BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 11.01.2021

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal Nos. 38 and 63 of 2020

Ms. Anjali Iyer ... Appellant in A.No.38/2020

-Vs-

1. Ananya Shelters Private Limited
2. A.V.Balakrishnan,
3. C.S.Ganesh,
4. R.Krishnan,
5. Janaka Krishnamurthy,
6. V.S. Sundaram,
7. Rajagopalan Parthasarathy,
8. S.Kannan,
9. Gangatharan,
10. Kalady Krishna Mani,
11. Dr.Radhakrishnan,
12. M.K.Bhaskar,
13. Dr.K.P.Balakrishnan,
14. Mahadevan Iyer,
15. R.Mohan Rao,
16. Meenakshi,

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17. Leela Vaidhyanathan,
18. S.Prema,
19. R.Ramamoorthy and R.Rajeswari
20. Geetha Krishnakumar,
21. V.Ramanathan,
22. Kamala Chockalingam.
23. A.V.Haridevan,
24. B.Srinivasan,
25. N.C.Ramasubbu,
26. Dr.S.N.Iyer,
27. Sugantha Sundaresan,
28. Vijayalakshmi,
29. M.Kumar,
30. V.S.Subramanian,
31. K.Ganapathy,
32. K.V.Ramanathan
33. R.V.Bhuvangiri,
34. Kasthuri Yogeswaran,
35. K.Chandramouli,
36. K.K.Ganapathi,
37. Sai Mohan,
38. G.Seetharaman,
39. Shantha Krishnamoorthy,
40. Murthy Vasanth,
41. C.Ravichandran,
42. N.Ramakrishnan,
43. Mythili Jayaraman,
44. Dr.P.A.Venkatachalam,
45. T.K.Balasubramanyan,
46. Chandra Balakrishnan
47. P.G.Jayaram
48. G.Ananthapadmanabhan
49. Ramamoorti K.Iyer
50. Rajee Rajagopalan,
51. Sakunthalla Iyengar,
52. T.R.C.Sharma,

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53. Dr. Mahadevan. M.S.,
54. C.Santhanam,
55. T.N.Seshan,
56. Usha Raghunathan,
57. Shankar,
58. G.Raggini Gopalakrishnan and B.V.Gopalakrishnan,
59. M.V.Dhandapani,
60. Dr. R.Vijayavalli,
61. Krishnan Subramaniam,
62. Usha Srinivasan,
63. V.Lakshmi,
64. Rajaraman,
65. C.P.Sivakumar,
66. T.S.Satyamoorthi,
67. C.V.Ramakrishnan,
68. A.Venkitachalam,
69. Saradha Subramanian,
70. N.Annapurni,
71. R.Rajagopalan,
72. M.S.Saroja,
73. T.R.Giridhar Gopal,
74. N.S.Krishnamurthi,
75. G.Balakrishnan,
76. S.Venkatesh Kumar,
77. Sarojini Krishnan,
78. S.Sathyam,
79. V.Sidhartha Seelan,
80. Lalitha Ramakrishnan,
81. Subramaniam Ratnam,
82. P.R.Chandrasekharan,
83. S.R.Gopalakrishnan,
84. N.Vijayalakshmi,
85. V.Meena,
86. S.Y.Parvathi,
87. C.Govindan,
88. M.Gopal,

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89. N.Hariraj,
90. Muthulakshmi Ayyappan,
91. A.Balasubramanian,
92. Sivamani Ramasamy,

... Respondents in A.No.38/2020

and

Ananya Shelters Private Limited ... Appellant in A.No.63/2020

-Vs-

1. Anjali Iyer
2. A.V.Balakrishnan,
3. C.S.Ganesh,
4. R.Krishnan,
5. Janaka Krishnamurthy,
6. V.S. Sundaram,
7. Rajagopalan Parthasarathy,
8. S.Kannan,
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15. R.Mohan Rao,
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17. Leela Vaidhyanathan,
18. S.Prema,
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21. V.Ramanathan,
22. Kamala Chockalingam.
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24. B.Srinivasan,
25. N.C.Ramasubbu,
26. Dr.S.N.Iyer,
27. Sugantha Sundaresan,

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28. Vijayalakshmi,
29. M.Kumar,
30. V.S.Subramanian,
31. K.Ganapathy,
32. K.V.Ramanathan
33. R.V.Bhuvangiri,
34. Kasthuri Yogeswaran,
35. K.Chandramouli,
36. K.K.Ganapathi,
37. Sai Mohan,
38. G.Seetharaman,
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40. Murthy Vasanth,
41. C.Ravichandran,
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52. T.R.C.Sharma,
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56. Usha Raghunathan,
57. Shankar,
58. G.Raggini Gopalakrishnan and B.V.Gopalakrishnan,
59. M.V.Dhandapani,
60. Dr. R.Vijayavalli,
61. Krishnan Subramaniam,
62. Usha Srinivasan,
63. V.Lakshmi,

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64. Rajaraman,
65. C.P.Sivakumar,
66. T.S.Satyamoorthi,
67. C.V.Ramakrishnan,
68. A.Venkitachalam,
69. Saradha Subramanian,
70. N.Annapurni,
71. R.Rajagopalan,
72. M.S.Saroja,
73. T.R.Giridhar Gopal,
74. N.S.Krishnamurthi,
75. G.Balakrishnan,
76. S.Venkatesh Kumar,
77. Sarojini Krishnan,
78. S.Sathyam,
79. V.Sidhartha Seelan,
80. Lalitha Ramakrishnan,
81. Subramaniam Ratnam,
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85. V.Meena,
86. S.Y.Parvathi,
87. C.Govindan,
88. M.Gopal,
89. N.Hariraj,
90. Muthulakshmi Ayyappan,
91. A.Balasubramanian,
92. Sivamani Ramasamy

... Respondents in A.No.63/2020

These appeals have been preferred against the order of the Regulatory Authority in C.No.214 of 2019 dated 17.10.2019, by the Appellant/Complainant as A.No.38/2020 and by the Appellant/Respondent

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as A.No.63/2020 respectively. A.No.38/2020 was taken on file on 10.02.2020 and A.No.63/2020 was taken on file on 07.10.2020 and came up for final hearing on 08.12.2020 in the presence of M/s.Sathish Parasaran, G.Vivkeanand, T.S.Devaraj, Counsels for the Appellant in A.No.38/2020 and 1st Respondent in A.No.63/2020, Mr.M.S.Krishnan, S.V.Pravin Rathinam, Sree Kumar Raju, Vignesh Venkat, B.Karthikeyan, B.Surendhar, J.Madhumitha, Lulu Mariam.M, Bala Kumar, Josephine Shreela.G, Counsels for 1st respondent in A.No.38/2020 and Appellant in A.No.63/2020 and Mr.G.Krishna Kumar, Counsel for Respondents R2 – R5, R8, R10, R11, R13, R16, R19, R20, R21, R24 – R26, R28, R29, R32, R33, R35-37, R42, R44, R49-R52, R56-R62, R68-R73, R75, R76, R78-R81, R83-R85, R88, R89 and R91 in both the appeals. R6, R7, R9, R12, R14, R15, R17, R18, R22, R23, R27, R30, R31, R34, R38, R39, R40, R41, R43, R45, R46, R47, R48, R53, R54, R55, R63, R64, R65, R66, R67, R72, R74, R77, R82, R86, R87, R90 and R92 were called absent. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

COMMON ORDER

1. The appellant in A.No.38/2020 is the complainant in C.No.214/2019 preferred a complaint against the promoter the 1st respondent in A.No.38/2020. During the pendency of the complaint the Respondents 2 to 92 were impleaded but in the Final Order names of the impleaded parties were not arrayed as Respondents. Against the order of the Regulatory Authority the complainant preferred Appeal in A.No.38/2020

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and 1st Respondent preferred Appeal in A.No.63/2020. In A.No.38/2020 the promoter arrayed as 1st respondent and other impleaded parties were arrayed as Respondents 2 to 92. In A.No.63/2020 the complainant arrayed as 1st Respondent and other impleaded parties were arrayed as Respondents 2 to 92. To avoid confusion and for easy understanding in this common order the parties are referred as per their original rankings in the complaint in C.No.214/2019. The Real Estate (Regulation and Development) Act 2016 is referred as Act hereinafter.

2. In the year 2014, the promoter M/s.Ananya Shelters Private Limited offered luxury villas in the name and style as Ananya's Nana Nani Homes Phase III (original project) at Thaliyur, Coimbatore. The complainant purchased a villa from the promoter and obtained possession of the villa. Subsequently, the promoter on the southern side and northern side of the original project developed projects by name Ananya's Nana Nani Home Phase III-Annexe 1, Annexe 2 respectively. The promoter has registered Annexe-2 alone before the RERA. The prospectus of the above said annexe project disclosed that the said annexe project is being developed with promise regarding common amenities and facilities such as (i) temple, (ii) indoor games and shuttle court, (iii) fully equipped gym (iv) swimming pool etc. but the approved plan of the annexe project does not show or indicate about those facilities, which implies that the respondent is intending to share the common amenities and facilities of the original project. Further, on the southern side of the original project a portion of

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the compound wall, near the temple, of the original project was demolished by the promoter without any intimation or sanction from the original owners, in order to pave way to share the above said common amenities and facilities with annexe owners. It amounts to breach of construction agreement, sale deed and other agreements entered into between the complainant and respondent. Hence the complainant was constrained to send a legal notice on 23.1.2019 to the promoter calling upon the promoter to comply with the terms of the agreement strictly. The promoter received the said notice and accelerated the demolition of the compound wall demarketing the original project with annexed projects. Hence the complainant came forward with the complaint before the Regulatory Authority for the relief of restraining the promoter from marketing the common amenities and facilities of the original project with the annexed projects, and also sought for the relief of restraining the promoter from damaging the southern side compound wall of the original project. After contest the Learned Authority had directed the promoter to file an affidavit regarding the common amenities proposed to be provided by him in the annexed projects. To that effect the promoter filed detailed affidavit. Recording the undertaking of the promoter the authority directs that the promoter shall neither market nor utilize the common amenities and facilities of Ananya's Nana Nani Homes Phase III project with any other real estate project in general and phase III Annexe I and phase III Annexe II projects in particular and also direct the promoter to obtain plan approval for common amenities in annexe II. Regarding compound wall the

Learned Authority has ordered that the compound wall is a common protection facility of the phase III project, which has been completed prior to the RERA Act came into force, the complainant is at liberty to seek appropriate civil remedy and accordingly disposed of the compliant. Aggrieved upon that the complainant preferred appeal in A.No.38/2020 and the promoter preferred separate appeal in A.No.63/2020.

3. The complainant preferred appeal in A.No.38/2020 on the grounds that the promoter violated the Act when it marketed the amenities and facilities of original project to the buyers of Annexe I and Annexe II project. The promoter has violated the provisions of RERA Act Section 3, Section 3 and Rule 4(2), Section 4(2)(b) Section 11(2) Section 12, Section 14, Section 17 and Rule 10. Further would submit that the impleading petitioners (Respondents 2 to 92) have no locus standi on the matters in the issue in the proceedings which relate to the usurpation of the vested interest of the complainant. The impleading petitioners (Respondents 2 to 92) have no right to deal with, destroy or consent to the destruction of, or create interest in favour of third parties in the common amenities and facilities of original project in which they only have a shared co existing interest together with that of the complainant and other 288 owners of the original project. The complainant sought the Tribunal to see through the sham and mendacity of the promoter and protect the interest of the ordinary buyers like the complainant, further contended the authority has failed to see that the admission is the best piece of evidence and the

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integration was categorically admitted by the impleading petitioners. In addition to the above said grounds the Learned Senior counsel has elaborately put forth his arguments. First of all, the Learned counsel has narrated the invasion of the original project by the annexe project as "the original project is sandwiched between the two new real estate projects, all three projects are located directly facing the main road, having access to the main road and their ingress and egress is from the same main road".

4. The Learned senior counsel for the complainant would submit that regarding TNRERA jurisdiction it is to be determined by whether the substance of the complaint falls within the Act and Rules i.e., whether there has been a violation of the provisions of the Act and Rules, and not by whether a particular project is registered under the Act or not. For which preamble of the Act has to be looked into. The purpose of the Act is to protect the interest of all the consumers in the Real Estate Sector and to establish expedited dispute resolution mechanism for the whole real estate segment. Thus the Act was promulgated to protect the entire fraternity of consumers of the real estate without any restriction or discrimination, irrespective of whether the project was registered under section 3 or not. Further the scheme of the Act and the scope of its application as intended by legislature may be determined by examining the definition of the key words namely allottee, project, promoter and real estate project. None of the above defined with reference to or registration under the Act. Further the definition of "aggrieved person" in Section 31 of the Act neither the

party making the complaint nor the subject matter of the complaint were likewise constrained by reference to registration of any project. From the above said definitions it is clear, plain and unambiguous that the legislators intended that the protections offered by the Act were not limited only to project registered under Section 3 of the Act but that they protected a wider circle. Further the language of Section 71 which expressly states that even matters pertaining to compensation under section 12, 14, 18 and 19 pending in consumer dispute redress forums, on or before the commencement of the Act may be withdrawn and filed before the Adjudicating Officer of the Act which clearly shows that the Adjudicating powers of TNRERA and of the Adjudicating Officer was never intended to be confined only to the real estate projects that are registered under section 3 but was intended always to extend to all real estate projects. The provision permitting transfer of cases instituted even before the Act came into force in the name fora, evidences the intention of the legislature to bring projects that have not been registered under the Act, within the Ambit of the Act. Further provisions of 31 and 35 of the Act are deliberately not restricted to projects registered under the Act. In support of this argument, the Learned counsel has relied (*2003) 6 SCC page 516 Union of India Vs Rajiv Kumar It is well settled principle in law that a court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statue is an edict of the legislature. The language employed in a statue or any statutory provision is the determinating factor of legislative intend of policy makers.*

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5. Further would submit that the language of the statue itself is abundantly clear as to the intention of the legislature. The legislators could have easily stated that Section 31, 34, 35, 37 and 39 applied only to registered projects, if that had been their intend, since they have not chosen to do so, it is evident that the Act is applicable to all promoters, allottees and agents. The requirement for registration is only as an administrative/ regulatory frame work and the substantive remedies available under the Act are not restricted only to registered projects.

6. Further would submit that the language of the bill may be referred in order to ascertain such legislative intention. The extent to which the objects and reasons of a particular enactment can be relied upon was elucidated by the Hon'ble Supreme Court in *State Bank's Staff Union (Madras Circle) Vs Union of India (2005) 7 SCC 584 at para 12 :*

> ***"12. It is a cordinal rule of interpretation that the objects and reasons of a statue are to be looked into as an extrinsic aid to find out the legislative intend only when the meaning of the statue by its ordinary language is obscure or ambiguous."***

7. From a perusal of the statement of objects and reasons as stipulated in the bill it is evident that a) the real estate sector has grown significantly in recent years but has been largely unregulated with absence of professionalism and standardization and lack of adequate consumer protection. b) Consumer Protection Act 1986 is only curative and is not adequate to address all the consent of buyers and promoters in that sector.

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c) the proposed bill provides for the establishment of real estate regulatory authority, real estate appellate tribunal. d) the proposed bill will ensure great accountability towards consumers and significantly reduce frauds and delays and also the current high transaction cost. It is very clear that there is no reference to suggest that the ambit of the new legislation is restricted to registered projects only.

8. Further would submit that Section 79 of the Act goes as far as to say that no civil court shall have jurisdiction to entertain any suit or proceedings in which TNRERA or Adjudicating Authority or Appellate Tribunal is empowered by or under this rule. Section 79 does not limit the power to adjudicate to RERA registered projects only.

9. Further would submit that while the Act does not have a retrospective effect the jurisdiction of TNRERA is not limited only to RERA registered projects as suggested by the respondent.

10. Further would submit that in fact the promoter has himself admitted on numerous occasions that the common facilities and amenities of the original project belonged exclusive to the owners of the original project was meant for their use only. Contrary to the evidence placed by the complainant the promoter also stated that it did not intend to integrated nor as it integrated the common facilities and amenities of the original project. However, in reality the promoter continues to represent

the common facilities and amenities of the original project as if it were to be used to be benefit of the annexed projects. In this regard the complainant has relied (2005) 5 SCC 784 *"The effect of admission is that it shifts the onus on to the person admitting the fact on principle that what a party himself admits to be true may reasonably presumed to be so and until the presumption is rebutted the fact admitted must be taken to be established"*

11. Further would submit that the impleading petitioners falsely assert that they speak for the larger interest the truth is that they are in the minority and a large number of these 92 impleading petitioners are either themselves buyers or have close relatives who are buyers in Annexe I project and Annexe II project and support the integration in preservation of their own self interest. Further stated that even if all the owners in original project had consented to integration such would neither be binding on the complainant nor would the complainant's right have been prejudiced in contravention of the Rule 7 of the building Rules. Thus seen from any angle neither the promoter nor the impleading petitioners have right to touch any compound wall of the original project or share the common amenities and facilities of the original project with third parties. The TNRERA failed to exercise judicial function by adjudicating the matter based on the pleadings and documents furnished and erred in disposing the complaint of the appellant based on the undertaking of the respondent. The TNRERA has erroneously relied on the affidavit of two persons alleged

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to be filed on behalf of all the co owners of the original project when admittedly the said deponents neither furnished the authority before the court nor have the proof that the co owners of the original project have authorized to file such affidavit. Therefore, prayed that appeal in A.No.38/2020 has to be allowed and A.No.63/2020 has to be dismissed.

12. On the side of the respondent came forward with the A.No.63/2020 on the following grounds:

The RERA Act is only prospective in nature and therefore any complaint that would lie on and from a project which is already completed before the Act came into force is not maintainable.

The complainant has no locus standi to file a complaint under section 31 of the Act.

Section 31 r/w 12 and 14 (1) of the Act entitles only those allottees of the proposed project falling under the purview of RERA to file a complaint before the Authority on false and incorrect statement in advertisements including the present allegation of marketing of common amenities which do not find place in the approved DTCP plan.

To maintain a complaint under Section 31 of the Act two essential requirements namely "aggrieved" and "complaint should relate to violation and contravention provisions of the Act or Rules and Regulations". The word aggrieved in Section 31 of the Act should be applied prospectively and should construe to mean that the term aggrieved refers only to persons who have purchased properties in the RERA registered projects and in projects post coming into force of RERA Act.

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Under Section 3 of the Act each of such phases should be considered as an independent project under the Act and therefore the subsequent development of Annexe II project which is registered under RERA would not in any way make the original project come within the ambit of RERA.

Every statue is prima facie prospective unless it has been given a retrospective operation by either stating expressly or by necessary implication in the said statue which is followed from the legal maxim " Nova constitution futuris forman imponere debet non praeteritis" i.e. a new law on to regulate what is to follow not the past.

The complainant without any proof stated allegations about the sharing of common amenities of original project with annexe projects. Under Section 31 if the person has truly and directly been aggrieved by the activity of the promoter of the proposed project or a project falling with the purview of the Act which is in contravention of the Act alone entitled to make a complaint.

It is crystal clear that the provisions of the Act especially Section 3 and 14 only to bring within its ambit all projects which are proposed and on-going, provided the same are not registered with the competent authority on the date of commencement of the Act as such the RERA Act is only prospective in nature. The provisions of the RERA cannot be applied retrospectively particularly in view of the various penal provisions the Act is appended with and doing so would run totally contrary to Article 20 and 21 of the Constitution of India. A liberal interpretation of provisions of the Act particularly Section 31 of the Act, would lead to a chaotic situation, as

permitting purchasers of properties in projects developed prior to coming into force of the Act would amount to opening of a pandaro box and the same would run totally contrary to the legislative intent in enacting the RERA Act.

The complainant purchased a house which has been completed and handed over in 2015 itself prior to the Act coming into force. The Authority has absolutely no legal or factual justification in directing the promoter to obtain plan approval for common amenities in annexed project. In view of the fact that the very complaint filed by the complainant was not maintainable.

The annexe projects I and II itself contains all amenities and facilities. If any amenities or facilities as promised if not provided then it is only the allottees of the said project who shall be entitled to file the complaint and not by this complainant.

The demolition of compound wall of the original project has neither affected the complainant nor has affected any of the residents of the original project including the impleading parties and the same was done only at the suggestion and request of majority of the residents of the original project for easy delivery of services and for easy access to the entry and exit gates of the annexe projects as the original project has only one entry/exit gate which was inadequate for them and the main objective behind all the Nana Nani projects being to provide high quality care and service to senior citizens.

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13. The Learned Regulatory Authority failed to consider the above stated points and erroneously directed the promoter to obtain plan approval for common amenities and facilities in Annexe II project.

14. The learned senior counsel for the promoter mainly concentrated in the maintainability of the complaint. The learned senior counsel vehemently put forth his arguments on the line of constitutional validity of amendments to the Acts, and implementation of the same for the existing laws and in support of his arguments the Learned counsel has relied regarding Article 21 AIR 1977 SC 2091 1988 LW (Crl) 326, 2002 LW (Crl) 274, 2017-2-LW (Crl) 252. In the first judgment of the Apex Court it was held that "amendment was made after proceedings were started against accused hence accused entitled for protection under Article 20(1)". In this case the complainant purchased the villa property from the promoter's project which was completed and handed over before the RERA Act came into force hence the RERA Act has no effect regarding the project of the complainant. Therefore the complaint is not maintainable.

AIR 1977 SC 2091

State of Maharashtra Vs Kaliar Kovil Subramaniam Ramasamy

It was held that recovery of disproportionate property from disclosed source of income was made offence subsequently by an amendment after proceedings were initiated against respondent. Clause (e) in Section 5 (1) was inserted by amendment after proceedings were started against accused. The apex court held that accused entitled for protection under article 20 (1) and not guilty for said offence.

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The next submission with regard to that the RERA Act has no retrospective effect. In support of his argument the learned senior counsel has relied Neelkamal Realtors case which is as follows:

2018 1 ABR 558
Neelkamal Realtors Suburban Pvt. Ltd. & Ors
Vs
Union of India & Ors

86. On behalf of the petitioners it was submitted that registration of ongoing project under RERA would be contrary to the contractual rights established between the promoter and allottee under the agreement for sale executed prior to registration under RERA. In that sense, the provisions have retrospective or retroactive application. After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature. What the provisions envisage is that a promoter of a project which is not complete / sans completion certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed. From the scheme of RERA and the subject case laws cited above, we do not find that first proviso to Section 3(1) is violative of Article 14 or Article 19(1)(g) of the Constitution of India.

15. The case of the impleaded parties before the Regulatory Authority by way of written submission filed by the counsel for them. The impleaded parties/Respondents 2 to 92 out of which those who appeared through counsel had stated that the complainant has purchased only 1500 sq. ft of land on which villa no.13 is constructed. The complaint has only license to use only the common areas and facilities in the light of the undertaking given by the promoter that providing common facilities in annexe 1 and 2 the complaint can be closed recording the said undertaking. As regard the demolition of the compound wall it would not

affect the exclusivity of phase III but it only give the residents to have access to the annexe area and vice versa without having to exit to the main road and then visiting the residents in the annexe area who may be their relation/friends. It would also give larger area for the service provider to utilize the access in an emergency as the residents are aged. Therefore the impleaded parties also pray that the complaint given by one person not being in the larger interest of the entire community is liable to be rejected. During the course of arguments in these appeals the learned counsel for the impleaded parties adopted the arguments of the promoter.

16. From the above said arguments of both sides the following points were raised for consideration:

1. Whether the compliant of the complainant is maintainable?
2. Whether the A.No.38/2020 is deserves to be allowed or not?
3. Whether the A.No.63/2020 is deserves to be allowed or not?

Point No.1:

17. The complainant purchased a villa from the promoter namely 'Ananya's Nana Nani Homes Phase III' (original project) and possession was also handed over in the year 2015. The promoter constructed Annexe I and Annexe II projects on the north and south of the original project are all admitted facts.

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18. According to the complainant the promoter has not obtained any building plan approval for the amenities and facilities separately for the Annexe I and Annexe II projects and attempted to integrate the amenities and facilities of the original project with the Annexe projects. As a first step the promoter demolished the portion of the compound wall near the temple for integration. The above said fact was denied by the promoter. This is the disputed facts. Hence the complainant came forward with a complaint before the Regulatory Authority for redressal of her grievance. The promoter questioned the locus standi of the complaint by the complainant. After enquiry the learned Regulatory Authority accepted the version of the promoter that there is no chance for integration of amenities and facilities and obtained undertaking from the promoter and directed the complainant to approach the civil court for the relief of demolition of compound wall since it will not fall under the purview of RERA Act. Aggrieved upon that, both the complainant and the promoter were preferred these separate appeals.

19. The learned senior counsel for the complainant would submit that the compliant is maintainable on the basis of the preamble of the RERA Act and Section 71 and 31 of the RERA Act. The learned senior counsel for the promoter would submit that before the RERA Act came into force in the year 2016 the complainant purchased the villa in the year 2014 and possession was handed over in the year 2015 hence the complainant cannot invoke section 31 of RERA Act to maintain the complaint, therefore

the complaint is not maintainable. How far the above said arguments are tenable has to be analyzed. Before going to discuss the merits of the case it is relevant to extract the preamble of the RERA Act and background of the enactment of the RERA Act and relevant provisions of the RERA Act.

DRAFT REPORT ON THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013 Background

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of 9 industry. Therefore, the need for regulating the sector has been emphasised in various forums. Though availability of loan both through private and public banks have become easier, the high rate of interest and the higher EMI has posed additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. At this juncture the need for the Real Estate (Regulation and Development) Bill is felt badly for establishing an oversight mechanism to enforce accountability of the Real Estate Sector and providing adjudication machinery for speedy dispute redressal.

Section 71 : Power to adjudicate.

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is

pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act

Section 79: Bar of jurisdiction.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 37 : Powers of Authority to issue directions.

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

38. Powers of Authority

(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that— (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.

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Section 12: Obligations of promoter regarding veracity of the advertisement or prospectus.

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Section 14: Adherence to sanctioned plans and project specifications by the promoter

(1) ...

(2) ...

(i) ....

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

Section 18: Return of amount and compensation

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount

received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

20. Nowadays the construction industry has grown significantly. In olden days the construction of group developments is unknown. So there is no need or necessity for the growth of that industry. But now, due to rapid growth of population the necessity arises for the high demand for accommodation. This is the cause for the rapid growth of construction industry but there is no specific law to regulate the construction industry. Taking advantage of the fact it leads to absence of professionalism, standardization and lack of adequate consumer protection. Consequently the consumers are unable to procure complete information or enforce accountability against the builders and developers in the absence of an effective mechanism in place. At this juncture, the need for the real estate regulation and development bill is felt badly for establishing an oversight mechanism to enforce accountability of the real estate sector and providing adjudication machinery for speedy dispute redressal. Even though the draft

bill was drafted in the year 2009 it reached the parliament select committee in the year 2014 and finally the Act was passed in the year 2016. The preamble of the Real Estate (Regulation and Development) Act 2016 runs as follows:

> ***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.***

The ultimate aim of this Act is to ensure sale of plot, apartment or building or sale of real estate project in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector. While putting it in nutshell the sale of real estate is an efficient and transparent manner by protecting the interest of the consumers. There is no room for any secrecy or concealment in the dealing of the real estate sale. On the basis of the above said salient features the real estate Act was enacted. Now let us analyze the case in hand on the above said principle.

21. According to the complainant she was impressed by the features and facilities provided in the prospectus and the marketing materials and amenities and facilities 20 in numbers and based on the above said

promises, assurances and features of the original project purchased Type A villa, villa No.13 in the year 2015. On the southern and northern side of the original project the promoter constructed annexe projects. Out of the two the project was registered under RERA Annexe II only. From the RERA website the complainant came to know that the common amenities and facilities namely temple, indoor games and shuttle court, gym, swimming pool etc. the promoter has not obtained any approval which implies that the promoter is intending to share the common amenities and facilities of the original project with the prospective purchasers of the annexe project. In this regard by admitting the intention with regard to common amenities and facilities, the Chairman, Managing Director of the promoter company in his letter dated 01.03.2017 has categorically stated as follows: (page No.92 of the Typed set produced by the complainant before the Regulatory Authority) (xerox copy of original letter available in page No.479 of typed set of the complainant/appellant)

> ***"We request our residents to happily enjoy the facilities, as all our team works to create a safe, happy, healthy, clean atmosphere in our homes for all the residents to live happily and the same is ensured from time to time.***
>
> ***Regarding the integration of phase III, we will create the amenities and facilities needed for them. We have few new amenities in our phase III annexure during integration and our phase III residence can use it too. Technically the plan and emerging facilities will act as back up and support for the existing facilities***
>
> ***We Ananya Shelters always assure the residence the best of our quality services and once again I wish to emphasize that the company has created and maintaining the beautiful place for the enjoyment and happiness of residents in all the years to come.***
>
> ***Warm Regards.***

Sd/-
Mr.A.Yuvaraj, Chairman & Managing Director"

22. On the side of the complainant in this appeal they have produced typed set of documents in which page No.261 and 491 are the copy of approved building plans. In page No.261 building plan related to the main project in the area statement it has been specifically mentioned as club house. Total built up area mentioned as 1699.28 sq. m. number of car parking requires 17 cars number of parking provided 12 cars. But in page No.491 building plan related to the annexe project, the area statement number of dwelling mentioned as 66 numbers in which there is no provision for club house or common facilities area. Hence apprehending the integration the complainant questioned the same and sent a legal notice for which the promoter replied that there is no such integration. Hence the complainant preferred a complaint before the authority. On the side of the complainant in the typed set produced before the Authority at page No. 93 there was an email from one Vijayan to the complainant in which the said Vijayan stated that *"He was an ex-resident and joint owner of flat F-304 in Nana Nani Phase III". In the above said mail he has introduced himself and narrated about the attitude of the promoter and what is the necessity to leave the flat are as follows:*

> ***"I introduce myself as Vijayan, once the resident, joint owner of Flat F 304 in Nana Nani Phase 3.***
>
> ***I understand you have lodged a complaint with RERA regarding Ananya's illegal/unlawful proposal to share the facilities in Phase 3 project with the ongoing Annex 1 & 2 projects.***

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I further understand that Ananyas is vehemently claiming that there was never any Owners Association formed in Phase 3 and they were never obstructive to the concept of Association.

As a past owner of F-304 and past Secretary of the Association, I hereby confirm that their claim about absence of Association is absolutely false. In fact, after registering the Association they adopted strong arm tactics on the office bearers and forced us to de-register the Association soon after its formation.

As I got disgraced in the hands of this builder I decided to quit that community. I managed to sell the property in March 18 and moved out.

Prior to us, Mrs. Ramadevi (President of Association) and Mr. Raghunathan decided that they could not lead a life losing self respect and dignity at NNP 3 and hence sold their villa A 36 in Jan 2018 and moved out.

23. The Learned counsel for the complainant would submit that regarding integration of common amenities are concerned the letter of the promoter is a clinching evidence to prove the case of the complainant and relied (2005) 5 SCC 784 as stated supra. So the admitted fact is presumed to be true until the presumption is rebutted, the fact admitted must be taken to be established. Now the burden is shifted to the promoter to prove that there is no such integration. But on the side of the promoter no such evidence was produced. Furthermore in the building plan also does not disclose any provision for common amenities etc. so on the basis of the above referred evidences the complainant prima facie has proved the complaint.

24. The complainant purchased the property from the promoter and took possession and also executed mutual agreement for maintenance. In

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such a situation the promoter himself is developing apartments on the north and south of the original project without following the provisions of the RERA Act. Hence the complainant approached the Regulatory Authority, The Regulatory Authority directed the complainant to approach the civil court. The remedies under civil court are also barred by RERA Act under Section 79. In such situation whether this complaint is maintainable before Regulatory Authority has to be analyzed.

25. In Section 79 it has been specifically mentioned as no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter with the Authority or the Adjudicating Officer or the Appellate Tribunal

is empowered by
or
under this Act to determine

The legislature intended to bar the civil court jurisdiction in respect of the matter empowered to be dealt with by the Regulatory Authority or Adjudicating Officer or Appellate Tribunal. The word 'EMPOWERED BY' is used. Next to that word 'OR' is used. If the sentence is used without the words 'EMPOWERED BY OR' we can easily construe that it is only under the Real Estate Act. As per the provision 38(1)(2) it may only refer to the actual projects which are only registered projects whereas the provisions under 38(3) a & b deals with all projects which is extracted below:

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

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.

26. As per Section 38(3)(a & b) the Authority has got power to deal with an issue raised relating to agreement, action, omission. In this case the action and omission of the promoter is raised here, hence this complaint. When there is no remedy available through the civil court the only way open to the complainant is the Regulatory Authority. Furthermore, the promoter, who has not handed over the entire responsibility and has not run away from the project and still he is holding the project under his control for which he has obtained a mutual agreement from the complainant and also not handed over the corpus fund maintenance etc. to the allottees. On that ground also the complaint is maintainable. Now let us discuss the next ground raised by the promoter as 'for completed project the RERA Act is not applicable on the ground that there is no retrospective effect.

27. The next relevant provision of this Act for the plea of the promoter namely retrospective effect is Section 71. Section 71 proviso clause

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National

Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act

As per the above proviso clause Section 12, 14, 18 are exclusively triable by the Adjudicating Officer under RERA Act. Before the Act came into force any complaint regarding the matters covered under Section 12 namely Obligations of promoter regarding veracity of the advertisement or prospectus and under Section 14 namely Adherence to sanctioned plans and project specifications by the promoter and under Section 18 namely Return of amount and compensation, is pending before the Consumer Dispute Redressal Forum, Redressal Commission or National Commission before the commencement of the Real Estate Act, may withdraw the compliant pending before it and file an application before the Adjudicating officer under this Act. Under the consumer protection Act they have filed the complaint on the ground of deficiency of service. For which they sought compensation or direction to hand over possession. If really the legislature was not intended to give effect for continuation of the same claim before the RERA Act there is no need or necessity for the provision of Section 71. So the real intention behind the enactment of Section 71 is to protect the consumer's in the real estate sector. The preamble of the Act and the background of the Real Estate bill also insisted the same. Hence the plea of the promoter that the RERA Act is applicable only to the registered project only is not sustainable.

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28. The next defense put forth by the promoter side is that the complainant is not an aggrieved person and she is not an allottee for the existing project and she has no locus standi to file the complaint under Section 31. Now let us see who is entitled to give complaint under RERA Act. In this Act in Section 7 and Section 31 the word compliant is used.

Section 7: Revocation of Registration

(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

Section 31: Filing of complaints with the Authority or the Adjudicating Officer

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

29. As per section 7 if the promoter makes a default in doing anything required by or under this Act, the promoter violates any of the terms or conditions of the approval given by the competent authority, the promoter is involved in any kind of unfair practice or irregularities, the promoter represents that the has approval or affiliation which such promoter does not have, makes a false or misleading representation concerning the services, the authority may on receipt of a complaint or suo moto revoke the registration. It is pertinent to point out here in our earlier order in A.No.45/2020 we have categorically held

> ***"16) In this case the specific allegation of the respondent is that the appellant misrepresented that the RERA Registration No.40/2018 obtained for Thalambur project I is used for Thalambur phase III and properties in Medavakkam and Perumbakkam. The above misrepresentation is the violation under Section 7(1)(A)(ii) and (iii), since the respondent being a proposed purchaser who verified the website of the appellant with a view to buy the property and found the misrepresentation and has made the complaint. "***

30. As per Section 31 any aggrieved person may file a complaint for any violation or contravention of the provisions of this Act against the promoter.

31. In the above said two provisions under Section 7 the word used as on receipt of complaint but it has not specifically stated who has to give complaint. If there is any violation of the Act, Rules and Regulations complaint can be given. In Section 31 any aggrieved person can give complaint. According to the promoter the complainant is not an aggrieved

person since she has obtained possession before the Act came into force for the original project and she is not the allottee for the annexe project. On the side of the complainant the learned counsel would submit that the complainant is aggrieved by the Act of omission and commission of the promoter and still the promoter having control over the common amenities hence the complainant is absolutely entitled to prefer a complaint as an aggrieved person. On the side of the promoter the only defense is that a liberal interpretations of Section 31 will lead to a chaotic situation as permitting purchasers of properties developed prior to coming into force of the Act would amount to opening up of a Pandora box and the same would run totally contrary to the legislative indent in enacting the RERA Act. The promoter has raised ground No.3,4,5,10,12,13,14 with regard to Section 31 of the Act. How far the defense of the promoter is sustainable has to be analyzed. If really the promoter after completion of the project and after handing over the possession he has left the project the defence of the promoter may be at best as an arguable case. Now here the promoter has entered into an agreement with the complainant namely mutual agreement (page No.179 of the typed set filed before the RERA) clauses No.14 and 15 which runs as follows:

> ***" All maintenance pertaining to the gated community Ananya's Nana Nani Homes Phase III at Dhaliyur will be only undertaken by M/s. Ananya Shelters (P) Ltd.,***
>
> ***Ownership and the Management of the common area along with the property of Ananya's Nana Nani Homes Phase III, will rest with the M/s.Ananya Shelters (P) Ltd."***

32. The above said two clauses clearly establishes that still the promoter is continuing the control over the original project and the promoter has not handed over the maintenance and essential services to the Association of allottees. In such circumstances the promoter is absolutely responsible for any contraventions of the provisions of the Act, Rules and Regulations as per Section 11 (4) (d) which runs as follows:

> ***11. Functions and duties of promoter***
> ***(4) The promoter shall—***
> ***(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;***

As per the above said provision the promoter is responsible and it is his duty to provide essential services till the Association of allottees taking over the maintenance. During that period if there is any contravention of the Act certainly the promoter is liable. In Section 11(d) it has not been specifically stated that if the possession has been handed over the promoter is not liable. In this case even though possession of the villa is handed over still the amenities and maintenance and essential services are maintained by the promoter alone. The privity of contract between the complainant and promoter as allottee and promoter is not detached. Furthermore the promoter has violated the Section 7 (1) (b), 7(1) (A) (ii & iii) so the complainant is absolutely entitled to make a complaint with regard to the registered project of the promoter namely Annexe II project.

33. The last defence of the promoter is that "The vision of the promoter is to act as a 'care taker' of the Retired/Senior citizens. The demolitions of the compound wall of the original project would not in any manner affect the complainant nor any of the residents as this would only help in achieving the very purpose behind the project in delivering services to the elderly residents within a very short span of time. Further according to the promoter most of the residents of original projects have suggested demolishing the compound wall for easy delivery of services for having wider access for them and for using the entry gate exit gates of the annex projects as well as the original phase III project has only a entry/exit gate and same was proving to be inadequate for them.

34. The promoter further would submit that any attempt to apply the provisions of the RERA, as done in the case of other commercial Real Estate Projects, in the present retirement communities would have adverse effect on the interests of the residents.

35. The above statement was filed by the counsel for the promoter as written submission on 25.07.2019 before the Regulatory Authority. During the course of argument before this Tribunal in the video conferencing the Learned Senior counsel also fairly conceded that the compound wall of the original project was demolished by the promoter. According to the promoter demolishing the compound wall was for the benefit of residents/senior citizens. According to the complainant it is for

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the purpose of integration of amenities due to the original project with the annex projects, which of this statement is true is to be analyzed.

36. The letter of the Chairman and Managing Director of the promoter company Mr.A.Yuvaraj, dated 01.03.2017 will reflect the real intention of the promoter which runs as follows:

> ***"Regarding the integration of Phase III, we will create the amenities and facilities needed for them. We have few new amenities in our phase III annexe during integration and over phase III residents can use it too. Technically the plan and emerging facilities will act as back up and support for the existing facilities"***

Against the real intention of the promoter the written submission submitted by his counsel as if the demolition was suggested by most of the residents for easy delivery of services.

37. The second part of the above written submission regarding "any attempt to apply RERA, as done in the case of other commercial Real Estate Projects, in the present retirement communities would have adverse effect". How far this statement is true is to be analyzed. Let us see the brochure of the promoter at page No.281 of the Typed set of the complainant before the Regulatory Authority, "Ananya's Nana Nani Phase III luxury villa and apartments for senior citizens in Dhaliyur.

> ***Note : The promoter(s) reserve the rights to add/delete any facility, specification or amenities at the time of execution of the agreement of sale of the villa. This brochure does not form any***

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inclusion in the legal documents and purely for information only. (At Page 418 of the typed set of complainant before Authority)

38. The mutual agreement obtained by the promoter with the allottee like complainant and the specific clauses as stated in para 31 of this order. The conjoint reading of both will clearly reflect the real motive behind that. The qualification for purchasing and to become a tenant the age fixed by the promoter is more than 50 years as senior citizens. After the execution of sale deed for consideration the promoter compelled the purchaser to execute the mutual agreement and invaded into the property rights of the purchaser by using the words luxury, care, protection for senior citizen **AS A SHIELD**. That is why the promoter went to the extent of saying that "any attempt to apply RERA provisions would adverse effect on the interests of the residents". After execution of mutual agreement the purchaser lost every right in his property. If the promoter advertised with clear disclosure regarding mutual agreement, surrendering of rights etc. we can easily infer that everything is not done for the benefit of purchasers. As per the RERA Act "Transparency in Real Estate sale" is the main motive. But as far as this promoter is concerned there is no such transparency at all.

39. In the brochure of the annex project also the same amenities and facilities are mentioned in the brochure. But in the approved plan no such specific area is provided for such amenities as stated in the original project approved plan. Hence the complainant questioned the same by way of complaint before the Authority. The authority has directed the promoter to

show to the authority with respect to the common amenities to be provided to phase III. For which a written submission is submitted by the promoter's side along with brochure. As per the building approval for 66 apartments there is no such area statement is given with regard to club House provision in the approved plan. Merely showing one of the apartment No.267 as club house in yellow colour shade alone is not sufficient and it must be approved by the competent authority. No such approved building plan was produced by the promoter. Hence it shows his real intention of integration of projects for which above compound wall of original project was demolished in the shield of 'care of senior citizens'.

40. It is pertinent to point out here that the respondent had given a solemn undertaking before the authority that even during the course of the trial on 08.12.2020 that they will not demolish the compound wall but contrary to the undertaking as fairly conceded and accepted by the Learned Senior counsel of the appellant in A.No.63/2020 during the arguments before the Tribunal the promoters have completely demolished the said wall. After the undertaking if this is the attitude of the promoter can we accept the arguments of the learned senior counsel that after all we have made it clear and stated before the court that the new allottees will not utilize the amenities as provided in phase III for the new proposed annexe project. We are not satisfied with this argument as the person who has clearly violated the court undertakings cannot be given any liberty. At this point of time the Tribunal has to definitely give an order for restoration

for compound wall which has been demolished even as per his own admission. Their intention was adamantly, vehemently, forcibly, completely to demolish the compound wall. Hence it has to be restored within a period of 15 days from the date of receipt of copy of this order at the cost of the promoter. We also make it very clear that even as per the undertaking of the senior counsel before the Appellate Tribunal that they will not allow the annexe allottee people to utilize the amenities and facilities which has been provided to the original project by them cannot be accepted as we said earlier undertaking was not adhered to we make it clear that they will not allow facilities and amenities duly given for original project to be utilized or enjoyed by anyone other than the residents/owners of the original project.

41. Thus in any angle the complainant is entitled to maintain this complaint and the defences put forth by the promoter are not sustainable. The point No.1 is answered accordingly.

Point Nos.2 and 3:

42. In the point No.1 it was decided that the compliant of the complainant is maintainable under Section 31 and Section 7 of the RERA Act. Therefore this Tribunal comes to a conclusion that A.No.38/2020 deserves to be allowed and A.No.63/2020 is to be dismissed. The point Nos.2 and 3 are answered accordingly.

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A.No.38/2020

43. In the result, A.No.38/2020 is allowed with costs and the order of the Regulatory Authority in C.No.214/2019 dated 17.10.2019 is set aside and by allowing the complaint and directed:

a) the promoter is restrained from marketing the common amenities and facilities forming part of the development in survey Nos.(i) 848/1 measuring 1.21. Acres, (ii) 849 measuring 4.20 Acres (iii) 850/2 measuring 3.25 Acres and (iv) 853/2 measuring 0.55 Acres situated at Kalakinaickenpalayam, Perur Taluk, within the sub registration district of Thondamuthur and registration district of Coimbatore, with any third parties or merge with any Real Estate Project and

b) the promoter is restrained from damaging the walls being part of the development in Survey Nos (i) 848/1 measuring 1.21. Acres, (ii) 849 measuring 4.20 Acres (iii) 850/2 measuring 3.25 Acres and (iv) 853/2 measuring 0.55 Acres situated at Kalakinaickenpalayam, Perur Taluk, within the sub registration district of Thondamuthur and registration district of Coimbatore, as per the approved plan of the said project including the compound wall demolished by the promoter pertaining the said original project and to restore the same to its original features. The respondent/builder is directed to restore the compound wall at his own costs within a period of 15 days from the date of receipt of the copy of this order.

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A.No.63/2020

44. In the result, A.No.63/2020 is dismissed with costs.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 11th Day of January, 2021.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

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