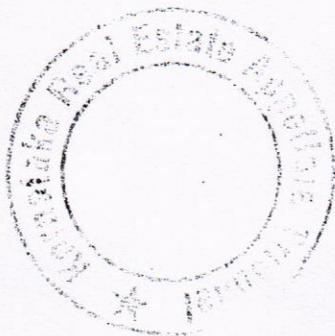
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APPEAL NO (K-REAT) - 355 /2020

(Contd...)

Office Notes	Orders of Court
	<p>immediately to issue notice to respondent No.2 returnable by 09.03.2021.</p> <p>Office to issue notice to respondent No.2 returnable by 09.03.2021.</p> <p>List the Appeal on 09.03.2021.</p> <p style="text-align: right;"><b>Sd/- Hon'ble Chairman</b></p> <p style="text-align: right;"><b>Sd/- Hon'ble Judicial Member</b></p> <p style="text-align: right;"><b>Sd/- Hon'ble Admn. Member</b></p> <hr/> <p style="text-align: center;"><b>TRUE COPY</b></p> <p style="text-align: center;"><i>H. Shree</i> SECTION OFFICER KARNATAKA REAL ESTATE APPELLATE TRIBUNAL BENGALURU-560 002</p> <p style="text-align: right;"><i>17/4/21</i></p>



Karnataka Real Estate Appellate Tribunal  
 Case No. 12/2012  
 Bangalore  
 12/2012  
 12/2012  
 12/2012

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—16

REGISTERED NO. DL—(N)04/0007/2003—16



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 17] नई दिल्ली, शनिवार, मार्च 26, 2016/ चैत्र 6, 1938 (शक)  
No. 17] NEW DELHI, SATURDAY, MARCH 26, 2016/ CHAITRA 6, 1938 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 26th March, 2016/Chaitra 6, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2016, and is hereby published for general information:—

### THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

No. 16 OF 2016

[25th March, 2016.]

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Real Estate (Regulation and Development) Act, 2016.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,  
extent and  
commence-  
ment.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "adjudicating officer" means the adjudicating officer appointed under sub-section (1) of section 71;

(b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

(c) "agreement for sale" means an agreement entered into between the promoter and the allottee;

(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;

(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

(f) "Appellate Tribunal" means the Real Estate Appellate Tribunal established under section 43;

(g) "appropriate Government" means in respect of matters relating to,—

(i) the Union territory without Legislature, the Central Government;

(ii) the Union territory of Puducherry, the Union territory Government;

(iii) the Union territory of Delhi, the Central Ministry of Urban Development;

(iv) the State, the State Government;

(h) "architect" means a person registered as an architect under the provisions of the Architects Act, 1972;

20 of 1972.

(i) "Authority" means the Real Estate Regulatory Authority established under sub-section (1) of section 20;

(j) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;

(k) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

*Explanation.*— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be,

(b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

*Explanation.*—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

(zl) "prospectus" means any document described or issued as a prospectus or any notice, circular, or other document offering for sale or any real estate project or inviting any person to make advances or deposits for such purposes;

(zm) "real estate agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

(zo) "regulations" means the regulations made by the Authority under this Act;

(zp) "rule" means the rules made under this Act by the appropriate Government;

(zq) "sanctioned plan" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

(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.

## CHAPTER II

## REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

3. (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:

Prior registration of real estate project with Real Estate Regulatory Authority.

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.

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

Application for registration of real estate projects.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

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

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

(f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;

(i) the number and areas of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such

chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

*Explanation.*— For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

2 of 1934.

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

5. (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

Grant of registration.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

6. The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to *force majeure*, in such form and on payment of such fee as may be specified by regulations made by the Authority:

Extension of registration.

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

*Explanation.*— For the purpose of this section, the expression "*force majeure*" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

## CHAPTER V

## THE REAL ESTATE REGULATORY AUTHORITY

Establishment and incorporation of Real Estate Regulatory Authority.

**20. (1)** The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

Composition of Authority.

**21.** The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

Qualifications of Chairperson and Members of Authority.

**22.** The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

Term of office of Chairperson and Members.

**23. (1)** The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.

(2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

Salary and allowances payable to Chairperson and Members.

**24. (1)** The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

Annexure A-2 (copy)

# Kaikondrahalli lake sees 5 duck deaths in 1 week

## Activists Blame Unchecked Sewage Inflow

Arinadhi Bhat  
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Bengaluru: In the past week, five ducks died in Kaikondrahalli lake, east Bengaluru, and activists attribute this to unchecked and increasing sewage inflow.

A representative from MAPSA (Mahadeswara Purasara Samrakshane Mattu Abhivrodhi Samithi) said, "Citizen groups like ours

cannot fix these engineering problems. We don't have the expertise or resources to address such issues."

Residents and citizen groups want immediate intervention of the Police and other civic agencies concerned to save the lake which has a rich biodiversity.

"Increasing volume of sewage is the root cause of bird deaths. Permanent solution through a new UGD has been in the approval process since a couple of years. A beautiful lake is in such a poor condition due to callousness of the authorities who are not addressing basic infrastructure needs



**DANGEROUS WATER:** Citizen groups allege the BBMP has failed to clean the polluted lake, resulting in the death of birds.

of the waterbody," the representative said, adding this affects its fragile ecosystem.

Over 50 species of birds, including water and migratory

birds such as ducks (Spotted Bill, Garganey), cormorants, storks (giant, grey, open billed), herons (red, night, purple), egrets,

lapwings, moorhens, water cocks, pelicans, kingfishers, bee-eaters, starlings, jungle mynas, barbets, thrushes, warblers, owls, pariah and brahminy kites, prinias, tailor birds, weaverbirds, munias are seen in the lake.

According to the group, the lake needs a new fence and stringent action against illegal dumping in the buffer zone. Sewage inflow has been a persistent issue since 2016 but the civic agency has not done anything on the ground, it pointed out.

The BBMP chief engineer for lakes was not available for comments.



## Illegal constructions near

**SWDs** Illegal constructions on the

banks of SWDs are the primary culprits for the city getting inundated every time it rains, Prasad said. Citing

the example of Dollars Colony where

basements were submerged, he said both residents and BBMP officials are equally to blame. "Residents have built their homes on the retaining walls of the SWD in violation of rules. Now that water is gushing into their basements, they are complaining,"

Prasad said, adding: "They would have paid hefty bribes to our officials and got CCs and OCs." When there is no outlet for water, it flows wherever it can, which is happening in the city, he said.



