

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 8<sup>TH</sup> DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

**CRP NO.96 OF 2021 (SC)**

**C/W**

**CRP NO.64 OF 2021 (SC)**

**BETWEEN:**

1. SHANTHARAM PRABHU  
S/O LATE RAMDAS MADHAV PRABHU,  
AGED ABOUT 53 YEARS
2. VEENA SHANTHARAM  
W/O SHRI.SHANTHARAM PRABHU  
AGED ABOUT 53 YEARS

BOTH ARE R/AT: 'B' BLOCK  
APARTMENT NO.403  
MAURISHKA PARK  
OPPOSITE SHARADA VIDYALAYA  
KODIYALBAIL.  
MANGALURU-575003

... PETITIONERS  
(COMMON)

(BY SRI. ARAVIND BABU.J, ADVOCATE  
SRI. SURIYA NARAYNAN.G, ADVOCATE)

**AND:**

1. MR. K. DAYANAND RAI  
PRESIDENT  
MAURISHKA PARK APARTMENT  
OWNERS ASSOCIATION  
OPP. SHARADA VIDYALAYA  
KODIYALBAIL  
MANGALURU-575003
2. MRS. ANITHA PRABHU

VICE PRESIDENT  
MAURISHKA PARK APARTMENT  
OWNERS ASSOCIATION  
OPPOSITE SHARADA VIDYALAYA  
MANGALURU-575003

3. MR. DEVDAS S. HEGDE  
SECRETARY  
MAURISHKA PARK APARTMENT  
OWNERS ASSOCIATION  
OPPOSITE SHARADA VIDYALAYA  
MANGALURU-575003
4. MRS. APARNA P  
JOINT SECRETARY  
MAURISHKA PARK APARTMENT  
OWNERS ASSOCIATION  
OPPOSITE SHARADA VIDYALAYA  
MANGALURU-575003
5. MR. G.P. PADMANABHA SHETTY  
TREASURER  
MAURISHKA PARK APARTMENT  
OWNERS ASSOCIATION  
OPPOSITE SHARADA VIDYALAYA  
MANGALURU-575003
6. AMARNATH KUMAR SHETTY  
JOINT TREASURER  
MAURISHKA PARK APARTMENT  
OWNERS ASSOCIATION  
OPPOSITE SHARADA VIDYALAYA  
MANGALURU-575003

... RESPONDENTS  
(COMMON)

(BY SRI.VIJAYAKRISHNA BHAT.M, ADVOCATE)

IN CRP NO.96 OF 2021 IS FILED UNDER SECTION 18 OF THE KARNATAKA SMALL CAUSE COURT ACT, 1964 AGAINST THE ORDER DATED 04.04.2019 PASSED ON IN SC.NO.26/2019 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MANGALURU, D.K. DISMISSING THE IA NO.2 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC FOR RESTORE THE ELECTRICITY TO HIS SCHEDULE APARTMENT.

IN CRP NO.64 OF 2021 IS FILED UNDER SECTION 18 OF THE KARNATAKA SMALL CAUSE COURT ACT, 1964 AGAINST THE ORDER DATED 04.04.2019 PASSED ON IN SC.NO.26/2019 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MANGALURU, D.K. DISMISSING THE IA NO.3 FILED UNDER ORDER 7 RULE 11(A) AND (D) OF CPC FOR REJECTION OF PLANT.

THESE PETITIONS COMING ON FOR ADMISSION AND HAVING BEEN RESERVED FOR ORDERS ON 12.08.2021, THIS DAY, PRONOUNCED THE FOLLOWING:

**ORDER**

**CRP No.64/2021:**

1. The Plaintiffs are before this Court seeking to set aside the judgment and decree dated 04.04.2019 passed by II Additional Senior Civil Judge & CJM., Mangaluru in S.C.No.26/2019 inasmuch as the plaint in the said suit came to be rejected by allowing I.A.No.3 filed by the respondent therein.

**CRP No.96/2021:**

2. The Plaintiffs are before this Court seeking to set aside the order dated 04.04.2019 passed by the II Additional Senior Civil Judge & CJM., Mangaluru, D.K., in S.C.No.26/2019 dismissing I.A.No.2 filed by the Plaintiffs for restoration of electricity supply to the Plaintiff's Apartment.

**FACTS:**

3. The suit in S.C.No.26/2019 was filed before the Court of Small Causes, Mangalore under Section 26 read with Order VII Rule 1, 2 and 3 of CPC read with Section 13 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and transfer) Act, 1972 (hereinafter for brevity referred to as 'the KOFA'). In the said suit, the Plaintiffs had sought the following reliefs:

*"(a) pass a decree of mandatory injunction in favour of the Plaintiffs and against the Defendant, directing the Defendant, its agents, servants, employees to restore the electricity supply to the apartment No.403 mentioned in schedule:*

*(b) Pass any orders or orders which this Hon'ble Court may deem fit and proper in the facts and circumstances in favour of the Plaintiffs and against the Defendant."*

4. In the plaint, it was contended that

4.1. The Plaintiffs are the owners of the Apartment bearing No.403 of Maurishka Park "B" Condominium, having purchased the same by

virtue of the sale deed dated 24.10.2014 as document No.4554 in the office of the Sub-Registrar, Mangalore.

4.2. The Plaintiffs contended that they were regular and prompt in making payment of electricity bills and had never refused the payment of any amounts.

4.3. It is alleged that recently an association by the name 'Mourishka Park Apartment Owners Association' was formed illegally by few members of the condominium without following the requisite conditions mentioned in the Declaration and Deed of Apartment or mentioned in the Karnataka State Apartment Ownership Act, 1972 or any other law governing the same.

4.4. The Association was formed by a few of the owners, not by all the owners; it is not a registered association. The Plaintiffs are not

agreeable for the same or for certain persons being elected as President or Secretary, or Treasurer.

4.5. The said Association is not a legal entity; it is an illegal one and not binding on the plaintiffs. The Plaintiffs approached the trial Court, being aggrieved by the threats held out by the office bearers of the said Association on 06.10.2018 that in the absence of making payments of demands made by them, electricity, water supply, and diesel generator set, etc., would be disconnected.

4.6. It was alleged that the Plaintiffs had paid the electricity bills as and when due on invoices raised by the concerned supplier like MESCOM towards actual consumption made by the Plaintiffs month on month.

4.7. Electricity was disconnected from time to time, and from 06.10.2018 until 09.11.2018

when the suit was filed electricity connection was under disconnection.

5. The Plaintiffs had filed an application under Order XXXIX Rule 1 and 2 of CPC seeking a mandatory injunction to the defendants, their agents, etc., to restore the electricity supply and grant such other reliefs.
6. The defendants filed their counter-statement to the application filed under Order XXXIX Rule 1 and 2 of CPC. It was contended that
  - 6.1. Plaintiffs had earlier filed a suit in S.C.No.4/2018 on the file of the Civil Judge, Mangaluru, D.K., where identical relief and a mandatory injunction were sought for.
  - 6.2. The mandatory interim injunction sought for in terms of I.A.No.2 filed therein came to be rejected after hearing both sides. Having

failed in obtaining an order in S.C.No.4/2018, the present application is not maintainable.

6.3. The plaint in S.C.No.4/2018 had been returned for presentation before the Court of competent Jurisdiction, and it is thereafter that the plaint was presented before the II Additional Senior Civil Judge & CJM., Mangaluru. It is therefore contended that the very same reliefs having been refused earlier, Plaintiffs cannot seek the same reliefs once again.

6.4. All the averments in the plaint were denied. It was contended that all the other apartment owners were making payment of the due amount; it was only the Plaintiffs who are not making the payments.

6.5. Necessary accounts have been maintained by the Association, which is always available for inspection. It is only on account of non-



payment of the amount due, the services to the Apartment provided by the Association, including the electric supply was disconnected.

6.6. It was further stated that there are 360 apartments in the said complex, none of whom have complained or defaulted. The Association has been formed in terms of the Karnataka Apartment Ownership Act 1972 (for short, 'KAOA').

6.7. KAOA is applicable and not the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer Act, 1972) (for short, KOFA) and therefore, Section 13 thereof is not applicable, and the suit has to be dismissed.

7. Subsequent thereto, an application under Order VII Rule 11(a) and (d) of CPC came to be filed seeking for rejection of the plaint on the ground that:

7.1. There does not exist a cause of action, and that the relief sought for is barred by law.

7.2. It was contended that Section 13 of the KOFA, which had been invoked by Plaintiff, is not applicable inasmuch as it was KAOA which will be applicable and in terms of Declaration and Deed of Apartment, necessary steps were taken by the Association in respect of defaulters like the plaintiffs.

7.3. Section 13 of KOFA not being applicable, the suit being wrongly framed is barred under the law and has to be rejected.

8. In reply thereto, the Plaintiffs contended that Section 13 of the KOFA is applicable in terms of the decision of this Court in CRP No.190/2010 **(Mr.Gregory Peres vs. Mr.Eigan Alexander Salins)** and therefore, sought for dismissal of the said application.

8.1. The Plaintiffs have also relied upon the order dated 04.07.2013 passed by this Court in **Review Petition No.20/2013 in CRP No.190/2010 (Mr.Eigan Alexander Salins vs. Mr.Gregory Peres)** to contend that the grievance against the Manager of the flat and the relief sought for would be covered under Section 13 of KOFA and therefore, it is only KOFA which would be applicable.

9. The trial court, after hearing the parties and considering the application filed under Order VII Rule 11(a) and (d) of CPC, allowed the same and dismissed the application filed by Plaintiffs under Order XXXIX Rule 1 and 2 of CPC for an injunction. While doing so, the trial Court held that:

9.1. The ownership of the Plaintiffs is not in dispute, the Declaration and Deed of Apartment having been submitted are also not in dispute, the Declaration and Deed of

Apartment were executed prior to the date of sale in favour of the Plaintiffs and the contents of the Declaration and Deed of Apartment would be binding on the Plaintiffs.

9.2. In terms of Declaration and Deed of Apartment, there are certain covenants that have been agreed to be bound to by the owners. In terms thereof, any demand made by the Association is required to be paid by the owners of the Apartments.

9.3. If at all they are aggrieved by the amount of payment sought for, the same is required to be challenged, but so long as there was no challenge, the due amount would be required to be paid.

9.4. In terms of Section 11 of the KAOA, the Declaration and Deed of Apartment have been drafted and contents thereof incorporated in the said Deed, no one can claim exemption of

payment of the due amounts, and the Court has come to the conclusion that it is the KAOA, which is applicable and not the KOFA.

10. It is aggrieved by the said order that the petitioners who are Plaintiffs are before this Court.

11. Sri Suriya Narayana, learned Counsel for Plaintiffs, would submit that:

11.1. The intent of KAOA is only to make each Apartment heritable and provide for the transfer of the Apartment, and in this regard, he relies upon the object and purpose of KAOA. The same is extracted hereunder.

*"Consequent upon the shortage of lands in urban areas, the majority of the citizens of urban areas of the State cannot think in terms of owning houses on individual basis. Though there is a tendency to construct multi-storeyed flats, apartments and the like on ownership basis, intending persons cannot purchase flats, tenements, or apartments in multi-storied building as they will not have a marketable title thereto and cannot obtain any loan by mortgaging such flats, tenements, etc. Consequently tenements constructed by the Housing Board for example cannot be*

*sold to the tenants who cannot raise any loan on the security of such tenements with the result that an enormous amount of capital will be locked up, which can be utilised for new constructions to meet the increasing demands for housing. It is, therefore, considered expedient that each Apartment should for all purposes constitute a heritable and transferable immovable property, and that suitable legislation should provide for all matters connected therewith. It is felt that such a measure will not only enable many a person to own his Apartment but it will at the same time enable institutions like Housing Boards to utilise their locked up capital in the construction of new buildings."*

11.2. Hence he submits that KAGA only deals with the transfer of apartments and does not deal with the maintenance thereof.

11.3. In this regard, he refers to the Statement of Objects and reasons of KOFA, which are reproduced hereunder for easy reference:

*"Separate law is being made to declare that flats or apartments in multistoried building may, for all purposes, be heritable and transferable immovable Property. Owners of such flats or apartments enjoy exclusive ownership of their flats or apartments while retaining an undivided interest in the common areas and facilities which are to be used and owned by all such owners jointly.*

*An enterprising individual or group of individuals may either construct out of his or their own funds multistoried buildings consisting of a number of self contained flats or apartments and sell them to individuals on ownership basis, or construct such buildings after collecting contributions from intending purchasers of such flats or apartments.*

*In the interest of the intending purchasers who advance funds it is necessary to regulate the construction, sale, Management and transfer of flats or apartments by individuals or group of individuals who construct such multistoried buildings.*

*Hence the Bill”.*

11.4. It is the KOFA which deals with the safeguarding of the interest of purchasers of the flats. Hence, it is the KOFA that is applicable to the present case.

11.5. The competent authority under Section 3 (i) of KAOA is the Registrar of the Co-operative Societies.

11.6. In terms of Section 2(d) of KOFA, the Registrar is defined to be the Registrar under the Karnataka Co-operative Societies Act,

1959 or the Registrar as defined under the Companies Act, 1956.

11.7. In both cases, where a company has not been formed, the Registrar is the Registrar of Co-operative Societies.

11.8. The KAOA does not provide for the Management of the Apartment. Sections 11 and 12 of KAOA relate to particulars to be included in the Declaration and the Deed of Apartment.

11.9. Section 13 of KAOA provides for the registration of Declaration and the Deed of Apartment and annexing of copies of floor plans, which has nothing to do with the Management of the Apartment.

11.10. Sections 10 to 13 of KOFA specifically deal with the responsibility of the Promoter for the formation of Co-operative Society or



Company, conveying title to the Property, execution of the documents and liabilities of a person who purchases an apartment as also the duties of a manager of the complex.

11.11. Section 12 of KOFA provides for the general liabilities of a person who takes the flat, and Section 13 of KOFA provides for safeguarding of the interest of a person who takes a flat and the right of such person to approach the Court.

11.12. By relying on Rule 9 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sales, Management and Transfer) Rules, 1975 (for short, 'KOFA Rules'), he submits that there is a period prescribed for submission of an application for registration of Co-operative Society or Company of flat purchasers.

11.13. In the event of the apartment owners proposing to submit the Apartment to the provision of KAOA by executing Declaration and the Deed of Apartment, the same is required to be informed to the Registrar as defined under Karnataka Co-operative Societies Act, 1959 as soon as possible after the apartment owner/s (not being less than five) have executed such Declaration of deeds of Apartment.

11.14. Declaration and the Deed of Apartment even if executed, would not take away the ambit, scope and purview of Section 13 of KOFA.

11.15. As regards the facts of the present case, he submits that the Declaration and the Deed of Apartment were executed only by the Promoter on 16.03.2007, and none of the apartment takérs/purchasers has signed the Declaration and the Deed of Apartment. The

fact of execution of registration of Declaration and the Deed of Apartment has not been informed to the Registrar of Co-operative Societies. Hence, he submits that KAOA would also not be applicable. On this ground, he submits that the Plaintiffs have the necessary right in terms of Section 13(2) of KOFA to approach the jurisdictional Court, which cannot be faulted with.

12. Shri Vijaykrishna Bhat learned Counsel for the Defendant in the suit submitted as under:

12.1. Mourishka apartment is a residential apartment complex consisting of 360 apartments which is submitted to the provision of KAOA by executing Declaration and the Deed of Apartment on 16.03.2007 as per Section 2 of KAOA.

12.2. The Plaintiffs are the purchasers of one Apartment vide sale deed dated 24.10.2008.

In terms of Clause 11 of the sale deed, the Plaintiffs undertook that they will hold and enjoy the Apartment subject to the provision of the KAOA, Declaration and the Deed of Apartment, bye-laws, etc.

12.3. The apartment complex is managed by the Association of Apartment Owners constituted under Declaration and the Deed of Apartment.

12.4. The aspects of maintenance, expenses relating thereto, etc., are handled by the Association. The expenses collected by the Association are expended on the Property.

12.5. The bye-laws provide for the manner in which the amounts collected by the Association are to be expended, and there is a proper audited account maintained in relation thereto, which is available for anyone to inspect.

12.6. The Plaintiffs had not paid the due amounts of maintenance despite several requests and reminders. It is only after follow up, left with no option, the Association disconnected the electricity connection.

12.7. KAOA and KOFA are two different enactments. They are not supplemental to each other, nor would they apply concurrently to an apartment, they being mutually exclusive.

12.8. KOFA applies only in respect of the protection of interest of a purchaser who has made payment of advances for the construction of the Apartment, liabilities of the Promoter and protection of interest of intending purchasers.

12.9. Under KOFA, society or company of owners for Management of the Apartment by such society or company is contemplated. The primary liability to form such a society is on the Promoter and thereafter, once the society is

formed, the Management of common areas and facilities would be with the said society.

12.10. KAOA applies to the transfer of the apartments and all matters relating to the apartments, which would include maintenance.

12.11. By referring to Rule 9 of the Rules framed under KOFA, he submits that the said Rule 9 recognises the right of the apartment owners to submit to the provisions of the KAOA by executing a Declaration and Deed Of Apartment.

12.12. Thus, on such submission to KAOA, he states that KOFA would not apply. The provision of KAOA is self-contained. Once the Apartment is submitted to KAOA, the apartment owners would be governed by the provision of KAOA and Declaration and Deed Of Apartment

submitted thereunder. Hence, KOFA would not be applicable.

13. In rejoinder Shri Suriya Narayan Learned Counsel for the Plaintiffs submits as under:

13.1. In terms of Section 10 of KOFA, it was for the Promoter to take steps for formation of the co-operative society for Management of the apartment complex, as such, Board had been formed, and the demands made by the Board had already been paid by the plaintiffs, though of course no co-operative society or company has been formed.

13.2. The Management of the apartment complex cannot cut off, withhold or curtail any services and if any such action is taken, a remedy available to the Plaintiffs was in terms of Section 13 of the KOFA, which Section is reproduced hereunder for easy reference:

**13. Manager not to cut off, withhold, curtail or reduce essential supply or service.-**

1. No person, who is a promoter, or who is in charge of Management or connected with the Management of a block or building of flats whether as member of a managing committee, Director, Secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, withhold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him.
2. The person who has taken or agreed to take the flat or the occupier may, if the Manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.
3. If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service and that it was cut off or withheld or curtailed or reduced by the Manager without just and sufficient cause, the Court shall make an order directing the Manager to restore such supply or service before a date to be specified in the order.
4. The Manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.



5. *Notwithstanding anything contained in any law for the time being in force,-*
- (a) *in any area for which a Court of Small Causes is established under the Karnataka Small Causes Courts Act 1964, that Court; and*
- (b) *elsewhere, the Court of the Civil Judge, shall have Jurisdiction to decide any application made under sub-section (2) of and no other court shall have Jurisdiction to entertain such application. No appeal shall lie from any order made on such application.*
6. *The District Court, may, for the purpose of satisfying itself that the order made on an application made under sub-section (2) was according to law, call for the case in which such order was made and pass such order with respect thereto as it thinks fit.*
7. *Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.*
8. *An offence under sub-section (7) shall be a cognisable offence”.*

13.3. He relies upon the decision of this Court in the **Review Petition No.20/2013 filed in CRP No.190/2010 (Mr.Eigan Alexander Salins vs. Mr.Gregory Peres)**, more particularly

paras 10 and 15 thereto which are extracted hereunder:

*"10. As could be seen from the aims and objects of the second enactment, the Legislature was conscious of both the enactments. The enactment called Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 is the result of Act No.16/73 and was brought into force with effect from 1.4.1975. During that period, the other enactment was also brought into force. If the intention of the Legislature was to make Act No.16/73 to be applicable only to residential buildings, Act No. 16/73 would have indicated so. There is no mention of the word 'residential flat' in Act No.17/73. It must further be noticed from the aims and objects of Act No.17/73 that it provides for ownership of individual apartments in a building and to make such Apartment heritable and transferable Property and to provide for matters connected thereto. It does not provide for Management of the said Apartment. Thus the intention of the Legislature is clear: to provide for ownership of individual Apartment and to make such Apartment heritable and transferable Property for which purpose the provisions of the Act requires registration under Section 17.*

*15. Therefore it is seen that this enactment caters to all situations, particularly in the instant case the main grievance of the Plaintiffs is essential services have been disconnected. His grievance is against the Manager of the flat and undoubtedly the relief sought for is covered under Section 13 of the Act. Therefore, it is only the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972, which is applicable".*

13.4. By relying upon the said decision, he submits that the KOFA is an Act enacted for the purpose of protecting the rights of the owners of the premises and delivering the services required by such owners, whereas the KAOA is only as regards the marketability of title and facility of the Apartment.

13.5. In this regard he once again relies upon the statement of objects and reasons of KAOA which is extracted hereinabove and the statement of objects and reasons of KOFA; by extrapolating the statement of objects of KAOA and KOFA he submits that KAOA does not relate to the maintenance and or Management of the Apartment. None of the provisions under the said Act refer thereto, the Management of the Apartment is taken care of by the KOFA and it is the provisions of

KOFA which would be applicable to the dispute between the parties.

13.6. He, therefore, submits that the plaint as filed under Order VII Rule 11 read with Section 26 and further read with Section 13 of the KOFA is proper and correct, the trial Court ought not to have rejected it. Therefore, he submits that the impugned order be set-aside and the matter be remanded for fresh consideration of the trial Court on the ground that the said Court has the necessary Jurisdiction, more so in terms of Section 13(5)(a) of the KOFA.

14. Heard Sri.Aravind Babu, learned Counsel for the Plaintiffs and Sri. Vijayakumar, learned Counsel for the respondents. Perused papers.

15. On the basis of the submissions made, the points which would arise for determination of this Court are:

- 1) **Whether the provisions of KAOA and KOFA are mutually exclusive or are they supplementary to each other?**
- 2) **Whether once an apartment is submitted to KAOA by execution of a Declaration and Deed of Apartment under KAOA, would the provisions of KOFA apply?**
- 3) **Would the provisions of KOFA apply if there is no Declaration and Deed of Apartment executed and/or submissions made under the KAOA ?**
- 4) **What is the scope and purview of KAOA and KOFA?**
- 5) **Would the purchasers be personally required to be parties to the Declaration, Deed of Apartment and bye-laws?**
- 6) **In the event of KOFA being applicable would the present suit filed before the Small Causes Court at Mangaluru in S.C.No.26/2018 be maintainable?**
- 7) **What order?**

16. I answer the above points as under.

17. **Answer to Point No.1: Whether the provisions of KAOA and KOFA are mutually exclusive or are they supplementary to each other?**

17.1. The contention of Sri.Suriya Narayan, learned counsel for the petitioner is that the decision

of this Court in CRP No.190/2010 and the Review Petition No.20/2013 in CRP No.190/2010 is applicable which has also decided the matter in issue that KAOA is a supplementary enactment to KOFA and as such, any grievance against the Manager of an apartment would have to be taken up as provided under Section 13 of KOFA.

17.2. CRP No.190/2010 had been filed assailing the order dated 02.02.2010 in M.A.No.45/2009 by the II Additional Civil Judge (Sr.Dn.), Mangalore, D.K., confirming the order dated 15.12.2009 in O.S.No.843/2009 by the IV Additional Civil Judge (Jr.Dn.) & JMFC., Mangalore allowing I.A.No.2 filed under Order XXXIX Rule 1 and 2 of CPC for temporary injunction. The Revision Petition was allowed and this Court held that the suit filed by the Plaintiffs for the relief under Section 13(2) of

the Act in the Court of Civil Judge (Jr.Dn.) and JMFC., Mangalore was not maintainable and the said Court had no legal competence or jurisdiction to entertain it. The said suit had to be filed in terms of Sub-Section 5(a) of Section 13 of KOFA before a Court of Small Causes.

17.3. The entire grievance of the Association which had come up in revision was as regards whether the suit could have been filed before the Civil Judge (Jr.Dn.) or it would have to be filed before the Small Causes Court.

17.4. In the Revision Petition as filed and as is clear from the order dated 07.03.2011, there is no contention raised as regards the applicability of KAOA and/or inapplicability of KOFA to the said dispute.

17.5. In Review Petition No.20/2013 filed by the apartment owner, the apartment owner had



contended that KOFA is not applicable and therefore, it is KAOA, which is applicable and in terms of KAOA, the suit filed before the Civil Judge (Jr.Dn.) & JMFC., Mangalore was maintainable. It is the apartment owner who had contended that the Apartment is covered under the KAOA.

17.6. It is in that background that the matter was considered by this Court in review and this Court was of the opinion that as regards any grievance relating to disconnection of the services, Section 13 of KOFA would be applicable and dismissed the Review Petition.

17.7. The said decision relied upon by the learned counsel for the petitioner is in different perspective of facts inasmuch as it is the apartment owner who had contended that KAOA and not KOFA is applicable. In the present case, the apartment owner contends



that KOFA is applicable and not KAOA. A reading of the order passed in the Revision Petition as also the order passed in the Review Petition does not indicate as to whether the Apartment was subjected to KAOA by execution of a Declaration, Deed of Apartment and/or byelaws. Only an averment was made by the apartment owner that KAOA would apply.

17.8. The contention raised in the present Review Petition are detailed hereinabove. The contention raised which ex facie are different from that raised in CRP No.190/2010 and/or Review Petition No.20/2013. Hence, I am of the considered opinion that the decision in CRP No.190/2010 or Review Petition No.20/2013 are not applicable to the present facts.

17.9. This Court would have to adjudicate on the issues raised by considering all the issues and the relevant provisions applicable thereto, which I propose to do as under:-

17.10. KAOA is stated to be an Act to provide for the ownership of an individual apartment in a building and to make such an Apartment heritable and transferable Property. KAOA is applicable if the owners of the Apartment submit to the provision of the KAOA by duly executing and registering a Declaration and Deed of Apartment. Some of the definitions of the KAOA which are relevant are Sections 3 (a), (b), (d), (e) (f), (g), (i), (j) and (q) which are reproduced hereunder for easy reference:.

**"3(a) Apartment"** means a part of the Property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road or highway or to a common area leading to such street, road, or highway."

**3(b) "apartment owner"** means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration;

**3(d) "association of apartment owners"** means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration.

**"3(e) Building"** means a building containing four or more Apartment, or two or more buildings, each containing two or more apartments, with a total of four or more apartments for all such buildings, and comprising a part of the Property."

**3(f) "common areas and facilities"** unless otherwise provided in the Declaration or lawful amendments thereto, means,-

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes, entrances and exits of the building;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;

(4) the premises for the lodging of janitors or persons employed for the management of the property;

(5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating;

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(7) such community and commercial facilities as may be provided for in the Declaration; and

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

**3(g) "common expenses" means,-**

(1) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners,

(2) expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(3) expenses agreed upon as common expenses by the bye- laws;

(4) expenses declared as common expenses by the provisions of this Act or by the Declaration or the bye-laws:

**3(i) "competent authority"** means in relation to building constructed or to be constructed by the Housing Board, the Secretary of the Housing Board and in any other case, the Registrar of Co-operative Societies as defined in the Karnataka Co-operative Societies Act, 1959;

**3 (j) "Declaration"** means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such Declaration as from time to time may be lawfully amended;

**"3(q) property"** means the land, the building, all improvements and structures thereon, all owned in freehold or held on lease or as occupant under any law relating to land revenue and all easements, rights and appurtenances belonging thereto, and all articles of personal Property intended for use in connection therewith, which have been, or are intended to be submitted to the provisions of this Act."

17.11. In terms of Section 5 of the KAOA, each apartment owner shall be entitled to the exclusive ownership and possession of his Apartment, and each apartment owner is required to execute a Declaration that he/she submits his/her Apartment to the provisions of the Act and a Deed of Apartment in relation to his Apartment. Section 5 of the KAOA is reproduced hereunder for easy reference:

**5. Ownership of apartments.-**

*(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his Apartment.*

*(2) Each apartment owner shall execute a Declaration that he submits his Apartment to the provisions of this Act and a Deed of Apartment in relation to his Apartment in the manner prescribed for the purpose.*

17.12. Section 6 of KAOA deals with common areas and facilities. Section 6 of KAOA is reproduced hereunder for easy reference:

**6. Common areas and facilities.-**

*(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the Apartment in relation to the value of the property and such*

*percentage shall reflect limited common areas and facilities.*

*(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall have permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the Apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the Apartment even though such interest is not expressly mentioned in the conveyance or other instrument.*

*(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this Act as provided in sections 14 and 22. Any covenant to the contrary shall be null and void.*

*(4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.*

*(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bye-laws.*

*(6) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency*



*repairs therein necessary to prevent damage to the common area and facilities or to another apartment or apartments.*

17.13. Section 6(5) of KAOA deals with the necessary work of maintenance, repair and replacement of the common areas and facilities.

17.14. Section 7 of KAOA mandates that each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted by the Association as set forth in the Declaration and Deed Of Apartment. Section 7 of KAOA is reproduced hereunder for easy reference:

***7. Compliance with covenants, bye-laws and administrative provisions.-*** Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his Apartment. Failure to comply with any of the same shall be a ground for an action to recover sums due for damages or injunctive relief or both maintainable by the Manager or Board of Managers on behalf of the Association of Apartment Owners or, in a proper case by an aggrieved apartment owner.

17.15. Section 11 of KAOA deals with Contents of Declaration, which is reproduced hereunder for easy reference:

**11. Contents of Declaration.-**

*(1) The Declaration shall contain the following particulars, namely:-*

*(a) description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold;*

*(b) description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed;*

*(c) the apartment number of each Apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;*

*(d) description of the common areas and facilities;*

*(e) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;*

*(f) value of the Property and of each Apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each Apartment and its owner for all purposes, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration;*

*(g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use;*



(h) the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located:

(i) provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the Property in the event of damage or destruction of all or part of the Property;

(j) any other details in connection with the Property which the person executing the Declaration may seem desirable to set forth consistent with this Act: and

(k) the method by which the Declaration may be amended, consistent with the provisions of this Act.

(2) A true copy each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.

17.16. Section 12 of KAOA deals with Contents of deeds of Apartments, which is reproduced hereunder for easy reference:

**12. Contents of Deeds of Apartments.-**

(1) Deeds of Apartments shall include the following particulars, namely:-

(a) description of the land as provided in section 11 of this Act or the post office address of the Property, including in either case the book, page and date of executing the Declaration the date and serial number of its registration under the Registration Act, 1908 and the date and other reference if any, of its filing with the competent authority;

(b) the apartment number of the Apartment in the Declaration and any other data necessary for its proper identification;

*(c) statement of the use for which the Apartment is intended and restrictions on its use, if any;*

*(d) the percentage of undivided interest appertaining to the Apartment in the common areas and facilities; and*

*(e) any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act.*

*(2) A true copy of every Deed of Apartment shall be filed in the office of the competent authority.*

17.17. Section 13 of KAOA deals with the Declaration and all amendments thereto. Section 13 of KAOA is reproduced hereunder for easy reference:

***13. Declarations, deeds of apartments and copies of floor plans to be registered.-***

*(1) The Declaration and all amendments thereto and the Deed of Apartment in respect of each Apartment and the floor plans of the buildings referred to in subsection (2) shall be registered under the Registration Act, 1908.*

*(2) Simultaneously with the registration of the Declaration there shall be filed along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the buildings as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout location, apartment number and dimensions of the*

*apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the Apartment as built.*

*(3) In all registration offices a book called " Register of Declarations and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972" and Index relating thereto shall be kept. The book and the Index shall be kept in such form and shall contain such particulars as may be prescribed.*

*(4) It shall be the duty of every Manager or Board of Managers to send to the SubRegistrar of the sub-district in which the property containing the Apartment is situate, or if there is no Sub-Registrar for the area, to the Registrar of the district in which such property is situate, a certified copy of the Declaration and Deed of Apartment made in respect of every Apartment contained in the building forming part of the property together with a memorandum containing such particulars as may be prescribed.*

*(5) The Sub-Registrar, or as the case may be, the Registrar shall register the Declaration along with floor plans of the building and the Deed of Apartment in the "Register of Declaration and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972" and shall also enter particulars in the Index kept under sub-section (3). Any person acquiring any apartment or any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section.*

*(6) Except as provided in this section, the provisions of the Registration Act, 1908, shall mutatis mutandis apply to the registration of such Declarations and Deeds of Apartments, and the words and expression used in the section but not defined in this Act shall have the meaning assigned to them in the Registration Act, 1908.*

17.18. Declaration and the Deed of Apartment in respect of each Apartment as also the floor plans of the building showing layout, location, apartment numbers and dimensions of the apartments along with a verified statement of an architect are required to be submitted and registered under the Registration Act, 1908 with the Registrar of Assurances/Sub-Registrar.

17.19. In terms of Section 13 (5) of KAOA, which deals with any person acquiring any Apartment, it is deemed that such person has notice of the Declaration and the Deed of Apartment as from the date of its registration under Section 13 of KAOA.

17.20. Section 14 of KAOA provides for removal of the Apartment from the provision of the Act by effecting an instrument in that regard with

the concurrence of all holders of all charges and other encumbrances on the Property.

Section 14 of KAOA is reproduced hereunder for easy reference:

**14. Removal from provisions of this Act.-**

*(1) All the apartment owners may remove a property from the provisions of this Act by an instrument to that effect duly executed:*

*Provided that, the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed, that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.*

*(2) Upon the removal of the property from the provisions of this Act the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall apportion to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.*

17.21. Section 16 of KAOA provides for bye-laws and their contents and further provides that the administration of every Property shall be governed by bye-laws, which shall be annexed

to the Declaration. Section 16 of KAOA is reproduced hereunder for easy reference:

**16. Bye-laws and their contents.-**

*(1) The administration of every property shall be governed by bye-laws, a true copy of which shall be annexed to the Declaration. No modification of or amendment to the bye-law shall be valid, unless set forth in an amendment to the Declaration and such amendment is duly recorded and a copy thereof is duly filed with the competent authority.*

*(2) The bye-laws shall provide for the following matters, namely:-*

*(a) The election from among the apartment owners, of a Board of Managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such Board shall expire annually; the powers and duties of the Board; the compensation, if any, of the members of the Board; the method of removal from office of members of the Board; and whether or not the Board may engage the services of a Secretary, a Manager or Managing Agent, and specifying which of the powers and duties granted to the Board by this Act or otherwise may be delegated by the Board to either or both of them;*

*(b) method of calling meetings of the apartment owners; what percentage, if other than a majority of Apartment Owners, shall constitute a quorum;*

*(c) election of a President from among members of the Board of managers who shall preside over the meetings of such Board and of the Association of Apartment Owners;*

*(d) election of a Secretary who shall keep a minute book wherein resolutions shall be recorded;*

*(e) election of a Treasurer who shall keep the financial records and books of accounts;*



*(f) maintenance, repairs and replacement of the common areas and facilities and payments therefor;*

*(g) manner of collecting from the apartment owners their share of the common expenses;*

*(h) designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities;*

*(i) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;*

*(j) such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners; and*

*(k) the percentage of the votes required to amend the bye-laws.*

*(3) The bye-laws may also provide for the following matters namely:*

*(a) subject to the provisions of this Act, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such Apartment, subject to such terms and conditions as may be specified in the bye-laws:*

*(b) provisions enabling the Board of Managers to retain certain areas of the building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building; and*

*(c) any other provisions, not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and*

*annual and special general meetings, annual report and the like.*

17.22. No modification or amendment to the bye-laws would be valid unless duly recorded with the competent authority. In terms of Section 16(2) of KAOA, the bye-laws shall provide for the election, method of calling meetings, election of a President, Secretary, etc., maintenance, repair and replacement, manner of collection of common expenses, designation and removal of persons employed for the maintenance, restrictions on the requirements and use of common areas, voting, etc.

17.23. Section 19 of KAOA provides for charge on the Property on account of common expenses. Section 19 of KAOA is reproduced hereunder for easy reference:

**19. Charge on property for common expenses.-** *All sums assessed by the Association of Apartment owners but unpaid for the share of common expenses chargeable to any apartment shall constitute a charge on such Apartment prior to all other charges, except*



*only (i) charge if any on the Apartment for payment of Government and Municipal taxes and (ii) all sums unpaid on a first mortgage of the Apartment.*

17.24. Section 20 of KAOA deals with joint and several liability of vendor, etc, for unpaid common expenses. Section 20 of KAOA is reproduced hereunder for easy reference:

***20. Joint and several liability of vendor, etc, for unpaid common expenses.-***

*(1) Upon the sale of an apartment, the purchaser of the Apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the latter for his share of the common expenses upto the time of the sale without prejudice to the purchaser's or grantee's right to recover from the vendor the amount paid by the purchaser or grantee therefor.*

*(2) A purchaser referred to in sub-section (1) shall be entitled to a statement from the Secretary or Board of Managers, setting forth the amount of the unpaid assessment against the vendor and such purchaser or grantee shall not be liable for, nor shall the Apartment sold be subject to a charge for any unpaid share of common expenses against such Apartment accrued prior to such sale or bequest in excess of the amount therein set forth.*

17.25. Section 21 of KAOA deals with the aspect of insurance.

17.26. Section 22 of KAOA deals with the disposition of Property., etc.

17.27. In terms of Section 25 of KAOA, the Karnataka Apartment Ownership Rules, 1974 (for short, 'KAOR') has also been formulated.

17.28. In terms of Rule 3 of KAOR, a format for Declaration under Section 2 has been provided.

17.29. In terms of Rule 4 of KAOR, a format for Declaration under Section 5 (2) of each apartment owner has been provided.

17.30. Conveyance of apartments is provided under Rule 5 of KAOR.

17.31. A provision for parties to Deeds of Apartments is made under Rule 6 of KAOR, which reads as under:

**6. Parties to Deeds of Apartments.** *In the case of the first Deed of Apartment, the party of the first part shall be either the sole owner or all the*

*owners of the Property who has or have executed and registered the Declaration under Section 2 and the party of the second part shall be the apartment owner. In the case of subsequent Deeds of Apartment, the party of the first part shall be the apartment owner and the party of the second part shall be his transferee.*

17.32. Rule 7 of KAOR deals with contents of Deeds of Apartment, which are reproduced hereunder for easy reference:

**7. Contents of Deeds of Apartment.**

*(1) The first Deed of Apartment shall be accompanied by a copy of the relevant floor plans of the building field under subsection (2) of Section 13 and by a certificate of an architect certifying that the said floor plan shows the number and dimensions of the Apartment being conveyed and of the immediately adjoining apartments and that said floor plan fully and accurately depicts the layout of the Apartment, its location, dimensions, approximate area, main entrance, common areas and facilities and limited common areas and facilities, if any, to which it has access as built.*

*(2) The first and every subsequent Deed of Apartment shall also include the following particulars, namely.*

*(a) description of the land as provided Section 11 or the post office address of the Property, including, in either case, the book, page and date of executing the Declaration, the date and serial number of its registration under the Registration Act, 1908, and the date and other reference, if any, of its filing with the competent authority;*

*(b) the apartment number of the Apartment in the Declaration and any other data necessary for its proper identification;*

*(c) statement of the use for which the Apartment is intended and restriction on its use, if any;*

*(d) the percentage of undivided interest appertaining to the Apartment in the common areas and facilities;*

*(e) any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and the Act.*

*(3) The provisions of this Rule may be given effect to by referring to the relevant provisions made in the Declaration for the purpose of avoiding repetition of those relevant provisions in the Deed of Apartment*

*(4) The apartment owner shall file a true copy of every Deed of Apartment to which he is a party in the office of the competent authority within thirty days from the date of its execution.*

17.33. Form B to the KAOR provides a Form of Declaration to be executed by the owner of the Apartment whereunder it is required that the said owner of the Apartment shall mention about how he derived his ownership and the document under which, he derived his ownership.

**KOFA**

17.34. The Statement of Objects and reasons for KOFA are extracted hereinabove.

17.35. KOFA is stated to be an act to regulate in the State of Karnataka the promotion of the construction of, the sale and Management and the transfer of flats on ownership basis.

17.36. Section 2(c) of KOFA defines "Promoter". Section 2 (c) is extracted below for easy reference

*2(c) "Promoter" means a person who constructs or causes to be constructed a block or building or flats or apartments for the purpose of selling some or all of them to other persons or to a company, co-operative society or other Association of persons and includes his assignees; and where the person who builds and the person who sells are different persons, the terms includes both;*

17.37. Section 3 of KOFA relates to the General liabilities of promoters. Section 3 is extracted below for easy reference

**3. General liabilities of Promoter.-**

(1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce or cause to be given or produced the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall,-

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Advocate of not less than seven years standing;

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(c) allow inspection on reasonable notice of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;

(e) disclose on reasonable notice or demand if the Promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building and if the Promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors



*regarding the design, materials and construction of the building;*

*(f) specify in writing the date by which possession of the flat is to be handed over;*

*(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken and the names and addresses of the parties and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken;*

*(h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats;*

*(i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given to the local authority;*

*(j) make a full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);*

*(k) make a full and true disclosure of such other information and documents in such manner as may be prescribed and give or demand true copies of such of the documents referred to in any of the clauses of this subsection as may be prescribed at a reasonable charge therefor.*

17.38. Section 4 of KOFA imposes an obligation on the Promoter to execute an agreement and for the agreement to be registered before receiving any advance payment.

17.39. In terms of Section 5 of KOFA, the Promoter is required to maintain a separate account of sums taken as advance.

17.40. Section 6 of KOFA imposes responsibility on the Promoter for payment of outgoings on the Property including all types of charges, etc., until he transfers the Property to the persons taking over the flats.

17.41. In terms of Section 7 of KOFA, the Promoter is not barred from carrying out any alterations or additions.

17.42. In terms of Section 8 of KOFA, the Promoter is required to refund amount paid with interest in the event if he being unable to give possession within the specified time.

17.43. There is an embargo under Section 9 of KOFA not to create any mortgage etc., subsequent



to the execution of sale without the consent of such agreement holder.

17.44. In terms of Section 10 of KOFA, a promoter is required to take steps for the formation of a Co-operative Society or Company as soon as the minimum number of persons required to form a Co-operative society or a Company having taken flats. Section 10 of KOFA is extracted below for easy reference

***10. Promoter to take steps for formation of co-operative society or company.-***

*(1) As soon as a minimum number of persons required to form a cooperative society or a company have taken flats, the Promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society, or as the case may be, as a company; and the Promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company.*

*(2) Nothing in sub-section (1) shall affect the right of the Promoter to dispose of the remaining flats in accordance with the provisions of this Act.*

17.45. In terms of Section 11 of KOFA, Promoter is required to convey title and execute documents.

17.46. Section 12 of KOFA relates to general liabilities of a person who takes a flat viz., to pay at a proper time and place the price of the Apartment, municipal taxes, water and electrical charges, ground rent etc. Section 12 of KOFA is extracted below for easy reference

**12. General liabilities of a person who takes a flat.-**

*(1) Every person who has executed an agreement to take a flat shall pay at the proper time and place, the price, the municipal taxes, water and electricity charges, ground rent (if any), and other public charges payable in respect of the flat taken by him and where a co-operative society or a company of persons taking the flats is to be constituted co-operate in the formation of such society or company as the case may be.*

*(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to one thousand rupees.*

17.47. In terms of Section 13 of KOFA, there is a restriction on a promoter or a person who is in charge of the Management or connected with the Management from cutting, withhold or any manner curtailing or abusing or reducing any essential supply or service enjoyed by a person who has taken a flat without just and sufficient cause. Section 13 is extracted below for easy reference

**13. Manager not to cut off, with-hold, curtail or reduce essential supply or service.-** (1) No person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats whether as member of a managing committee, Director, Secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, with-hold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him.

(2) The person who has taken or agreed to take the flat or the occupier may, if the Manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.

(3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service and that it was cut off or with-held or curtailed or reduced by the Manager without just and sufficient cause, the Court shall make an order directing the Manager to restore such supply or service before a date to be specified in the order.

(4) The Manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.

(5) Notwithstanding anything contained in any law for the time being in force,-

(a) in any area for which a Court of Small Causes is established under the Karnataka Small Causes Courts Act 1964, that Court; and

(b) elsewhere, the Court of the Civil Judge, shall have jurisdiction to decide any application made under sub-section (2) of and no other court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application.

(6) The District Court, may, for the purpose of satisfying itself that the order made on an application made under sub-section (2) was according to law, call for the case in which such order was made and pass such order with respect thereto as it thinks fit.

(7) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.

(8) An offence under sub-section (7) shall be a cognizable offence.

17.48. In the event of a Court coming to a conclusion that the said withholding of service is without a just and sufficient cause, the Court could direct the Manager to restore such supply or service.

17.49. In terms of Section 13 (5) of KOFA, a person who takes the flat can approach the Court of Small Causes where established or elsewhere the Court of Civil Judge who has Jurisdiction to decide the same.

17.50. Section 14 of KOFA deals with the offences by Promoter.

17.51. Section 15 of KOFA deals with the offences by a company.

17.52. Section 16 of KOFA provides powers to the State Government to make rules.

17.53. In furtherance of Section 16, the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1975 (for short, 'KOF Rules') have been effected.

17.54. Rule 3 of KOF Rules provides the manner of making disclosure by the Promoter.

17.55. Rule 4 of KOF Rules requires the Promoter to provide copies of various documents after receipt of legal charges.

17.56. Rule 5 of KOF Rules provides for particulars to be contained in agreement of sale.

17.57. Rule 6 of KOF Rules provides for documents which are required to be annexed to the agreement of sale.

17.58. Rule 9 of KOF Rules provides for submission of application for registration of co-operative society which reads as under:

**9. Form of Memorandum under Section 13(4):-** *The memorandum required to be filed by the Manager or Board of Managers for the purpose of sub-section (4) of Section 13 shall be in Form E.*

17.59. Rule 10 of KOF Rules provides for the time period within which the conveyance has to be effected.

### **Comparison of KAOA and KOFA**

17.60. From the above, it is seen that KAOA deals with all aspects of an apartment used for residential purposes, including ownership of an apartment and matters relating thereto namely details as mentioned above viz., insurance, repairs, assessment, payment of taxes. KAOA is basically premised on Declaration, Deed Of Apartment and Bye-Laws and contents thereof.

17.61. Section 16 of KAOA relates to bye-laws and the contents thereof, which provides for election, method of calling a meeting,



maintenance, repair and replacement, employment of persons, etc. The relevant provision for the purposes of this matter would be Section 16 (2) (g), which relates to the manner of collecting from the apartment owners their share of the common expenses. The common expenses could be in relation to maintenance of common areas and the like, which is defined under Section 3(g) of the KAOA, which is reproduced hereinabove.

17.62. Section 20 of KAOA deals with liability for unpaid common expenses, which is stated to be that of the owner of the Property. In terms of Section 19 of KAOA, a charge is created on the Property for common expenses.

17.63. Section 12 of the KOFA deals with the payment of municipal taxes, water and electricity charges etc., and the right to disconnect such services.



17.64. In terms of Rule 9 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1975, it is stated that where a co-operative society or a company of persons taking a flat is to be constituted, the Promoter is required to submit an application to the Registrar for registration of the Co-operative Society or a company as the case may be within four months from the date on which the minimum number of persons required to form such organisation have taken flats.

17.65. Rule 9 of KOFA Rules, however, provides that where the apartment takers propose to submit the apartments to the provisions of KAOA by executing Declaration and Deeds of Apartment, the Promoter shall inform the Registrar as defined in the Karnataka Co-operative Societies Act, 1959 as soon as

possible after the date on which all the apartment owners (being not less than five) have executed such Declarations and Deeds of Apartment.

17.66. Thus, a reading of Rule 9 of KOFA Rules makes it clear that it is not necessary to form a Co-operative Society or a Company. The decision is of the owners and the same could be submitted to the provisions KAOA by executing Declaration and Deed Of Apartment in which case, there is no need to form a Co-operative Society or Company but only information of the execution of Declaration and Deed Of Apartment is to be communicated to the Registrar of the Co-operative Societies, registration thereof having been done before the Registrar of Assurances/Sub-Registrar.

17.67. In view of the above discussion, KAOA is clearly dealing with the ownership of the Apartment, transfer of apartments, formation of the Association for the Management of the Building, Property and the management thereof etc.,

17.68. Rule 7 of KAOR extracted hereinabove provides for each apartment owner to comply strictly with the bye-laws and with the administration rules and regulations which includes the payment of common expenses in terms of Section 3(g) read with Section 16(2)(g).

17.69. In view thereof, KAOA and KOFA though cannot be said to be mutually exclusive, they cannot also be said to be supplemental to each other.

17.70. Both Acts would apply in different time periods in that KOFA would be applicable until the

Apartment is subjected to the provisions of KAOA, if the Apartment is not subjected to KAOA, KOFA would continue to apply. Once an Apartment, Building, Property is subjected to the provisions of KAOA by execution of Declaration, Deed of Apartment and Bye Laws KOFA would stop being applicable.

**17.71. Thus I Answer Point No.1 by holding that KAOA and KOFA cannot be said to be mutually exclusive nor can they be said to be supplementary to each other in as much as both the acts cannot apply at the same time.**

**18. Answer to point No.2: Whether once an apartment is submitted to KAOA by execution of a declaration and Deed of Apartment under KAOA, would the provisions of KOFA apply?**

18.1. Rule 9 of the KOF Rules, which has been extracted hereinabove, would indicate that a promoter is required to submit an application for registration to the Registrar of a Co-

operative Society or the Registrar of Companies, as the case may be, within 4 months from the date on which the minimum number of persons required to form such organisation have taken flats.

18.2. The said KOF Rules also provides for a situation where the apartment takers propose to submit the apartments to the provisions of KAOA by executing Declaration and Deeds of Apartment as required by that Act, the promoters shall inform the Registrar as defined in the Karnataka Co-operative Societies Act, 1959 as soon as possible after a date on which all the Apartment Owners have executed such Declaration and Deeds of Apartment.

18.3. Though the said Rule or any other provisions of KOFA or Rules framed thereunder do not specifically indicate that when such

Declaration and Deeds of Apartment is executed under KAOA the Jurisdiction of KOFA is excluded, a meaningful reading would indicate that if Declaration and deeds of Apartment is executed under KAOA and Apartment is subjected to the provisions of KAOA, it is only information that is required to be provided to the Registrar of Co-operative Societies. Such providing of information would essentially imply that there is no registration of a co-operative society which is contemplated since this is an exception created under the said Rule.

18.4. It is only if a Co-operative Society is registered, the said Co-operative society would come within the preview of KOFA and not an Association formed by way of a Declaration and Deed of Apartment being executed under KAOA.

- 18.5. As discussed in answer to point no.1, above Section 7 of KAOA requires compliance with covenants, bye-laws and administrative provisions of the Declaration, Section 11 deals with contents of declaration, Section 12 deals with contents of deeds of Apartment and Section 16 with bye-laws and their contents.
- 18.6. The bye-laws deal not only with ownership of the Apartment but also deal with all the aspects relating thereto including common areas, maintenance expenses to be borne by apartment owners, more particularly Section 16 (2)(g) relates to the manner of collecting from the apartment owners their share of common expenses which common expenses is defined under Section 3 (g).
- 18.7. Thus in a sense, the Declaration, Deed of Apartment and the bye-laws provide for all aspects relating to the Apartment, Building



and Property. The interse rights and liabilities of parties being reflected and covered by the said document, it can not be that the provision of KAOA and KOFA would apply at the same time.

18.8. Once a Declaration and Deed of Apartment is executed, then the Apartment, Building and Property will come within the preview of the KAOA, it is only in the absence there of that KOFA would apply.

18.9. **Hence, I answer Point No.2 by holding that once an apartment is submitted to KAOA by execution of a Declaration and Deed of Apartment under KAOA, the provisions of KOFA would not apply, it is only the provisions of KAOA which would apply.**

19. **Answer to point No.3: Would the provisions of KOFA apply if there is no Declaration and Deed of Apartment executed and/or submissions made under the KAOA?**

19.1. In pursuance of the discussion and the answer to point Nos. 1 and 2, it is clear that when there is a Declaration and Deed of Apartment executed, then it is the KAOA which would be applicable to all the matters relating to the ownership of an apartment and or Management of the Building and Property which would be covered by the Declaration, Deed of Apartment and Bye-laws formulated. Such being the case, it is not envisaged that KOFA is also made applicable.

19.2. In terms of Rule 9 of the KOFA Rules, the execution of a Declaration and Deed of Apartment as also the bye-laws would only have to be informed to the Registrar of Co-operative society.

19.3. Thus, conversely if there is no declaration and Deed of Apartment executed, then the Apartment as also the apartment complex would not have been submitted to the KAOA and in such a situation, it is the KOFA which would be applicable, of course many of the provisions of KOFA overlapping with the Real Estate (Regulation and Development) Act, 2016, the provisions thereof would also be applicable.

19.4. **I answer Point No.3 by holding that the provision of KOFA would apply if there is no declaration, Deed of Apartment or bye-laws executed and or if the Building and Property not having been submitted to the provision of KAOA.**

20. **Answer to Point No.4: What is the scope and purview of KAOA and KOFA?**

20.1. As discussed in point Nos.1 and 2, both KAOA and KOFA apply as regards apartments/flats used for residential purpose. In KAOA, it is referred to as Apartment, in KOFA, it is referred to as flat.

20.2. In KOFA, the definition of flat is wider and would also cater to an office unit, whereas an apartment under KAOA relates only to a residential unit.

20.3. Under KOFA a co-operative society or a company to manage the affairs of an apartment complex would have to be formed and registered, if in the case of the co-operative society before the Registrar of a co-operative society and in the case of the company before the Registrar of companies.

20.4. When such a co-operative society or a company is formed, it is the Rules and regulations contained in the said constitutional documents of the co-operative society or a company which will apply to a flat as defined under the KOFA under Section 2(a) thereof, which is reproduced hereunder for easy reference:

**"2(a) Flats:-** means a separate and self-contained set of premises used or intended to be used for residence or office or show room or shop or godown (and includes a garage), the premises forming part of a building;

**Explanation:** Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained:"

20.5. Thus, KOFA has a larger application in respect of the residence or office or showroom or shop or godown (including garage).

20.6. The perusal of the definition of Apartment in terms of Section 3 (a) of the KAOA indicates

that it would only apply to an apartment that is used for residential purposes and not as an office or showroom or shop, or godown. Under the KAOA, the Declaration and Deed of Apartment and Bye-laws would have to be executed to deal with and cater to an apartment, Building or Property.

20.7. Section 3(e) of KAOA defines a building as one containing four or more Apartments, or two or more buildings, each containing two or more apartments, with a total of four or more apartments for all such buildings, and comprising a part of the Property.

20.8. Property is defined under Section 3(q) in terms thereof any land, building, all improvements, and structures thereon, all owned in freehold or held on lease or as occupant under any law relating to land revenue and all easements, rights and

appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been, or are intended to be submitted to the provisions of KAOA.

20.9. Thus, KAOA deals with only a subset of items dealt with by KOFA that is only Apartment used for residential purposes. KAOA would only be applicable if a Declaration, Deed of Apartment and Bye-laws are executed in respect of the said Apartment, Building and Property as defined under Section 3 (a), (e) and (q) of the KAOA respectively.

20.10. In view of the above it is clear that KAOA will not apply in respect of an office or showroom or shop or godown (and includes a garage), dealt with by the KOFA. Thus KOFA will apply to an office or showroom or shop or godown. This being so, for the reason that they cannot



be made subject to KAOA which only deals with Apartment used for residential purpose.

20.11. Thus, I answer point no.4 by holding that KAOA would apply to Apartment as defined under Section 3(a) of the KAOA used for residential purposes when a Declaration, Deed of Apartment and bye-laws are executed in relation thereto. KOFA would apply to flats as defined under Section 2(a) of the KOFA which includes flats, used or intended to be used for residence, office or showroom or shop or godown. However, if the flat is used for residential purpose and is made subject to KAOA by execution of a declaration, Deed of Apartment and bye-laws KOFA would not apply to residential Apartment, building or Property. KOFA would always apply to an office or showroom or shops or godown since, they cannot be made subject to KAOA. KOFA

would apply if the Apartment is removed from the purview of KAOA, from and after such removal.

20.12. Declaration, Deed of Apartment and Bye-laws in respect of an apartment building or Property can be executed at any point of time and not necessarily when the Apartment complex is ready or sale made there of. As and when the Declaration, Deed of Apartment and bye-laws is executed under the KAOA the said Apartment, building and Property would come out of the preview of the KOFA and be subject to the provisions of KAOA.

21. **Answer to Point No.5: Would purchasers be required to be parties to the Declaration, Deed of Apartment and Bye-laws or could the Promoter or owner/developer subject the same to KAOA by execution of Declaration, Deed of Apartment and Bye-laws prior to such sale?**

21.1. One of the contentions raised by Sri. Suriya Narayanan, learned Counsel for the Plaintiff, is

that the Declaration, Deed of Apartment and Bye-laws were executed by the Promoter of the Property prior to the Plaintiffs purchasing the Property, the Plaintiffs not having executed the same the question of the Plaintiffs being bound by the said Declaration, Deed of Apartment and Bye-laws would not arise.

21.2. Rule 6 of the KAOA Rules, 1974, reads as under as under:-

**"6. parties to Deeds of Apartment:-** In the case of the first Deed of Apartment, the party of the first part shall be either the sole owner or all the owners of the Property who has or have executed and registered the Declaration under Section 2 and the party of the second part shall be the apartment owner. In the case of subsequent Deeds of Apartment, the party of the first part shall be the apartment owner and the party of the second part shall be his transferee".

21.3. In the present case, Declaration and Deed of Apartment were executed prior to the sale of the Apartment, that is, at a point of time when the sole owner of all the apartments and Property was the promoter/developer, there

being no sale deed executed in respect of any particular apartment till then.

21.4. In view thereof, in terms of Rule 6 provides that in case of execution of the first Deed of Apartment, the promoter/developer as the sole owner of all the apartments would be entitled to execute and register the Declaration under Section 2 of the KAOA.

21.5. Rule 6 also provides for subsequent Deed of Apartment where the party of first part would be the owner of the Apartment and party of the second part would be his transferee.

21.6. It is not in dispute that Form-B in terms of Rule 4 of the KAOA Rules, 1974 which relates Section 5(2) of the KAOA has been executed by the Plaintiffs when they took sale of the Apartment in question. In the Declaration the Plaintiffs have declared that they are the present owners of the Apartment and that

they will be bound by the Deed of Apartment and the provision of the KAOA, such being the case Plaintiffs having executed form of Declaration in terms of Form-B, it is not open for the Plaintiffs now to contend that they are not signatories to the first Deed of Apartment and or bye-laws and therefore they are not bound by it.

21.7. When the Plaintiffs purchased the Apartment, they were aware of the Apartment having been subjected to the provision of KAOA. They executed a form of Declaration, and therefore in my considered opinion, they are bound by the Deed of Apartment and bye-laws relating to the Apartment, and they cannot continue to hold the Promoter liable for the maintenance of the Apartment since maintenance of the Apartment is now vested with the owners association constituted under KAOA and are

therefore liable to make payment of all common expenses as may be demanded by such Association, if there is any doubt the Plaintiffs could have inspected the accounts of the Association as they are entitled to do so in terms of the bye-laws.

21.8.I answer point no.5 by holding that the purchasers as such are not required to be signatories to the Declaration, Deed of Apartment and bye-laws. The promoters could, before the sale of the Apartment being the owner/developer of the Property or in the case of joint development, along with the owner of the land, subject the Apartment, building and Property to KAOA by execution of Declaration Deed of Apartment and Bye-laws. Execution of Form B by any purchaser would automatically bind them to the contents of Declaration Deed of Apartment and Bye-laws already executed and registered.

22. **Answer to point no.6: In the event of KOFA being applicable, would the present suit filed before the Small Causes Court at Mangaluru in S.C.No.26/2018 be maintainable?**

22.1. As afore discussed on account of Declaration, Deed of Apartment and Bye-laws having been executed the present Apartment would not come within the preview of KOFA, it is only in the event of such a declaration, Deed of Apartment, bye-laws not being executed then the Apartment would come within the purview of KOFA in terms of Section 13 thereof extracted hereinabove.

22.2. Section 13 (4) and (5) of the KOFA are extracted hereinabove.

22.3. A flat owner coming within the purview of KOFA can approach as against the action taken by the Manager of the flats for having disconnected any supply or service to the Court of Small Causes established under Karnataka Small Causes Court Act, 1964 or the Court of Civil Judge having Jurisdiction



seeking for restoration of the supply or service.

22.4. In the present case, there being Small Cause Court established in Mangalore, the Court of small causes would have Jurisdiction to adjudicate such a claim made by the flat owners, and SC No.26 of 2018 would be maintainable.

22.5. However, since in the present case, the Apartment has been subjected to the provisions of KAOA by execution of Declaration Deed of Apartment and Bye-laws, the remedy provided under Section 13 of the KOFA is not available to the Plaintiffs.

**23. To Summarise:**

**23.1. KAOA would only apply to an apartment where it is used for residential purposes. A flat or an apartment which is used for an office or showroom or shop or godown (and includes garage) cannot be**

**subjected to KAOA and would always continue to be governed by KOFA.**

**23.2. When an apartment is proposed to be constructed or under construction and agreements are entered into, KOFA would apply insofar as the relationship and/or dispute between the purchaser and the Promoter.**

**23.3. KOFA would continue to apply if the Apartment is not subjected to KAOA as afore detailed.**

**23.4. Once an apartment is subjected to KAOA, KOFA would cease to apply and it is only the KAOA, Declaration, Deed of Apartment and bye-laws which would be applicable.**

**23.5. In the event of an apartment being removed from the provisions of KAOA in**

**terms of Section 14 of KAOA, KOFA would come into operation.**

**23.6. Essentially KAOA, Declaration, Deed of Apartment and bye-laws would be the provisions under which the relationship between an apartment owner and Association of the Apartment, building, property, which would be governed.**

**23.7. KOFA would apply insofar as the relationship and/or dispute between the purchaser of an apartment and Promoter and any defaults on part of the Promoter. The other enactments like RERA would also be applicable.**

**23.8. Even when an Apartment is not subjected to KAOA and KOFA applies, the dispute and the relationship between the apartment owner and the Association would be governed in terms of the rules**

**and regulations under the Co-operative Society under which the said Association is registered or the terms of articles and memorandum of Association of company under which the said Association is registered.**

**23.9. If the Association is formed under KOFA, registration of the Association would be required under the Karnataka Co-operative Societies Registration Act and/or the Companies Act depending on whether it is a Co-operative Society or a Company which is to be registered.**

**23.10. In the event of a declaration, Deed of Apartment and byelaws being executed and the Apartment, building, property is subjected to KAOA, the said documents would have to be registered before the jurisdictional Sub-Registrar**

**and the same be informed to the Registrar of the Co-operative Societies.**

**23.11. There would be no requirement for registration of the Declaration, Deed of Apartment and/or bye-laws with the Registrar of the Co-operative Societies.**

**23.12. If the property is subjected to KAOA, the proceedings if any would have to be filed before the Civil Court of competent jurisdiction.**

**23.13. If a Co-operative Society or a Company is formed to manage the property, and the provision of KOFA being applicable the proceedings would have to be filed in terms of Section 13(5) before a Small Causes Court where a Small Causes Court is established, in the absence thereof, before a Civil Court of competent jurisdiction.**

**23.14. All the apartment owners are not required to sign and execute the Declaration, Deed of Apartment and bye-laws. The Promoter before registration of a sale deed can execute and register the Declaration, Deed of Apartment and bye-laws with the jurisdictional Sub-Registrar being the owner of the Apartment, building and property. If there is a joint development agreement, the owner of the property would also have to join the execution of the registration of the above documents. Suffice it to say, it is only the persons or entities who have registered title in respect of the property who are required to execute and register the above documents.**

**23.15. On the purchase of the property and registration of the sale deed, the purchaser or apartment taker would have to execute necessary Declaration under Form B of KAOR agreeing to be bound by the said Declaration, Deed of Apartment and bye-laws. The Association when formed could always amend the same in terms of the provisions applicable thereto.**

**24. Answer to point No.7: What Order?**

24.1. In view of the discussion above, since the Apartment in question is subjected to KAOA by execution of a Declaration, Deed of Apartment and bye-laws KOFA would not be applicable, no proceedings could have been initiated under Section 13 (5) before the Small Causes Court, Mangalore the said proceedings not being maintainable is barred under provision of the KAOA, the trial court has



rightly allowed the application under Order VII  
of the Rule 11(a) and (b) of the CPC.

The petitions stand ***dismissed***

**Sd/-  
JUDGE**

In/Prs\*

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