



KENGERI UPANAGARA, BENGALURU-560 060.

...RESPONDENTS

(BY SRI SIDHARTH BABU RAO, AGA FOR R1 AND R2 (MA NOT FILED), SRI M S NAGARAJ, ADVOCATE FOR R4, R3 - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R2/THE REGISTRAR OF CO-OPERATIVE SOCIETIES NOT TO REGISTER A CO-OPERATIVE SOCIETY TO MAINTAIN AND MANAGE THE RESIDENTIAL APARTMENT COMPLEX KNOWN AS THE DS-MAX STAR NEST, ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY THE COURT MADE THE FOLLOWING:

### ORDER

1. Heard the learned counsel appearing for the petitioners, learned Government Advocate appearing for the respondents No.1 and 2 and the learned counsel appearing for respondent No.4.
2. The petitioners are the owners of certain flats built in project known as "DS-Max Star Nest" (referred to as 'Property' for short), situated at Survey No.210/2, 210/3 and 210/4 in Kengeri village, Kengeri Hobli, Bengaluru South. The respondent No.4 is a Society proposed to be registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short



the 'Act of 1959'). The promoters of the said Society are the flat owners in the aforementioned Property.

3. The petition is filed for the following reliefs:-

- "I. Issue a writ of prohibition directing the **Respondent No.2**/The Registrar of Cooperative Societies not to register a Cooperative Society to maintain and manage the residential apartment complex known as the DS-Max Star Nest and;
- II. Quash the letter of permission dated 21/09/2023 bearing no.ARB-4/RGN/NO.PO.SHI/10/2023-24 issued by the Assistant Registrar of the Co-Operative Society to the Respondent no.4 to collect the share capital for the Respondent No.4 (**ANNEXURE-C**) and;
- III. Issue directions or order to the **Respondent No.3**/Builder to enable the formation of an Association under the Karnataka Apartment Ownership Act, 1972 as mentioned in the Sale Deed dated 16/08/2019 (**ANNEXURE-B**) and;
- IV. Grant such other reliefs that this Hon'ble court deems fit to grant in the circumstances of the case, to the petitioners, in the interest of justice."

4. As can be noticed from the submission made by the learned counsel for the petitioners as well as the learned counsel appearing for the proposed 4<sup>th</sup> respondent Society, the promoters of 4<sup>th</sup> respondent are intending to register a Co-operative Society under the provisions of the Act of 1959 to maintain and



manage the residential apartment complex namely "DS-Max Star Nest" referred to above. The permission is granted in this regard by the Registrar of Cooperative Societies vide permission dated 21.09.2023.

5. The petitioners are before this Court contending that the petitioners and some of the flat owners who are intending to register the 4<sup>th</sup> respondent Society having purchased the flats in the aforementioned Property are governed by the provisions of the Karnataka Apartment Ownership Act, 1972 (for short the 'Act of 1972'). It is the contention of the learned counsel for the petitioners that the persons who have purchased the residential flats as per the terms of the sale deed have bound themselves to form an association under the provisions of the Act of 1972. It is further contended that the promoters and the persons supporting them cannot form a Co-operative Society, having an object to maintain and manage the residential apartment under the Act of 1959.



6. Learned counsel for the petitioners to substantiate her contention has placed reliance on the judgments of the co-ordinate bench of this Court in writ petition Nos.34660/2017 and 35719-35724/2017 decided on 15<sup>th</sup> February, 2019, later confirmed by the division bench in writ appeal Nos.974/2019 and 1206-1211/2019. Referring to these judgments, it is submitted by the learned counsel for the petitioners that the persons having purchased the flats in a residential apartment are governed by the provisions of the Act of 1972 and those flat owners cannot form a housing Co-operative Society under the provisions of the Act of 1959 to manage and maintain the apartment.
7. The learned counsel for the petitioners would also refer to the judgment of the co-ordinate bench of this Court in ***Shantharam Prabhu and Others vs. Mr. K. Dayanand Rai and Others [C.R.P. Nos.96/2021 and 64/2021]*** to contend that the petitioners are entitled to register an Association



under the Act of 1972. It is her contention that in case the cooperative Society is registered and established under the Act of 1959, by the promoters of 4<sup>th</sup> respondent, the petitioners' right to establish an association under the Act of 1972 would be curtailed.

8. Learned counsel for the respondents would contend that the promoter is not cooperating with the members of the proposed 4<sup>th</sup> respondent Society who are 83 in number to form an association. It is also urged that there is a requirement under Section 5 of the Act of 1972 to submit a declaration before forming an association and on account of non-cooperation by the builder/owner, the 83 members of the proposed 4<sup>th</sup> respondent Society are deprived of their right to form an association. It is submitted that under these circumstances, there is an earnest effort to establish a housing cooperative Society under the Act of 1959 to manage and maintain the Property.



9. It is further submitted that the Act of 1959 does not contemplate any declaration to be submitted by the builder which is contemplated under the Act of 1972.
10. There is no representation for the 3<sup>rd</sup> respondent/builder.
11. This Court has considered the contentions raised at the bar.
12. Admittedly, the project referred to above is a residential housing project. There is no commercial unit in the said project. The sale deeds executed in favour of the purchasers of the flats would also indicate that the purchasers have undertaken to subject them to the provisions of the Act of 1972. In view of the law laid down by the coordinate Bench of this Court and upheld by the Division Bench, referred to supra, there is no difficulty in holding that the petitioners and members of the proposed respondent No.4 Society are entitled to have registration of an association under the Act of 1972, and there cannot be any association registered under the Act of 1959 to



form a society to manage and maintain the Property comprising only residential flats.

13. It is submitted at the bar that the sale deeds executed by the builder would also indicate that all the common areas are transferred in favour of the purchasers by the builder/owner while transferring flats. In case any flats are still retained by the builder/owner, the builder/owner is under obligation to cooperate with the purchasers of the flats to have an association under the Act of 1972.
14. It is also relevant to note that the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act of 1972 and the rules 1975, which is applicable only if the property is having both commercial and residential units provides for registration of an association. Since, the Property does not include the commercial unit, the said Act has no application. It is also relevant to note that the said Act provides for registration under the Act of 1959 and the Companies



Act, 1956. This position is not disputed. Since the said Act has no application, the registration under the Act of 1959 is not permissible.

15. Having gone through the aforementioned judgments, this Court is of the view that the petitioners are justified in raising the dispute contending that the 4<sup>th</sup> respondent Society cannot have a Society registered under the Act of 1959 for the purpose of maintaining and managing the Property in which the petitioners have purchased certain units. Submission is made at the bar that 83 members who are willing to be the members of proposed 4<sup>th</sup> respondent Society are also willing to form an association under the Act of 1972 by joining the petitioners. Hence, the direction be issued to the 3<sup>rd</sup> respondent builder/owner to cooperate in having the association of flat owners in the Property registered under the provisions of the Act of 1972.

16. Under these circumstances, the 3<sup>rd</sup> prayer is made praying for an appropriate direction against the 3<sup>rd</sup>





respondent builder to cooperate the petitioners in forming the association under the Act of 1972 has to be granted.

17. Since, the project does not involve commercial unit, the Registrar of Cooperative Societies could not have granted permission dated 18.10.2023 marked at Annexure-A. Accordingly, same is quashed.
18. Respondent No.2 is prohibited from registering the proposed respondent No.4 Society to manage and maintain the residential apartment complex known as "DS-Max Star Nest".
19. Direction is issued to the 3<sup>rd</sup> respondent builder to comply all the requirements under law and cooperate with the petitioners and members of the 4<sup>th</sup> respondent proposed Society to form an association under the Act of 1972 in the project known as "DS-Max Star Nest" referred to above.
20. The respondent No.3 shall cooperate in complying with the requirement of Section 5.



21. Learned counsel for the respondent No.4 would submit that they will take effective steps to maintain and manage the property till the association is registered under the Act of 1972. Some of the petitioners who are before the Court would also agree that they would cooperate in arriving at a solution till the registration is completed under the Act of 1972.
22. Accordingly, writ petition is disposed of.
23. In view of disposal of the writ petition, pending applications do not survive for consideration.

**Sd/-  
JUDGE**

CHS  
List No.: 1 Sl No.: 25