

Reserved on : 01.02.2024
Pronounced on : 08.02.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF FEBRUARY, 2024

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.26194 OF 2023 (GM-RES)

BETWEEN:

M/S. OZONE URBANA INFRA
DEVELOPERS PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT: NO.38
ULSOOR ROAD, BENGALURU – 560 042
REP. BY ITS AUTHORISED SIGNATORY/
MR. MAHESH GOWDA C. S.,

... PETITIONER

(BY SRI. V.SANJAY KRISHNA, ADVOCATE)

AND:

1 . THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY
HAVING OFFICE AT: 2ND FLOOR
SILVER JUBILEE BLOCK
UNITY BUILDING, CSI COMPOUND
3RD CROSS, MISSION ROAD
BENGALURU – 560 027
REPRESENTED BY ITS SECRETARY

- 2 . SERENE URBANA APARTMENT OWNERS
WELFARE ASSOCIATION (REGD.)
(OZONE URBANA CAMPUS)
REGISTERED UNDER THE KARNATAKA
SOCIETIES REGISTRATION ACT, 1960
KANNAMANGALA VILLAGE
KASABA HOBLI, DEVANAHALLI TALUK
BENGALURU RURAL, BENGALURU – 562 110
REPRESENTED BY ITS SECRETARY
MR. R.KRISHNASWAMY
(R/O APT B1-604 SERENE URBANA)
- 3 . M/S. COVAI PROPERTY CENTRE (INDIA) PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
COVAI CARE TOWER, 3RD FLOOR
GEM NIRMAALAYAM, V.G.RAO NAGAR
GANAPATHY, COIMBATORE – 641 000
REP. BY ITS MANAGING DIRECTOR.
- 4 . M/S. COVAI SENIOR CARE
CONSTRUCTIONS PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
COVAI CARE TOWER, 3RD FLOOR
GEM NIRMAALAYAM, V.G.RAO NAGAR
GANAPATHY, COIMBATORE – 641 000
REP. BY ITS MANAGING DIRECTOR
- 5 . M/S. SERENE SENIOR LIVING PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
485, PANTHEON ROAD, PANTHEON PLACE
EGMORE, CHENNAI – 600 008
REP. BY ITS MANAGING DIRECTOR

6 . M/S. COLUMBIA PACIFIC
COMMUNICATIONS PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
2999, 12TH MAIN ROAD
HAL 2ND STAGE, INDRANAGAR
BENGALURU – 560 008
REP. BY ITS MANAGING DIRECTOR.

... RESPONDENTS

(BY SRI. GIRISH K. V., ADVOCATE FOR R1;
SRI. G.SURIYA NARAYANAN, ADVOCATE FOR C/R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY R1 DATED 05/07/2023 REJECTING THE INTERLOCUTORY APPLICATION FILED BY THE PETITIONER IN COMPLAINT NO. CMP/UR/211027/0008475/2021 ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.02.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner-M/s Ozone Urbana Infra Developers Private Limited, is knocking at the doors of this Court calling in question an order dated 05-07-2023 passed by the Karnataka Real Estate Regulatory Authority ('the Authority' for short) rejecting an interlocutory application filed by it in a complaint registered by

respondent No.2. The Authority holds that the complaint is maintainable before it.

2. Heard Sri V.Sanjay Krishna, learned counsel appearing for the petitioner, Sri K.V. Girish, learned counsel appearing for respondent No.1 and Sri G.Suriya Narayanan, learned counsel appearing for respondent No.2.

3. The facts adumbrated, are as follows:-

The petitioner claims to be a company registered under the Companies Act, 2013 and is a promoter of several real estate projects. Likewise the petitioner promotes a project in the name and style of 'Serene Urbana' exclusively developed for retirement community over lands bearing Sy.Nos. 126, 127, 16/1 and 153 of Kannamangala and Poojanahalli Villages, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District. The extent of land on which the development of retirement community is to be carried out is averred to be measuring 6.05 acres in blocks I to V consisting of 318 apartments and in block No.6, 32 apartments. It is claimed that all approvals were taken by the petitioner from the

jurisdictional Planning Authority for a composite development of the total extent of 6.05 acres.

4. The petitioner, in order to develop and maintain the project as a retirement community, enters into an agreement with the 4th respondent who agrees to develop the project on the aforesaid land after obtaining necessary sanctions and approvals from the competent authority and to provide all the amenities required to run and operate the project as a retirement community. The project was termed to be a group housing apartment project and proposed to be constructed and sold by the petitioner in favour of intending purchasers of apartments. The development plan for the project was obtained from the competent authority on 29-04-2013 to construct the aforesaid residential apartment complex with all necessary amenities and a revised plan was also submitted on 09-07-2015. The project had to get completed in the month of April, 2017. It is claimed that when the project was nearing completion, the petitioner applies for grant of occupancy certificate before the jurisdictional authority which according to the petitioner was Kannamangala Gram Panchayat on 27-04-2017. The

occupancy certificate was based upon the completion certificate issued by the project architect. Based upon the aforesaid application, the Panchayat resolves to issue occupancy certificate on 16-05-2017 which ultimately was issued on 16-08-2017.

5. During the aforesaid proceedings, the petitioner had executed sale deeds in favour of allottees in the project commencing from June, 2016 for 318 apartments in the project. Sale deeds in respect of 241 apartments were executed and registered. Project does not get complete. It is then, the 2nd respondent Serene Urbana Apartment Owners' Welfare Association ('the Association' for short) knocks at the doors of the Authority by registering a complaint seeking to declare the project 'Serene Urbana' as an on-going project and claimed several reliefs inter alia. The petitioner during the pendency of those proceedings before the Authority files an application on 09-02-2013 invoking Sections 35 and 36 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act' for short) seeking rejection of the complaint on the ground that the project is not registerable as it stands excluded under the Rules

framed under the Act particularly with reference to Rule 4. Therefore, it was the case of the petitioner that it need not register itself before the Authority. This application is contested to by the 2nd respondent, which results in passing of the impugned order rejecting the application filed by the petitioner by holding the complaint to be maintainable and declaring the project of the petitioner as an 'on-going project'. It is this order that has driven the petitioner to this Court in the subject petition.

6. The learned counsel appearing for the petitioner, Sri. V. Sanjay Krishna would take this Court through the provisions of the Act and the Rules, to contend that under Rule 4 of the Rules the petitioner is exempted from registering before the Authority as it was not an on-going project as on the date the Rules came into force, it was a project where completion certificate was submitted and occupancy certificate was issued by the competent authority. He would further contend that entertainment of the complaint by the Authority was without jurisdiction. If it is without jurisdiction, any order that is passed is a nullity in law. He would seek to place reliance on the judgment of this Court in ***M/s PROVIDENT***

HOUSING LIMITED v. KARNATAKA REAL ESTATE REGULATORY AUTHORITY AND ANOTHER¹, to buttress his submission. It is his submission that the judgment in the aforesaid writ petition covers the issue on all its fours.

7. Per contra, the learned counsel representing the 2nd respondent/Association would vehemently refute the submissions. It is his contention that the petition suffers from suppression of material facts. It is the case of the petitioner that it has secured an occupancy certificate after submitting completion certificate. Neither the completion certificate nor occupancy certificate is placed on record by the petitioner. It is his submission that he has placed all the documents on record which would clearly demonstrate the fraud played by the petitioner in getting away from the rigours of Act. It is an on-going project even to-day as the project is not complete and the occupancy certificate is secured on bogus documents. He would submit that the project is meant for senior citizens, projected as retirement home, and these old people are

¹ *ILR 2023 KAR 777*

made to suffer due to the acts of the petitioner. He would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. For a complete resolution, a few dates would require reiteration. The project that is sought to be developed is not in dispute. It was to be a retirement home projected for retirement community/senior citizens to ensure harmonious living in the community is a matter of record. It is this projection that lured the retired home buyers. The development plan for the project was sanctioned by the Planning Authority on 29-04-2013, to construct a residential apartment complex with basic amenities for old age people. The plan was later modified on 09-07-2015. It is then the sale deeds are executed for 241 apartments in an apartment complex of 318 apartments. It is claimed that after the sale deeds are executed, the petitioner approaches the competent authority – the Kannamangala Gram

Panchayat with a completion certificate and secures an occupancy certificate dated 16-05-2017 and on 16-08-2017.

10. To consider the issue projected, it becomes germane to notice certain provisions of the Real Estate (Regulation and Development) Act, 2016 ('Act' for short) and the Karnataka Real Estate (Regulation and Development) Rules, 2017 ('Rules' for short).

The Real Estate (Regulation and Development) Act, 2016:

Section 2 of the Act deals with definitions. Section 2(m), (n), (q), (t), (zb) and (zf) of the Act run as follows:

"2(m) ***"Commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;***

(n) ***"common areas" mean—***

(i) *the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*

- (ii) *the staircases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
- (iii) *the common basements, terraces, parks, play areas, open parking areas and common storage spaces;*
- (iv) *the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*
- (v) *installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
- (vi) *the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*
- (vii) *all community and commercial facilities as provided in the real estate project;*
- (viii) *all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;*

....

(q) "Completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

....

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

....

(zb) **"Internal development works"** means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;

....

(zf) **"Occupancy certificate"** means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;"

(Emphasis supplied)

Section 2(m) defines what is a Commencement certificate. It is the one that permits construction of a building or to begin development works on an immovable property as per the sanctioned plan.

Section 2(n) defines Common areas.

Section 2(q) defines what is a Completion certificate. The Completion certificate would mean the one issued by the competent

authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

Section 2(t) defines Development works, to mean external development works and internal development works on the said property.

Section (zb) defines internal development works. They are manifold.

Section (zf) defines Occupancy certificate. Occupancy certificate would mean, a certificate issued by the competent authority permitting occupation of any building, as provided under locals laws which would necessarily contain civic infrastructure such as water, sanitation and electricity.

Two of the provisions quoted *supra* forms the fulcrum of the present *lis*. One being, the completion certificate. The completion certificate, as observed, mandates that the real estate project has been developed according to the sanctioned plan, layout plan and specifications. Occupancy certificate mandates that a building

should be complete with infrastructure such as water, sanitation and electricity.

The Karnataka Real Estate (Regulation and Development) Rules, 2017:

11. The Government of Karnataka in exercise of powers conferred under Section 84 of the Act promulgates the Rules. The Rules come into effect on 10-07-2017. Rules 3 and 4 are germane to be noticed and they read as follows:

"3. Information and documents to be furnished by the promoter for registration of project.— (1) The promoter shall furnish the following additional information and documents, along with those specified in sub-section (2) of Section 4 of the Act for registration of the real estate project with the regulatory authority namely:—

- (a) self attested copy of the PAN card of the promoter;*
- (b) annual report including audited profit and loss account, balance sheet, cash flow statement, directors report and the auditors report of the promoter for the immediately preceding three financial years; and where annual report is not available, the audited profit and loss account, balance sheet, cash flow statement and the auditor report of the promoter for the immediately preceding three financial years;*
- (c) the number of parking slots available in the said real estate project;*
- (d) authenticated copy of the legal title deed reflecting the title of the promoter to the land on which development of project is proposed along with legally valid documents for chain of the title;*

- (e) *the details of encumbrances on the land for which permission given under Section 109 of the Karnataka Land Reforms Act, 1961 if applicable, the Certified copy of the conversion order under Section 95 of the Karnataka Land Revenue Act, 1964 and permission of change in land use granted under Section 14 of the Karnataka Town and Country Planning Act, 1961, if applicable on which development is proposed including any rights, title, interest or name of any party in or over such land along with details;*
- (f) *where the promoter is not the owner of the land on which development is proposed details of the consent of the owner of the land along with self attested the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed; and*
- (g) *name, photograph, contact details and address of the promoter if it is an individual and the name, photograph, contact details and address of the chairman, partners, directors, as the case may be, and the authorised person in case of other entities.*

(2) An application to the Authority for registration of the real estate project shall be made in writing in Form 'A', in triplicate, until the procedure is made web based for filing of such application.

(3) The promoter shall pay a registration fee at the time of application for registration by way of a demand draft or a bankers cheque drawn on any scheduled bank or a Co-operative Bank or through online payment mode, as the case may be, for a sum calculated at the rate of,—

- (a) *in case of group housing project, -five rupees per square meter for projects where the area of land proposed to be developed does not exceed one thousand square meters; or rupees ten per square meter for projects where the area of land proposed to be developed*

exceeds one thousand square meters, but shall not be more than five lakhs rupees;

- (b) in case of mixed development (residential and commercial) project,-ten rupees per square meter for projects where the area of land proposed to be developed does not exceed one thousand square meters; or fifteen rupees per square meter for projects where the area of land proposed to be developed exceeds one thousand square meters, but shall not be more than seven lakhs rupees;*
- (c) in case of commercial projects,-twenty rupees per square meter for projects where the area of land proposed to be developed does not exceed one thousand square meters; or twenty five rupees per square meter for projects where the area of land proposed to be developed exceeds one thousand square meters, but shall not be more than ten lakhs rupees; and*
- (d) in case of plotted development projects,-five rupees per square meter, but shall not be more than two lakhs rupees.*

(4) The declaration to be submitted under clause (l) of sub-section (2) of Section 4, shall be in Form-B, which shall include a declaration stating that the promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or a building, as the case may be.

(5) In case the promoter applies for withdrawal of application for registration of the project before the expiry of the period of thirty days specified under sub-section (1) of Section 5, registration fee to the extent of ten percent paid under sub-rule (3), or rupees fifty thousand whichever is more, shall be retained as processing fee by the regulatory authority and the remaining amount shall be refunded to the promoter within thirty days from the date of such withdrawal.

4. Additional disclosure by promoters of ongoing projects.— (1) Upon the notification for commencement of sub-section (1) of Section 3, promoters of all ongoing projects which have not received completion certificate

shall, within the time specified in the said sub-section, make an application to the Regulatory Authority in the form and manner as specified in Rule 3.

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

- (i) in respect of layouts where the streets and civic amenities sites and other services have been handed over to the Local Authority and Planning Authority for maintenance;**
- (ii) in respect of apartments where common areas and facilities have been handed over to the registered Association consisting of majority of allottees;**
- (iii) where all development works have been completed as per the Act and certified by the competent agency and sale/lease deeds of sixty percent of the apartments/houses/plots have been registered and executed;**
- (iv) where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate/occupation certificate; and**
- (v) where Partial occupancy certificate is obtained to the extent of the portion for which the partial occupancy certificate is obtained.**

(2) The promoter shall in addition to disclosures provided in Rule 3 disclose the following information, namely:—

- (a) ***the original sanctioned plan, layout plan and specifications and the subsequent modifications carried out, if any, including the existing sanctioned plan, layout plan and specifications;***

Explanation:—For the purpose of clause (ii) of sub-section (2) of Section 14 of the Act, the Prior written consent of at least two third of the allottees would not be required if,—

- (i) ***implementation of the proposed plan has already been disclosed to the allottees under the agreement prior to registration, or***
- (ii) ***modification is required to be made in compliance of any order or direction issued by competent authority or statutory authority, under the agreement for sale, the promoter is not required to obtain the consent of allottee in case of any alteration or addition to the apartment required by Government authorities or due to change in any law.***
- (b) ***the total amount of money collected from the allottees and the total amount of money used for development of the project including the total amount of balance money lying with the promoter; and***
- (c) ***status of the project (extent of development carried out till date and the extent of development pending) including the original time period disclosed to the allottee for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant in practice.***

(3) The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on

any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

(4) In case of plotted development, the promoter shall disclose the area of the plot being sold to the allottees as per the layout plan.

(5) For projects that are ongoing and have not received completion certificate on the date of commencement of the Act, the promoter shall, within a period of three months of the application for registration of the project with the Authority, deposit in the separate bank account, seventy per cent, of the amounts already realized from the allottees, which have not been utilized for construction of the project or the land cost for the project as required under sub-clause (D) of clause (I) of sub-section (2) of Section 4, which shall be used for the purposes specified therein:

Provided that if the receivable of the ongoing project is less than the estimated cost of balance construction, then the promoter shall deposit 100 per cent of the amounts to be realised in the separate account."

(Emphasis supplied)

Rule 3 mandates information and documents to be furnished by the promoter for registration of a project under the Act. Rule 4 mandates additional disclosure by promoters of ongoing projects. The said Rule mandates that upon the notification for commencement under sub-section (1) of Section 3 of the Act, promoters of all ongoing projects which have not received completion certificate shall, within the time specified in the said

sub-section, make an application to the Regulatory Authority. The rule places an explanation as to what is an ongoing project. An ongoing project would mean where a development of a project is going on for which completion certificate has not been issued but excluded those projects which fulfill the criteria enumerated therein which are lay-outs where the streets and civic amenities and other services have been handed over to the Local Authority. It is in the aforesaid statutory frame work, the issue in the *lis* is to be considered.

12. The dates are undisputed. After execution of sale deeds as aforeaid, the petitioner approaches the competent authority – Kannamangala Gram Panchayat to secure occupancy certificate, for which submission of completion certificate is imperative. The certificate that was placed before the Gram Panchayat requires to be noticed. It reads as follows:

ನಮೂನೆ - V

(12ನೇ ಖಂಡ ನೋಡಿ)

ಪೂರ್ಣಗೊಂಡ ಬಗ್ಗೆ ಪ್ರಮಾಣ ಪತ್ರ

ನಾನು _____ ಗ್ರಾಮದಲ್ಲಿ _____ ಬೀದಿಯಲ್ಲಿ ಶ್ರೀ/ಶ್ರೀಮತಿ _____ ಇವರಿಗೆ ಸೇರಿದ _____ ಸಂಖ್ಯೆಯ ನಿವೇಶನದಲ್ಲಿನ ಕಟ್ಟಡವನ್ನು ಮೇಲ್ವಿಚಾರಣೆ ಮಾಡಲಾಗಿ, ಕಟ್ಟಡವು ಅಭಿವೃದ್ಧಿ ಹಂತದಲ್ಲಿದೆ / ನಿರ್ಮಾಣಗೊಂಡಿದೆ / ಮತ್ತು ನಿರ್ಮಾಣಗೊಂಡಿದೆ ಅಥವಾ ಮಾರ್ಪಾಟು ಮಾಡಲಾಗಿದೆ ಎಂದು ಮತ್ತು _____ ಸಂಖ್ಯೆಯ _____

ದಿನಾಂಕದಂದು ಮಂಜೂರಾದ ನಕ್ಷೆಯನ್ನು ನೋಡಲಾಗಿ ಅದಕ್ಕೆ ಅನುಸಾರವಾಗಿ ಕಟ್ಟಡವು _____ ರಂದು ಪೂರ್ಣಗೊಂಡಿರುವುದನ್ನು ನಾನು ಈ ಮೂಲಕ ಪ್ರಮಾಣೀಕರಿಸುತ್ತೇನೆ.

ಕಾಮಗಾರಿಯು ನನ್ನ ಪ್ರಕಾರ ತೃಪ್ತಿಕರವಾಗಿ ಪೂರ್ಣಗೊಂಡಿದೆ. ಕಾರ್ಯಶೌಶಲ್ಯ ಮತ್ತು ಸಾಮಾನ್ಯ ಮತ್ತು ನಿರ್ದಿಷ್ಟ ಪಡಿಸಿದ ವಿವರಗಳಿಗೆ ಅನುಸಾರವಾಗಿ ಎಲ್ಲ ಸರಕು ಸಾಮಗ್ರಿಗಳನ್ನು (ಬಗ್ ಮತ್ತು ದರ್ಜೆ) ನಿಖರವಾಗಿಯೇ ಬಳಕೆ ಮಾಡಲಾಗಿದೆ.

_____ ದಿನಾಂಕ _____ ನಮೂನೆಯ ಒಪ್ಪಂದದಲ್ಲಿ ಗೊತ್ತುಪಡಿಸಿದ ಎಲ್ಲ ಷರತ್ತುಗಳನ್ನು ಪಾಲಿಸಲಾಗಿದೆ.

ಈ ಕಟ್ಟಡವನ್ನು ಯಾವ ಉದ್ದೇಶಕ್ಕಾಗಿ ನಿರ್ಮಿಸಲಾಗಿದೆ / ಪುನರ್ ನಿರ್ಮಿಸಲಾಗಿದೆ / ಮಾರ್ಪಾಟುಗೊಳಿಸಲಾಗಿದೆ, ಹೆಚ್ಚಿಗೆ ಕಟ್ಟುವ ಮೂಲಕ ವಿಸ್ತರಿಸಲಾಗಿದೆಯೋ ಆ ಉದ್ದೇಶಕ್ಕೆ ಬಳಸಲು ಸೂಕ್ತವಾಗಿದೆ”

ಸಹಿ/-
(ಕಛೇರಿಯ ಮೊಹರಿನೊಂದಿಗೆ ಮೇಲ್ವಿಚಾರಕನ ಸಹಿ
ದಿನಾಂಕ: 13.04.2017.”

ಮಾಲೀಕನ ಹೆಸರು ಮತ್ತು ಸಹಿ

(Emphasis added)

The completion certificate is submitted by the project architect. Completion certificate under the Act would mean that the real estate project has been developed according to the sanctioned layout, layout plan and specifications as approved by the competent authority. None of those indications are found in the completion certificate placed before the Panchayath. It is dated 13-04-2017. All the information necessary to be filled in, **remain blank**. The owner's name and his signature **is blank**. But, the Gram Panchayat accepts it and affixes the signature. It is rather shocking as to how the Gram Panchayat could affix the signature, of receipt of completion certificate, which is **completely blank**. The certificate

reads that it is 'ಪೂರ್ಣಗೊಂಡ ಬಗ್ಗೆ ಪ್ರಮಾಣಪತ್ರ'. Therefore, the petitioner is projecting the apartment complex as complete. Neither the apartment complex was complete, nor a complete completion certificate, was placed before the Gram Panchayat. The request of the petitioner for issue of occupancy certificate reads as follows:

"To: Date:27.04.2017
 THE PANCHAYAT DEVELOPMENT OFFICER,
 Kannamangala Village Panchayat,
 Kannamangala Village,
 Kasaba Hobli, Devanahalli Taluk,
 Bangalore Rural District.

Dear Sir,

Sub: Requesting to issue occupancy certificate for Serene Residential apartment on Sy.No.126, 127, 153 of Kannamangala Village and Sy.No.16/1 of Poojenahalli Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District, for 360 units measuring 42337.78 sq.mtrs.

Ref: BIAAPA approved Building plan vide Commencement Certificate no. BIAAPA/TP1/CC/33/2015-16/4798 dated 11.03.2016.

This is with reference to the above subject, we request you to issue occupancy certificate for Serene Residential apartment on Sy.No.126, 127, 153 of Kannamangala Village and Sy.No.16/1 of Poojenahalli Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District, for 360 units measuring 42337.78 sq.mtrs.,

Please find we are herewith enclosed following documents:

- 1. Sale deed register Doc. No.367/16-17 dated 31.03.2016 for Sy.No.126, 127.**
- 2. Sale Deed register Doc. No.9501/06-07 dated 16.03.2007 for Sy.No.153, 16/1.**
- 3. Conversion order vide no. ALN(D)SR/105/2012-13 dated 19.12.2012**
- 4. Panchayath Khata no.6**
- 5. Tax paid receipt**
- 6. BIAAPA approved Modified Development Plan dated 09.07.2015**
- 7. BIAAPA approved Building plan vide Commencement Certificate no. BIAAPA/TP1/CC/33/2015-16/4798 dated 11.03.2016.**

Kindly acknowledge the receipt of the same and issue partly occupancy certificate at the earliest

Thanking you,

Yours faithfully,

for M/s. Ozone Urbana Infra Developers Pvt. Ltd."

(Emphasis added)

The afore-quoted is the representation submitted for securing an occupancy certificate. The documents that are appended to the representation would clearly indicate that it is akin to seeking a commencement certificate, not the occupancy certificate, as the occupancy certificate to be issued under the Section 2(zf) of the Act *supra* would require complete infrastructure such as water, sanitation and electricity to be in place. Neither the completion certificate nor the representation seeking occupancy certificate even

whispers about water, sanitation or electricity in place. But on the basis of the aforesaid representation, the Gram Panchayat issues an occupancy certificate. The occupancy certificate reads as follows:

“ಕನ್ನಮಂಗಲ ಗ್ರಾಮ ಪಂಚಾಯ್ತಿ ಕಾರ್ಯಾಲಯ

ಕನ್ನಮಂಗಲ, ದೇವನಹಳ್ಳಿ ತಾಲ್ಲೂಕು, ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ ಜಿಲ್ಲೆ.

ಸಂಖ್ಯೆ: ಕ.ಗ್ರಾ.ಪಂ 76/2017-18

ರವರಿಗೆ,

ಮೆ.ಓಜೋನ್ ಅರ್ಬನಾ ಇನ್ಸ್ಟ್ರಾ ಡೆವಲಪರ್ಸ್ ಪ್ರೈ.ಲಿ
ನಂ.38, ಅಲಸೂರು ರಸ್ತೆ
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ:- ಸ್ವಾಧೀನ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ನೀಡುತ್ತಿರುವ ಬಗ್ಗೆ, :-:16/05/2017

ಉಲ್ಲೇಖ: ದಿ:16/05/2017ರ ಸಾಮಾನ್ಯ ಸಭೆಯ ನಡವಳಿಗಳು.

ಮೇಲ್ಕಂಡ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖನಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮಗೆ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ, ದಿನಾಂಕ:16/05/2017 ರ ಸಾಮಾನ್ಯ ಸಭೆಯಲ್ಲಿ ಶ್ರ.ಸಂ:6/4 ರ ನಿರ್ಣಯದಲ್ಲಿ ಓಜೋನ್ ಅರ್ಬಾನವರು ಪೂರ್ಣ, ಕಟ್ಟಡ ಪರವಾನಿಗೆ ತೆರಿಗೆ, ಲೇಬರ್ ಸೆಸ್ ಕಟ್ಟಿದ ನಂತರ ಒ.ಸಿ (ಅಕ್ಕಪನ್ನಿ ಪ್ರಮಾಣ ಪತ್ರ) ನೀಡಲು ತೀರ್ಮಾನಿಸಲಾಗಿರುತ್ತದೆ.

ದಿನಾಂಕ:16/08/2017 ರಂದು ಗ್ರಾಮ ಪಂಚಾಯತಿಗೆ ಅಕ್ಷಾ ವಸತಿ ಅಪಾರ್ಟ್‌ಮೆಂಟು ಕಟ್ಟಡ-1 ಮತ್ತು ಸೆರೆನಾ ವಸತಿ ಅಪಾರ್ಟ್‌ಮೆಂಟು ಕಟ್ಟಡಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಲೇಬರ್ ಸೆಸ್ ಪಾವತಿಸಿದ ರಶೀದಿಗಳನ್ನು ನೀಡಿದ್ದು, ಓಜೋನ್ ಅರ್ಬಾನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸೆರೆನಾ ವಸತಿ ಅಪಾರ್ಟ್‌ಮೆಂಟನ್ನು ಕನ್ನಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 126, 127, 153 ಮತ್ತು ಪೂಜನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್:16/1 ರ ಜಾಗದಲ್ಲಿ 42337.78 (ನಲವತ್ತೆರಡು ಸಾವಿರದ ಮುನ್ನೂರ ಮೂವತ್ತೇಳು) ಚ.ಮೀಟರುಗಳ ಜಾಗದಲ್ಲಿ ಕಟ್ಟಿದ್ದು ಮತ್ತು ಕನ್ನಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 89/1,92/2,105 ರ ಜಾಗದಲ್ಲಿ 37276.68 (ಮೂವತ್ತೇಳು ಸಾವಿರದ ಇನ್ನೂರ ಎಪ್ಪತ್ತಾರು) ಚ.ಮೀಟರುಗಳ ಜಾಗದಲ್ಲಿ ಅಕ್ಷಾ ವಸತಿ ಅಪಾರ್ಟ್‌ಮೆಂಟಿನ ಕಟ್ಟಡ-1 ಅನ್ನು (ಎ, ಬಿ, ಸಿ, ಡಿ, ಇ)

ಕಟ್ಟಡ ಕಟ್ಟಿದ್ದು, ಕಟ್ಟಡ ನಿರ್ಮಾಣ ನಿಯಮಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿ ಕಟ್ಟಿದ್ದರಿಂದ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದ ಸಂಖ್ಯೆ..ಗ್ರಾ.ಅಪ788ಗ್ರಾಪಂಅ2014, ಬೆಂಗಳೂರು, ದಿ:08/05/2015 ರಂತೆ, ದಂಡ, ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಶುಲ್ಕ, ಖಾಲಿ ನಿವೇಶನದ ಶುಲ್ಕ ಸೇರಿ ಒಟ್ಟು 6071631=00 ರೂಪಾಯಿಗಳನ್ನು ರಶೀದಿ ಸಂಖ್ಯೆ: 629994, 629992, 629993, 649203, 649201, 649202, 649204 ರಂತೆ ಪಾವತಿಸಿರುತ್ತೀರಿ. ಹಾಗೂ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದ ಸಂಖ್ಯೆ ಗ್ರಾಅಪ788ಗ್ರಾಪಂಅ2014, ಬೆಂಗಳೂರು, ದಿ:08/05/2015 ರಂತೆ ಕಟ್ಟಡ ನಕ್ಷೆಯನ್ನು ತಯಾರಿಸಿದ ಅಧಿಕೃತ ಇಂಜಿನಿಯರ್ ರವರಿಂದ ಕಟ್ಟಡ ಪೂರ್ಣಗೊಂಡ ಪ್ರಮಾಣ ಪತ್ರ ಮತ್ತು ಪರಿಶೀಲನಾ ಪ್ರಮಾಣ ಪತ್ರ ಸಲ್ಲಿಸಿದ್ದು ಬಯಪಾ ಅನುಮೋದಿತ ನಕ್ಷೆಯಂತೆ ಕಟ್ಟಡ ನಿರ್ಮಿಸಿರುವುದಾಗಿ ಇಂಜಿನಿಯರ್‌ರವರು ದೃಢೀಕರಿಸಿರುತ್ತಾರೆ.

ನಿಯಮಾನುಸಾರ ಬಯಪಾ ನಿಯಮಗಳಿಗೊಳಪಟ್ಟು ಗ್ರಾಮ ಪಂಚಾಯತಿಯ ಪೂರ್ವಾನುಮತಿ ಇಲ್ಲದೆ ಕಟ್ಟಡವನ್ನು ಯಾವುದೇ ಮಾರ್ಪಾಟು ಮಾಡುವುದನ್ನು ನಿಶೇಧಿಸಿದ್ದು, ಸ್ವಾಧೀನ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಪಡೆದ ನಂತರ ಮಾಲೀಕರು ಕೂಡಲೇ ತಮ್ಮ ಹೆಸರಿಗೆ ಎಲ್ಲಾ ಘಟಕಗಳ ಖಾತೆಗಳನ್ನು ಕಟ್ಟಡ ತೆರಿಗೆ ಪಾವತಿಸಿ ನೋಂದಾಯಿಸಿ ಕೊಳ್ಳತಕ್ಕದ್ದೆಂದು ಷರತ್ತು ವಿಧಿಸಿರುತ್ತೆ.

ಕನ್ನಮಂಗಲ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 126, 127, 153 ಮತ್ತು ಪೂಜನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್:16/1 ರ 42337.78 (ನಲವತ್ತೆರಡು ಸಾವಿರದ ಮುನ್ನೂರ ಮೂವತ್ತೇಳು) ಚ.ಮೀಟರುಗಳ ಜಾಗದಲ್ಲಿ ಸೆರೆನಾ ವಸತಿ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಕಟ್ಟಡಕ್ಕೆ ಉಲ್ಲೇಖಿತ ಸಾಮಾನ್ಯ ಸಭೆಯ ತೀರ್ಮಾನದಂತೆ ಷರತ್ತುಗಳಿಗೆ ಒಳಪಟ್ಟು ಸ್ವಾಧೀನ ಪ್ರಮಾಣ ನೀಡಿರುತ್ತೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ

ನಹಿ/-

ಪಂಚಾಯತಿ ಅಭಿವೃದ್ಧಿ ಕನ್ನಮಂಗಲ ಗ್ರಾಮ ಪಂಚಾಯತಿ ದೇವನಹಳ್ಳಿ ತಾಲ್ಲೂರು."

(Emphasis added)

A perusal at the occupancy certificate would indicate that the Authorities have not even looked into the statute. There is no indication about the works completed *qua* sanitation, electricity and water. The apartment complex was not complete at all, when the completion certificate was submitted and occupancy certificate was granted. The occupancy certificate is resorted to be granted without

even inspecting the property, by the Kannamangala Gram Panchayat. Therefore, the occupancy certificate granted runs blatantly contrary to law.

13. On the project being dragged without rhyme and reason, the Association of retired people i.e., the retired home buyers/senior citizens knock at the doors of the Authority. The Authority issues notice and directs a spot inspection to be conducted of the project to get to know as to whether the project is actually complete as on 10-07-2017 or the completion certificate was a bogus document submitted for getting an occupancy certificate. The report of the said inspection is produced by the 2nd respondent. It reads as follows;

"SPOT INSPECTION REPORT: SERENE URBANA

Date of inspection: 29.06.2022

<i>Site inspection report of Residential Project "SERENE urbana" ozone urbana campus, Kannamangala village, Kasaba Hobli, Devanahalli taluk, Bengaluru Rural.</i>		
SL NO	Descriptions	Details
1	<i>Project Name</i>	<i>"SERENE URBANA</i>
2	<i>Promoter Name</i>	<i>M/S OZONE URBANA INFRA DEVELOPERS PVT LTD</i>
3	<i>Project Address</i>	<i>Ozone Urbana campus, Kannamangala village, Kasaba</i>

		<i>Hobli, Devanahalli taluk, Bangalore Rural.</i>
4	<i>Project Type</i>	<i>Residential Development/ Group housing.</i>
5	<i>Registration Number</i>	<i>Un-registered Number</i>
6	<i>Complaint number</i>	<i>CMP/8475</i>
7	<i>Plan Approved by</i>	<i>BIAPPA vide no. TP09/CC/33/2015-16 dated 11.03.2016 Bangalore International Airport Area Planning Authority.</i>

Ref: *Note from Hon'ble Chairman vide letter No: ರೇರಾ/ಕ/ಅಧ್ಯಕ್ಷರು/ಅಶಾ/ಓ10/2021-22 dated 10/06/2022.*

As per the directions of the Hon'ble Chairman, the above group housing project "SERENE URBANA was inspected by Engineering Inspection Team (RERA), on 29.06.2022. The complainants and the office bearers of the serene Urbana owners welfare association were present along with their advocate. But the developer or Representatives of the Developer were absent, inspite of prior intimation through e-mail (attendance sheet enclosed).

The above group housing project SERENE URBANA consists of 360 numbers of flats approved by BIAAPA in its development plan vide no.BIAAPA/TP3/DP/03/2012-13 dated 9.07.2015 and sanctioned plan vide no.BIAAPA /TP/09/CC/33/2015-16 dated 11.03.2016. This project is not registered under K RERA. There are 3- buildings in this project, Building 01-256 units, Building 02- 72 units & Building 3-32 units, total-360 housing units including "URBANA IRENE, URBANA SERENE" in stilt +Ground+7 upper floors.

The following points were raised by the members of the association "SERENE URBANA" apartment owners association (SUAOWA) registered under Karnataka society's registration act bearing Reg no.DBR/SOR/36/201819.

1. This housing project is maintained by an external agency appointed by the developer without the consent of SUAOWA.

2. The project work is completed and the occupancy certificate is issued by PDO, Kannamangala village panchayat dated 16.08.2017.

3. Fire clearance for building-3 was obtained on 21.05.2019, which is after the Occupancy certificate issued by Grama Panchayat dated on 16.08.2017.

4. BESCO Permanent power supply is obtained by the developer on 21.08.2018.

5. As per association and as per the Brochure submitted, the organic converter plant has to be installed as per the requirement of PCB, Air conditioning of dining hall not done, shaded walkway, Wellness centre, UPS Backup for each housing unit not provided.

6. Amenities promised such as health club, steam room, sauna room, Jacuzzi, Pharmacy, indoor badminton court, crèche and ATM facilities are not provided.

7. Sewage treatment plant located in Serene Urbana campus is connected to other blocks also.

8. The Exit road to the south as per sanctioned plan is blocked as of now and the entry is restricted.

9. Lift clearance for this project from the electrical inspectorate is obtained 14.01.2019 and for DG installation clearance on 4.01.2019.

10. Water supply is done using only one bore well, which is connected to water treatment plant and it is in operation.

The project was inspected and found that the allottees are already staying and facilities provided are in use, there was nobody from the developer side to clarify regarding the complaints.

This is for your kind information.”

(Emphasis added)

The inspection is conducted on 29-06-2022, five years after issuance of occupancy certificate on the completion certificate submitted by the petitioner. The lacunae are fire clearance for the building was obtained on 21-05-2019 without which occupancy certificate could not have been granted. But, the Gram Panchayat grants it on 16-08-2017 two years before fire clearance. BESCO power supply is obtained on 21-08-2018. The Gram Panchayat grants occupancy certificate to an apartment complex which did not have even the power. None of the amenities that were assured and promised to lure the retired home buyers were in place. Sewage treatment plant was yet to come up. Lifts were not provided as DG installation clearances for the lift was issued on 04-01-2019. Water supply was not complete. All these lacunae are found on the date of inspection i.e., 29-06-2022, to be present, as on the date of issuance of occupancy certificate.

14. Every trait that is necessary for grant of an occupancy certificate, is secured by the petitioner long after issuance of occupancy certificate. Therefore, it becomes surprising, as to how the Gram Panchayat granted occupancy certificate without even looking into the apartment complex. This is shrouded in mystery. Since the project was not handed over, as observed hereinabove, the 2nd respondent knocks at the doors of the Authority. The Authority rejects the application filed by the petitioner that it was not an on-going project, but stood completed and directs the petitioner to register itself under RERA. The order passed by the Authority reads as follows:

ORDER

- (a) *The Interlocutory Application dated 9-02-2023 filed by the respondent No.1 promoter is hereby rejected.*
- (b) *This complaint is maintainable.*
- (c) ***The "Serene Urbana Project" is declared as an "on-going project". The respondent No.1 promoter, M/s Ozone Urbana Infra Developers Pvt.Ltd., respondent No.3, M/s Covai Senior Care Constructions Pvt. Ltd., and respondent No.4 M/s Serene Senior Living Pvt.Ltd. are hereby directed to register the "Serene Urbana Project" under RERA immediately as per Section 3 of the Real***

Estate (Regulation and Development) Act within two weeks from the date of receipt of this order.”

(Emphasis added)

The Authority directs registration of the petitioner before it within 2 weeks from the date of the order. If regard is had to what is observed hereinabove, it cannot be said that 'Serene Urbana' a retirement home was a project that was complete on the strength of completion certificate which does not inspire even a semblance of confidence. Therefore, no fault can be found with the order passed by the Authority directing registration of the project as an 'on-going project'. There cannot be a cavil of doubt that the project was, as on 10-07-2017, the date on which the Rules came into force was still an '**on-going project**' as neither the completion certificate nor the occupancy certificate were issued in accordance with law, the project was yet to get completed, on the date on which the occupancy certificate was issued. The judgment in the case of ***M/S. PROVIDENT HOUSING*** (*supra*) is distinguishable on the facts obtaining in the case at hand, without much ado. The facts are entirely different, the project was complete in the said case, while it is not in the case at hand.

15. The respondents, in order to vindicate their stand that it was an ongoing project, has placed several communications in the form of assurances by the petitioner to the home buyers. It is germane to notice what are the assurances meted out to the petitioner home buyers/retirement home buyers. As an illustration three of the assurances meted out are quoted for the purpose of quick reference and they read as under:

*"Mr. Ramswamy Ramachandran
3A, Ascot Apartments, 191
4th Cross, Defence Colony, 6th Main
Indira Nagar, Bangalore - 560038
(M): 9902040973*

**Sub: Allotment of (a Retirement Apartment Unit
in Project Urbana Irene.**

Dear Sir,

*We thank you for investing in Residential Unit **No.304**, 3 BHK in Block C in Urbana Irene Retirement Community, NH-7, Kannamangala Village, Kasaba Hobl, Devanahalli Taluk-562 110. On the basis of the information provided by you and also on the assurances regarding prompt payments of various installments payable by you as per the schedule payments indicated to you at the time of booking and with the understanding that you will enter into suitable documentation as provided or advised by us, we hereby allot you the Unit No.304 mentioned below:*

The details of the Retirement Residential Unit allotted to you are as follows:

Residential Unit No. : 304
 Block : Block C
 Unit Type : 3 BHK
 Floor : 3
 Saleable Area : 1461 Sq ft
 Car Park : 1
 Basic Cost : Rs. 68,52,090/-

Note: *Basic cost mentioned above indicates only Land & Construction Cost. All statutory taxes and levies, Senior Care Specifications, Deposits etc will be additional and as per the terms of the cost sheet agreed and signed by you.

Please note that this allotment letter by itself does not create any independent right, possessory or otherwise in the above residential unit execution.

10	On Completion of External Plastering	320,204	24,415	344,619
11	Balance on Possession	281,974	26,602	308,576
	Total	5,006,571	438,027	5,444,598

- Computed based on the present prevailing taxes/statute, any prospective changes shall be applicable and binding.

ANNEXURE-III

Delivery Schedule

The delivery of the Residential Unit will be handed over by 31st March 2018 with a grace period of an additional Six (06) months.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands the day, month and year first herein above written."

"Re: Urbana Irene - C Block - Handing Over:

On Wed, 26 Dec 2018 at 10:11, Megha <megha@covaicare.com> wrote:

Dear Sir/Ma'am,

Vanakkam.

We are happy to inform you that C Block of Urbana Irene is ready for possession. The work on Senior Care Centre to provide services and care is in full swing.

We request you to take over your apartment so that the interior work can commence. Many have since got it done. Please give us 72 hour notice before you visit the site. Kindly complete this process by 15th Jan 2019 unless due to compelling reasons that you are unable to visit. In that case, please tell us your probable date of visit.

We are also in the process of finalising the sale deed for registration. The registration will commence after 15th Jan 2019. The Senior Care Centre will be operational by 31st Jan'19. Lifts will not be functional before Mar 2019, however we can provide services by end Jan 2019 for residents in C Block. Please plan your move accordingly.

We look forward to hearing from you soon.

*Kind regards,
Unnimegha K B
Manager CRM
Customer Relations"*

"Dear Sir/Madam,

Greetings from Serene.

We are pleased to announce that your apartment is ready for handover for interiors/wood work starting 10th August 2017. You may collect the keys from the

site from Ozone representative Ms. Nalina / Mr. Saravana Kumar (Contact No.: +91 99800 33658).

Do let us know your convenient date for taking the handover so we can make necessary arrangements at the site and assist you with a guided tour of your apartment.

At the time of handover you may observe some snags in your apartment, we request you to bring the same to the attention of the site engineer and Serene representative Mr. Honestraj (Contact No.: +91 99015 38692) or Ozone representative Ms. Nalina / Mr. Saravana Kumar (Contact No.: +91 99800 33658). In case of such snags reported we assure to complete the same before the completion of your interior/woodworks and final handover.

Thanks & Regards,"

(Emphasis added)

The afore-quoted communications would clearly indicate that Everytime illusory assurances are handed over to the senior citizens.

16. It is trite that retirement homes or old age homes as they call it, are developed to provide a social environment where seniors can interact with their peers and the retirees and have a comfortable living experience through modern developments. It is this that is projected by the petitioner while developing the project 'Serene Urbana'. The highlights projected at the time when the project was advertised and retired people were lured are as follows:

"Highlights of Urbana Project:

- 1) *First and the Biggest Retirement Housing with 'Freehold property' within the vicinity of Bangalore City.*
- 2) *Close to about 10 Kilometers from Devenahalli Town and with easy public road access.*
- 3) *The proposed project is very close to "GVK International Airport" @ Bangalore.*
- 4) *Plenty of green area for refreshing natural environment.*
- 5) *Specially designed for senior lifestyle with ramps and hand rails in all important areas.*
- 6) *Stretcher lifts for emergency evacuations.*
- 7) *Centrally air-conditioned medical and nursing facilities, assisted care with a resident doctor, nurse and physiotherapist.*
- 8) *Fully stationed ambulance.*
- 9) *Luxurious centrally air-conditioned dining facilities with dietician monitored hygienic food.*
- 10) *Housekeeping services including cleaning and moping inside the house.*
- 11) *24/7 Security.*
- 12) *24/7 Electrical, Plumbing and other preventive maintenance services.*
- 13) *Garbage clearing arrangements.*
- 14) *Travel services including pick up drop and ticketing.*
- 15) *Recreation arrangements including social evenings, dance and music.*
- 16) *Religious tours and holidays.*

- 17) *Picnics and Tours, visits to Theatres, restaurants and shopping malls.*
- 18) *Entertainment activities for residents.*
- 19) *Event management services.*
- 20) *Arrangement for celebrations like birthdays, wedding anniversaries etc.*
- 21) *Payment of bills and taxes.*
- 22) *Arrangement of Banking Facility.*
- 23) *Guest Houses for Guests and relatives.*
- 24) *Geriatric Gym. Ayurvedic Massage Centre.*
- 25) *Travel and Tour Desk Facilities.*
- 26) *Laundry Facilities.*
- 27) *Library and Reading Room.*
- 28) *Open Air Theatre.*
- 29) *Indoor TV Room.*
- 30) *Badminton Court.*
- 31) *Outdoor Sports Arena.*
- 32) *Jogging Track."*

The aforesaid is part of communication to the home buyers. It is on the aforesaid assurance of delivery of the project with all the aforesaid amenities within the time frame, the retired people/ senior citizens have invested. The investment of senior citizens sometimes

is from out of the entire savings, of their life time, or by raising finance from financial institutions who would face the wrath of proceedings under the SARFAESI Act, 2002, if they do not repay the amount. They sometimes neither have the money nor the apartments for them to live in. Home buyers are dodged by the developers as could be gathered from mushrooming of cases before the Authority and before this Court alleging that the projects are continuing beyond 10 years and the home buyers are not in a position to occupy the same.

17. The projection is that it is not an 'on-going project'. The contents of projection suffer from material suppression of facts, as none of the documents are placed on record by the petitioner while securing an interim order at the hands of this Court. It is the 2nd respondent who has placed every document on record and the documents would demonstrate that the petitioner has played fraud with the Gram Panchayat in securing occupancy certificate. ***Such fraud cannot be played only by the hands of the developer or by the hands of the competent officers, it can be played only***

when the hands of the competent officers are in the glove of the developers. It is an action hand in glove.

18. Therefore, it is necessary to admonish the competent authorities who are empowered to issue occupancy certificates not to sit in four corners of their air-conditioned chambers and issue occupancy certificates, to the developers, for their asking. The Authorities henceforth shall inspect the property, satisfy themselves whether occupancy certificate can be issued in terms of law, and only then issue such occupancy certificate, failing which those officers who handle such files where grant of occupancy certificate is sought, would be solely responsible and accountable for issuance of illegal occupancy certificates. Looking at the large increase in the number of cases which call in question reckless issuance of occupancy certificates, it has become necessary to direct the State Government to issue necessary circular in the form of guidelines to the Authorities who handle grant of occupancy certificates to strictly adhere to the conditions necessary to be looked into while granting occupancy certificates. The circular shall also bear that in the event of scrutiny of such occupancy certificates, if it is found that they are

issued contrary to law, those officers would become open to initiation of departmental enquiry, or in a given case registration of crime, as well against those officers. The developers should bear in mind, particularly of those projects, which involve retirement homes or homes for senior citizens, should not make those citizens run pillar to post, to secure accommodation, after them having paid substantial amount. ***It is necessary to bear in mind that retired people should not be made to re-tire themselves.***

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition stands dismissed.
- (ii) It is declared that 'Serene Urbana', project of the petitioner was an 'on-going project' as on 10-07-2017, the date on which the Rules come into force.
- (iii) The petitioner, as directed by the Karnataka Real Estate Regulatory Authority, within 4 weeks from the date of receipt of a copy of this order, register itself before Karnataka Real Estate Regulatory Authority.

- (iv) The State Government, through the Departments of Rural Development and Panchayat Raj and Urban Development, shall issue necessary circulars to all the authorities who are empowered to grant occupancy certificates, bearing in mind the observations made in the course of the order.
- (v) The circular, aforesaid, shall be issued within 8 weeks from the date of receipt of copy of this order. Compliance of such issuance be placed before this Court in these proceedings, within the expiry of the said 8 weeks.
- (vi) Registry shall forward a copy of this order to the Chief Secretary, Government of Karnataka for its compliance and reporting of such compliance.

**Sd/-
JUDGE**

bkp
CT:SS