



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE M G UMA

WRIT PETITION NO. 5934 OF 2024 (CS-RES)

BETWEEN:

M/S SOBHA LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
"SOBHA" DEVARABISANAHALLI
SARJAPUR-MARATHALLI OUTER RING ROAD
BELLANDUR POST
BENGALURU - 560 103
REPRESENTED BY ITS AUTHORISED
SIGNATORY SRI. PRASAD M.S.

... PETITIONER

(BY SRI: MADHUKAR M DESHPANDE, ADVOCATE)

AND:

1. THE DEPUTY REGISTRAR OF
CO-OPERATIVE SOCIETIES AND
APPELLATE AUTHORITY, ZONE-I
BANGALORE URBAN DISTRICT
"SAHAKARA SOUDHA", 1ST FLOOR
3RD MAIN, 8TH CROSS, MARGOSA ROAD
MALLESHWARAM, BENGALURU - 560 003.
2. ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETY
1ST ZONE, BENGALURU URBAN DISTRICT
OFFICE AT NO.146, "SAHAKARA SOUDHA"
1ST FLOOR, 3RD MAIN, 8TH CROSS,
MARGOSA ROAD, MALLESHWARAM,
BENGALURU - 560 003





3. SOBHA HRC PRISTINE APARTMENT OWNERS
CO-OPERATIVE SOCIETY LTD
REGISTERED UNDER KARNATAKA
CO-OPERATIVE SOCIETIES ACT, 1959
AMRUTHAHALLI MAIN ROAD
JAKKUR, BANGALORE-560 064
REPRESENTED BY ITS PRESIDENT
MR. TARAMANGALAM KAILASAM
PARASURAMAN ALSO KNOWN AS
T.K. PARASURAMAN.
4. THE STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF CO-OPERATION
M.S. BUILDING, DR. AMBEDKAR VEEDHI
BANGALORE - 560 001.
5. SOBHA HRC PRISTINE OWNERS ASSOCIATION
SOBHA HRC PRISTINE APARTMENT BUILDING
SY.NO.87/2, 87/3, 89 & 111
JAKKUR VILLAGE, AMRUTHAHALLI MAIN ROAD
YELAHANKA HOBLI, BANGALORE NORTH TALUK
BANGALORE - 560 097
REPRESENTED BY ITS PRESIDENT.

(CAUSE TITLE AMENDED ADDING
R5 AS PER COURT ORDER DATED 19.03.2024)

... RESPONDENTS

(BY SRI: YOGESH D. NAIK, AGA FOR R1, R2 & R4
SRI: PRADEEP KUMAR P.K., ADVOCATE FOR C/R3
V/O DATED 13/3/24, SRI. G. SRIDHAR AMICUS CURIAE
SMT: SNEHA NAGARAJ, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER AT ANNEXURE-A, DATED 07/02/2024
PASSED BY THE R1 IN APPEAL BEARING DRB-
1/APPEAL/30/2023-24. AND QUASHING / CANCELING
REGISTRATION GRANTED BY THE R2 TO R3 SOCIETY VIDE SL.



NO. ARB-44/REGISTRATION/10/54504/2023-24 DATED
06/09/2023 AT ANNEXURE-B. AND AWARD COSTS OF THIS
PROCEEDINGS. AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON 07.01.2026 AND COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE
THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE M G UMA

CAV ORDER

The petitioner has approached this Court seeking
issuance of writ in the nature of certiorari to quash the order
dated 07.02.2024 passed by respondent No.1, produced as per
Annexure-A and to quash/cancel the registration granted by
respondent No.2 to respondent No.3 - Society dated
06.09.2023, produced as per Annexure-B.

2. Facts of the case in brief are that, the petitioner -
M/s Sobha Limited, a Company registered under the Companies
Act, 1956, has filed this writ petition seeking the above reliefs.
It is contended that the petitioner, a Real Estate Developer,
undertook to develop a housing project by name 'Sobha HRC
Pristine' consisting of row houses and multi-storied residential
apartment buildings, in 4 phases situated at Jakkur village,
Yelahanka Hobli, Bangalore North Taluk, with 395 units i.e. 381



apartments and 14 row houses, with club house and other common amenities. This 4 phase project was registered with the Karnataka Real Estate Regulatory Authority, under the provisions of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA'). The petitioner completed construction of the apartment and villas and obtained the Occupancy Certificate dated 26.05.2023 from Bruhath Bengaluru Mahanagara Palike (BBMP).

3. It is stated by the petitioner that, after obtaining the Occupancy Certificate on 26.05.2023 under the provisions of RERA, it commenced the execution and registration of sale deeds in respect of the apartments and villas in favour of various allottees. The sale deeds in respect of 264 units out of 395 have been executed and registered in favour of the purchasers.

4. It is stated that the local law that is applicable to the project is Karnataka Apartment Ownership Act 1972, (hereinafter referred to as 'KAOA') and Karnataka Apartment Ownership Rules, 1974 (hereinafter referred to as KAOR'). A Deed of Declaration dated 12.06.2023 was submitted along



with the bye-laws of Sobha HRC Pristine Owners Association (for short 'the Association') as per Form-A under the provisions of KAOA and KAOR and registered as Document No.3588/2023-24. The bye-laws are enclosed as per Annexure-C and Deed of Declaration is as per Annexure-D. The Deed of Declaration along with the bye-laws was duly filed with the Deputy Registrar of Co-operative Societies vide letter dated 21.06.2023, as required under Section 13 of KAOA, which has been duly acknowledged. Thus the maintenance, administration and management of the common areas, amenities, equipments and facilities in the project was undertaken by forming an association of owners by executing and registering the Deed of Declaration under the name of the Association and executed Form-B as provided in KAOA, submitting their unit to the provisions of the said Act including few members of respondent No.3 - Society.

5. It is stated that respondent No.3 led by one Mr. T K Parasuraman, claiming to be the Chief Promoter approached respondent No.2 with misleading facts, suppressing the material facts and without adhering to the provisions of



KAOA and managed to obtain the Certificate of Registration of respondent No.3 by name Sobha HRC Pristine Apartment Owners Co-operative Society Limited (for short, 'the Society') under the provisions of Karnataka Co-operative Societies Act, 1959 (for short 'the KCS Act'). Such registration of the Society is illegal and contrary to the objectives of KCS Act, thereby hijacked the objectives of bye-laws of the Association as provided in the Deed of Declaration. Therefore, issuance of Registration Certificate dated 06.09.2023 as per Annexure-B is erroneous. Out of 395 units, only 30 to 40 are the members of respondent No.3 -Society. None of the other owners have given their consent to be part of respondent No.3 - Society.

6. It is stated that respondent No.3 - Society was registered with its bye-laws referred to in the petition and produced as per Annexure-E and majority of such objectives do not match with the principles of co-operative movement and economic interest of the members of respondent No.3 - Society. Therefore, it is contended that respondent No.3 - Society has adopted the bye-laws, which are contrary to the objectives of Co-operative Society under KCS Act, which is



initiated only by handful of persons with malafide intentions. Under such circumstances, the petitioner has preferred an appeal before respondent No.1 under Sections 106(1)(a) & (2)(a) of KCS Act, challenging registration of respondent No.3 - Society. The copy of appeal memo and the interim application are produced as per Annexures-F and F1. Respondent No.1, without holding any hearing, worth mentioning, disposed off the appeal vide order dated 07.02.2024. The parties to the litigation were never heard. The said order is produced as per Annexure-G. Therefore, it is contended that there is gross violation of principles of natural justice and respondent No.1 never considered the contentions of the petitioner on merits. Hence, the petitioner has approached this Court.

7. It is stated that, out of 395 units, the title in respect of 264 units have been transferred in favour of the purchasers. The title in respect of the remaining units is yet to be transferred and it remains with the petitioner and the land owners. Therefore, it is contended that the petitioner is also the owner of few apartments, units, row houses and it is effected by registration of respondent No.3 - Society. Therefore, the



petitioner prayed for quashing Annexure-A issued by respondent No.1 and Annexure-B issued by respondent No.2, in the interest of justice.

8. Heard Sri Madhukar M Deshpande, learned counsel for the petitioner, Sri Yogesh D Naik, learned Additional Government Advocate for respondent Nos.1, 2 and 4, Sri P K Pradeep Kumar, learned counsel for respondent No.3, Smt Sneha Nagaraj, learned counsel for respondent No.5 and Sri G Sridhar, learned Amicus Curiae. Perused the materials on record.

9. Learned counsel for the petitioner contended that as per the averments made in the petition, the petitioner is the developer who developed the property and submitted the same under the provisions of KAOA. Respondent No.5 is the Association which has taken over the property for maintenance, administration and management. In the meantime, respondent No.3 started claiming to be the Society registered under KCS Act. Learned counsel contended that out of 395 owners of apartments, 238 have submitted to KAOA by submitting the required Form. The meeting of the members was conducted



and even the office bearers are elected as per Annexure-R5, duly constituting the Association. Thus, respondent No.5 has stepped into the shoes of the petitioner for all practical purposes.

10. Learned counsel contended that there are no commercial units in the project developed by the petitioner. When there are only residential apartments and row houses, the provisions of KCS Act has no application. It is only the provision of KAOA, which will have an application. He further contended that Annexure-B dated 06.09.2023 came to be issued at the instance of few owners of apartments, declaring the project as registered under the KCS Act. When Annexure-B was challenged before respondent No.1 under Section 106 of KCS Act, the said appeal came to be dismissed by passing Annexure-A dated 07.02.2024. There is no application of mind by respondent No.1 and the matter was never heard by providing an opportunity to the petitioner.

11. Learned counsel for the petitioner has placed reliance on the decision in ***Mr.Arunkumar R and Others Vs***



State of Karnataka and Others¹, to contend that the co-ordinate Bench of this Court has categorically held that since the project does not involve commercial units, the provisions of KCS Act cannot have any application and therefore, the Registrar of Co-operative Societies was prohibited from registering the Society for the purpose of maintaining, managing and administering the residential apartment. Learned counsel contended that this decision of the co-ordinate Bench was affirmed by the Division Bench of this Court in ***Proposed Starnest Apartment Owners Co-operative Society Ltd. Vs State of Karnataka and Others***². Learned counsel referring to paragraphs 16 to 19 contended that the Division Bench has endorsed the view expressed by the learned Single Judge, regarding application of KAOA and held that the provisions of KCS Act has no application where the project is purely of residential nature. Learned counsel submitted that there are several such decisions rendered in various writ petitions, where similar opinion is formed.

12. Learned counsel also placed reliance on the decision of Co-ordinate Bench of this Court in ***Akhilesh Anand and***

¹ WP No.25528/2023 DD 23.02.2024

² WA No.564/2024 DD 18.06.2024



Others Vs State of Karnataka and Others³ and contended that the co-ordinate Bench of this Court raised specific points for consideration and answered the same supporting the contention taken by the petitioner. The Court has referred to the decision in ***VDB Celadon Apartment Owners Association Vs Praveen Prakash and Ors***⁴ and held that the said decision was rendered in a situation where RERA was not made applicable and the question that had arisen for consideration therein is as to who can maintain an apartment complex in the absence of RERA.

13. Learned counsel referring to the answer to point No.3, contended that it is categorically held that there is no conflict between KAOA and RERA and made it clear that inasmuch as RERA is applicable pre-ownership and KAOA is post-ownership, while holding that there is conflict between KOFA and RERA and held that it is the provisions of RERA which would override that of KOFA, wherever there is repugnancy. The Court has also referred to the decision of the Division Bench of this Court in ***Proposed Starnest Apartment***

³ WP No.27341/2024 DD 30.06.2025

⁴ WA No.974/2019 DD 06.11.2019



Owners Co-operative Societies Ltd. (*supra*) and held that the Co-operative Society can only be registered to the Apartments, where there are commercial units and to which the provisions of KOFA was applicable, but the same would no longer be applicable after RERA coming into force.

14. Learned counsel also contended that the facts in the said case was slightly different, as the construction has not been completed despite the period fixed having lapsed and several allottees have formed themselves into a Co-operative Society, pursuant to the provisions of RERA, which is not the case in hand.

15. Placing reliance on these decisions, learned counsel for the petitioner contended that the Apartment Owners Association was formed and the declaration in the prescribed format was submitted on 12.06.2023 and after execution of the sale deeds, handing over of units is already completed between December, 2023 to October, 2025. Under such circumstances, Annexure-A passed by respondent No.1 and the Registration Certificate granted by respondent No.2 as per Annexure-B are required to be quashed.



16. Learned counsel for the petitioner contended that IA No.3 of 2024 filed by respondent No.3 seeking direction to the petitioner to comply various provisions of RERA is not maintainable and hence, the same is liable to be dismissed.

17. Learned counsel for respondent No.5 supporting the contention taken by the petitioner contended that, respondent No.5 is an Association of owners, formed pursuant to registration of sale deeds, preceded by the agreements to sell, entered into between the petitioner and various purchasers. The Association of owners was formed under KAOA and KAOR by executing a Deed of Declaration in Form-A as well as in Form-B as prescribed under Sections 2 and 5 of KAOA and Rule 3 of KAOR. As per the terms of the agreements to sell and the sale deeds, each owner is required to be the member of the Owners' Association. Therefore, there was contractual obligation on the part of the owners to be members of the Association, which is in conformity with the requirements of KAOA. The said obligation was discharged by majority of owners and the same cannot be found fault with. The said compliance of contractual obligation was upheld by the Division



Bench of this Court in **VDB Celadon Apartment Owners Association** (*supra*). Therefore, she prays for allowing the petition, in the interest of justice.

18. *Per contra*, learned counsel for respondent No.3 opposing the petition submitted that various provisions of RERA requires registration of a Society under the provisions of KCS Act. He refers to Section 17 of RERA which deals with transfer of title and handing over documents with regard to common areas to contend that RERA is legislated to protect the interest of owners and it is a Central legislation, which will prevail over the State legislation.

19. Learned counsel further contended that respondent No.3 has challenged the application of KAOA after RERA coming into force and the said writ petition is still pending consideration. However, whatever the provisions in KAOA which are repugnant to RERA cannot be made applicable by referring to Section 11(4)(e) and (f) of RERA. Learned counsel submitted that in Karnataka, only the Co-operative Society can be formed. He placed reliance on the decision in **Sobha Hibiscus Condominium Vs Managing Director M/s. Sobha**



Developers Ltd. and Another⁵, to contend that the Hon'ble Apex Court categorically held that, the voluntary consumer association will only be a body formed by a group of persons coming together without being mandated by any other provisions of law. Such Association which consists of members of flat owners in a building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of KAOA cannot be said to be a voluntary association to maintain a complaint under the provisions of Consumers Protection Act, 1986.

20. Learned counsel relying on the decision in ***Moulivakkam Trust Heights Flats Affected Buyers Association Vs M/s Prime Sristi Housing Pvt. Ltd., and Ors,⁶*** contended that the Hon'ble Apex Court has upheld the view taken by the National Consumer Disputes Redressal Commission that even a Residents' Welfare Association, if registered under a statute will qualify as a consumer association under the provisions of Section 12 of the Consumer Protection Act, 1986 and not otherwise. Therefore, in the

⁵ (2020) 3 SCR 824

⁶ 2017 SCC Online NCDRC 163



absence of registration of a Society under the Co-operative Societies Act, mere voluntary association of owners of units, cannot prosecute and defend any litigation. Therefore, registration of such association under the provisions of KCS Act is a must.

21. Learned counsel for respondent No.3 places reliance on the decision of the Hon'ble Apex Court in ***Forum for People's Collective Efforts and Another Vs State of West Bengal and Another***⁷, to contend that, the Hon'ble Apex Court has considered repugnancy between the provisions of RERA and West Bengal's Housing Industry Regulation Act, 2017 (for short, 'WB-HIRA') and held that the provisions of the State enactment is repugnant to the Central RERA. Therefore, contended that after RERA coming into force, the owners of the units are required to be registered as a Co-operative Society and accordingly, respondent No.3 was registered under KCS Act, which cannot be found fault with. Therefore, the petitioner is required to comply various provisions of RERA, including Sections 11(4) (e) and 17. Accordingly, IA No.3 of 2024 came to be filed and the same is liable to be allowed.

⁷ (2021) 8 SCC 599



22. In reply, learned counsel for the petitioner contended that the provisions of KAOA is made applicable to the projects where there are only residential apartments. The provisions of KOFA are made applicable where the projects are having residential and commercial or only commercial units. The provisions of RERA is mostly applicable for pre-ownership stage, whereas, only under certain circumstances some provisions are applicable to post ownership. Learned counsel submitted that the provisions of RERA is silent about the procedure that is to be followed for maintenance and any other issues that may arise post ownership.

23. Learned counsel further submitted that the decision of the Hon'ble Apex Court in ***Forum for People's Collective Efforts*** (*supra*) is not applicable, as the Hon'ble Apex Court has found the provisions of WB-HIRA repugnant to the provisions of RERA and held that several provisions of WB-HIRA are repugnant to RERA. But in case of KAOA, there is no such repugnancy. Under such circumstances, the same cannot be made applicable to the present case.



24. Learned counsel further contended that in WB-HIRA, the Hon'ble Apex Court compared the provisions of the State enactment - WB-HIRA with the provisions of the Central enactment - RERA. It applied three different principles to find out the repugnancy between two statutes to record a categorical finding that the State enactment - WB-HIRA is nothing but a copy paste of the provisions of RERA and therefore, it is repugnant to the Central legislation. Thus, in exercise of jurisdiction under Article 142 of Constitution of India, struck down WB-HIRA.

25. Learned counsel submitted that in the State of Karnataka, KOFA was made applicable to pre-ownership stage and the provisions of KAOA is for post ownership. However, after RERA came into force, certain provisions of KOFA held to be repugnant to the Central enactment - RERA. This Court consistently held that the provisions of KAOA are not repugnant to RERA and both these enactments serve different purposes. There are thousands of owners' associations formed and functioning under KAOA throughout the State. If it is to be



held that such associations are not recognized under RERA, it may have serious consequences.

26. Learned counsel for the petitioner contended that the same cannot be applied to the provisions of KAOA as the co-ordinate Bench of this Court repeatedly held that the provisions of KAOA are not repugnant to the provisions of RERA. It is also held that these enactments would govern the field at different stages, one supplementing the other. Therefore, the decision in ***Forum for People's Collective Efforts*** (*supra*), cannot be made applicable to the present case.

27. Learned counsel for the petitioner contended that if the object and various provisions of KAOA are compared with the object and provisions of RERA, it is clear that even during 1972 the State has made exhaustive provisions under KAOA. The object with which these two enactments were enacted are totally different. They operate under different circumstances.

28. Learned counsel for the petitioner contended that various chapters and provisions under RERA do not deal with



heritability, maintenance of the units, management of common areas etc., It does not define the 'association of the apartment owners', whereas, we find such definition under KAOA. He further submitted that if the provisions of KAOA is considered in light of the provisions of KCS Act and Karnataka Societies Registration Act or Companies Act, minimum interference from the outside forces is found in KAOA. The apartment owners being the members of association are supreme to take a decision for the welfare of all. It is nothing but a self governing body in a democratic set up. There will not be any interference by any of the agencies of Government. But RERA only defines the word 'allottee' under Section 2(d), it does not define the word 'association' at all. The provisions in RERA is made applicable not only to apartments but also to plots.

29. Learned counsel for the petitioner contended that the phrases used under various sections of RERA while referring to the words 'association' or 'Society' or 'co-operative Society' or 'federation', uses the word 'under the laws applicable'. Therefore, the local law that is applicable to the State of Karnataka is KAOA, which is consistent with the object with



which the multi storied apartments were constructed. Various provisions under RERA makes its clear that an option is given to the allottees to form an association under any of the local laws, which may be applicable.

30. Learned counsel contended that Section 11(4)(f), Section 2(p) of RERA defines the word 'competent authority', Section 17 deals with 'transfer of title', Section 19 deals with 'rights and duties of allottees'. The allottee is required to participate in the formation of such association or Society or co-operative Society or federation. Section 31 of RERA deals with filing of complaints. The wordings used therein is 'any aggrieved person' can file a complaint against promoter, allottee, real estate agent as the case may be. The explanation appended to this Section makes it clear that the section shall include association of allottees. Therefore, it is clear that an association of allottees can definitely maintain any complaint under the provisions of RERA against the promoters, real estate agents etc., However, he contended that none of the allottees or the owners have filed any such complaints against the petitioners being the promoter.



31. Learned counsel referring to the decision of the Hon'ble Apex Court in ***Sobha Hibiscus Condominium*** (*supra*), contended that the Court has referred to the order of the National Consumer Commission dated 13.05.2015. The Court had no occasion to refer to the provisions of RERA, which came into effect only on 28.10.2016, which is having Section 31, which deals with filing of complaints. The Hon'ble Apex Court has considered only the provisions under the Consumer Protection Act, 1986 and held that voluntary consumer association has not filed the complaint under the Consumer Protection Act. Thus, the Hon'ble Apex Court was referring to class of action and not to individual actions. Learned counsel also referred to Section 88 of RERA to contend that there is no bar for application of any other laws.

32. Learned counsel contended that if the wordings in Rule 2(b) of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as 'RERR'), which defines 'association of allottees' is compared with Section 3(d) of KAOA, which defines 'association of apartment owners', such conjoint reading reveals that the association will cover the



'association of allottees' under RERA. Such Association is Association of apartment owners under KAOA. More so, when functioning of the association of allottees are not separately dealt with under RERR as the same is governed by other local laws that may be made applicable.

33. Learned counsel contended that taking into consideration various practical difficulties in implementing the provisions of RERA and KAOA, the Government of Karnataka is said to be preparing an amendment Bill where hopefully the 'association of allottees' will also be defined to take care of vacuum in the present enactment and that the Bill is said to be mandating that there must be only one association to one project.

34. Learned counsel contended that only 18 owners in whose favour the sale deeds are already executed and who have submitted Form-B declaration, joined hands with few allottees in favour of whom the sale deed is not yet executed, in forming the co-operative Society. All these 18 owners have submitted Form-B declaration in compliance of the contractual obligation and they are the members of respondent No.5 -



Association. Under such circumstances, these 18 owners cannot have dual membership to constitute a co-operative Society. Otherwise, a group of few owners or allottees can go on forming different association under KAOA, under Societies Registration Act, under Co-operative Societies Act and also under the Companies Act. Then the question arises who is responsible to maintain the building and the common areas. Unless there is restriction to have a single association, there will always be danger of parallel associations or societies, companies or federations. When in respect of one project a common electric and water bill is generated, when the owners are required to maintain the common areas and the facilities, functioning of parallel associations will definitely create chaos and it is not in the interest of the owners or even the allottees.

35. Learned counsel contended that the Division Bench of this Court in ***Proposed Starnest Apartment Owners Co-operative Society Ltd. (supra)***, referred to Section 11 of RERA and has arrived at a right conclusion that the provision of co-operative Society Act, are not applicable.



36. In view of the above, learned counsel for the petitioner submitted that respondent No.3 cannot be permitted to run a parallel Society, when there is already respondent No.5 - Association of owners formed in compliance of the contractual obligations as per the terms of agreements to sell and the sale deeds and also the statutory obligations as per the provisions of KAOA. Therefore, he prays for allowing the petition, in the interest of justice.

37. In reply, learned counsel for respondent No.5 contended that it is an association of owners which submitted the declaration as provided under KAOA and the deed of declaration is registered as required under law. Almost all the owners are the members of respondent No.5 - Association. It is this Association which is maintaining the common areas, since the project is complete and as many as 323 owners out of 395 have submitted themselves to the jurisdiction of KAOA and are the members of respondent No.5 - Association. Respondent No.3 - Society is formed at the instance of only a handful of allottees and owners, majority of whom are the members of respondent No.5 - Association. There cannot be any two



independent Associations or Society in a project as the same would lead to chaos. At the same time, there cannot be two independent Associations, one for maintaining the common areas and one for agitating the grievance of the members.

38. Learned counsel contended that the decision of the Division Bench in ***Proposed Starnest Apartment Owners Co-operative Society Ltd.*** (*supra*) is binding on all the parties. The Division Bench has rightly held that it was purely a residential project and the owners were having contractual obligation under deed of agreement to sell and the sale deed to submit themselves to the provisions of KAOA. The Court outrightly rejected the contention that it is only the Co-operative Society which can be formed under the provisions of KCS Act after analyzing the various provisions of law. Learned counsel submitted that even though this decision of the Division Bench is under review, no stay is granted to its decision and hence the same is binding.

39. Learned counsel for respondent No.5 contended that the facts and circumstances of the case in ***Akhilesh Anand*** (*supra*) are entirely different. The project which was



the subject matter in the said case was being developed in a phased manner. Three towers were already completed and an association under Societies Registration Act was formed, whereas two other towers were not completed. Therefore, it was held that the allottees whose project is not yet completed can form a co-operative Society, but the same cannot be applied to the owners who already acquired title under the registered sale deeds. Learned counsel referring to paragraph 22.11 in **Akhilesh Anand** (*supra*) contended that the co-ordinate Bench has made the position very clear that when the project is complete and the occupancy certificate is already received, the owners have submitted themselves to the provision of KAOA, it is only the association of owners which is authorized to maintain the common areas and the buildings. Hence, learned counsel for respondent No.5 contended that respondent No.5 being the Association of owners under the provisions of KAOA is even recognized by the co-ordinate Bench. Learned counsel also contended that the co-ordinate Bench has made it very clear that the provisions of RERA are applicable to pre-ownership, whereas, the provisions of KAOA are applicable post ownership. Respondent No.5 is the



association of owners formed after getting the sale deeds and hence it represents all the owners in the project, which is already completed and occupancy certificate is issued.

40. In reply, learned counsel for respondent No.3 contended that since the Central legislation - RERA came into existence in 2016, the provisions of KAOA which is a local law, cannot be made applicable to the project in question. Admittedly, the project in question is submitted to the provisions of RERA. He submitted that under KAOA, there is no provision regarding registration of an Association. It only provides submitting the Deed of Declaration as defined under Section 3(j) of KAOA, which is to be registered with the Sub Registrar, whereas, the association or a society or a co-operative Society referred to under Section 11(4)(e) of RERA, mandates registration of the same under any of the local enactments or companies Act as the case may be. He also refers to Sections 11(4)(f) and 17 of RERA to contend that the intention of the legislature is very clear that the promoter is duty bound to facilitate the formation of such Society under the local laws.



41. Learned counsel contended that mere registration of Deed of Declaration under Section 13 of KAOA will not be considered as an Association registered under any local law or under the Companies Act. He referred to the report of Standing Committee formed for the purpose of studying the requirements before enacting RERA and with reference to Clause-15, he contended that the said clause is now incorporated as Section 17 of RERA. He referred to Annexure-E to submit that bye-laws of the respondent No.3 - Society is approved and the same is in place.

42. Learned counsel placed reliance on the decision of Hon'ble Apex Court in ***Suman Jindal and another Vs M/s Adarsh Developers***⁸ to contend that even when the apartment is purely a residential one, the provisions of RERA are applicable.

43. Learned counsel contended that even though the decision of ***Akhilesh Anand*** (*supra*) is referred to by the learned counsel for the petitioner and respondent No.5, the findings recorded therein disclose that the decision of the

⁸ (2019) 7 SCR 154



Division Bench in ***Proposed Starnest Apartment Owners Co-operative Society Ltd.*** (*supra*) was distinguished by assigning proper reasons. It has held that it is only the co-operative Society under the provisions of KCS Act, which is required to be formed.

44. Learned counsel contended that even though Section 17 of RERA mandates transfer of title, the said process is not yet completed. Respondent No.5 being an Association not registered as required under law cannot agitate any of these issues with the competent authority. On the other hand, respondent No.3 is authorized to agitate any issues against the petitioner.

45. Learned counsel for respondent No.3 referring to the decision in ***Forum for People's Collective Efforts*** (*supra*), contended that the Hon'ble Apex Court by referring to its earlier decision in ***Innoventive Industries Ltd. Vs ICICI Bank***⁹, highlighted that repugnancy exists where two laws cannot operate simultaneously. It was also held that such inconsistency must be clear, direct and must be in the nature

⁹ (2018) 1 SCC 407



as to bring the two acts and parts thereof into direct collusion with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments would give different legal results when applied to the same set of facts.

46. Learned counsel referring to Section 2(b) of RERA, where the word 'allottee' is defined, also refers to Rule 2(1)(b) of RERR which defines 'association of allottees' to contend that such an association is required to be formed to address the grievance of the allottees. He submitted that the petitioner being the builder cannot be permitted to alter the common areas and common facilities. But in the present case, the petitioner has ventured to alter and minimize the common areas by selling the portions thereof for his benefit, which cannot be questioned under the provisions of KAOA.

47. Learned counsel contended that if there is any dispute between the allottees and the builder, since there is a bar of jurisdiction as provided under Section 79 of RERA, the only remedy that is available is under the provisions of KCS Act, if the association is registered. Respondent No.3 is such an



Association registered under the KCS Act, with the allottees and the owners being its members, alike. Respondent No.3 can agitate the grievance of the allottees and the owners with the competent authority, whereas such privilege is lacking with respondent No.5 - Association.

48. Learned counsel referring to Section 43 of RERA contended that only voluntary consumer association registered under any law can agitate the grievance of its members before the Real Estate Appellate Tribunal. Under these circumstances, learned counsel contended that there are several issues the allottees and owners are facing with the petitioner and therefore, it is only respondent No.3 which can agitate the matter to find a solution in accordance with law. Respondent No.5 not being a registered Association cannot sue or be sued in any Court of law or any forum for that matter. Therefore, the allottees and the owners will not have any recourse to redress their grievance before any forum. He further submitted that even though the construction of the building is complete and occupancy certificate is received, registration of all the



units is not yet completed, as even according to the petitioner only 323 sale deeds are executed.

49. Learned counsel further submitted that the petitioner has sent a mail to all the allottees requesting to form an *adhoc* Association for managing the day-to-day maintenance of the project. This communication was over 4 years ago from the time when most allottees booked their apartments. The petitioner himself proposed the names of 9 members for forming such *adhoc* Association. When strong objections were raised by several allottees, the petitioner sent a mail contending that the Association could be formed after sale of 51% of apartments. Apparently, it is a misrepresentation to avoid compliance of the obligations under Section 11(4)(e) of RERA to form association of allottees. The objections to form such *adhoc* Association and requesting to enable formation of registered association of allottees was sent through mail to the petitioner. A meeting was convened considering various objections raised by multiple allottees for the purpose of selecting a group of allottees. However, the petitioner identified 8 members of his choice and decided to form the



ad hoc Association. The allottees raised various concerns including the fact that they have not received Occupancy Certificate despite paying the full consideration amount. Therefore, they expressed the intention to form an Association as required under Section 11(4)(e) of RERA and to register the same under KCS Act. When this was communicated to the petitioner on 06.09.2023, series of meetings were held and the petitioner registered the Deed of Declaration without providing a copy of the same to the allottees and only informing that they have already registered the Deed of Declaration under KAOA on 12.06.2023. Thus, respondent No.5 - Association came into existence at the instance of the petitioner. In the meantime, the allottees approached the Registrar of Co-operative Society and got respondent No.3 - Society registered on 06.09.2023. This fact was communicated to the petitioner immediately thereafter.

50. Learned counsel further submitted that pursuant to the registration of respondent No.3 - Society, the Returning Officer was appointed to conduct the election of Board of Directors of respondent No.3 - Society, finalising the voters list



and other election process was undertaken for publishing the calendar of events. Few members have filed their nomination and the same was scrutinized by the Returning Officer. On 01.10.2023 the calendar of events to elect office bearers of the Society was issued and the result was published on 08.10.2023. The petitioner came up with a complaint with the Registrar of Co-operative Societies and a legal notice was issued preventing the Society from holding general body meeting. The petitioner conducted the election to the Board of respondent No.5 - Association, permitting only the owners who got registered the sale deeds and excluding the fully paid up allottees from voting. Respondent No.5 is fully controlled by the petitioner and it is an unregistered Association.

51. Learned counsel further contended that the Hon'ble Apex Court in ***Forum for People's Collective Efforts*** (*supra*), categorically held that the provisions of WB-HIRA is contrary to the provisions of RERA. Similar repugnancy could be noticed between RERA and the provisions of KAOA. Learned counsel undertook to file comparative chart of provisions under these two enactments, which are repugnant with one another.



52. Learned counsel referring to the decision of **Akhilesh Anand** (*supra*) contended that the co-ordinate Bench has categorically held that a Co-operative Society could be formed. In fact it is the only remedy available looking to the object and the intent of RERA. Therefore, learned counsel contended that respondent No.3 is a duly registered Co-operative Society as suggested under the provisions of RERA. Under these circumstances, he prays for dismissal of the petition.

53. Learned Amicus Curiae who is appointed to assist the Court, submitted that KAOA provides a framework for individual ownership of apartments as heritable and transferable property, applicable only when owners or promoters voluntarily submit to it by executing and registering a declaration of deed of apartments and bye-laws. He further submitted that KOFA, on the other hand, regulates the promotion, construction, sale and management of flats and requires formation of a co-operative society or a company to manage the complex, remaining applicable until the project is brought under KAOA.



54. Learned Amicus Curiae submitted that RERA is a Central legislation with overriding effect under Section 89, which aims to ensure transparency and consumer protection in real estate transactions. Importantly, RERA mandates conveyance of apartments to individual allottees and transfer of undivided proportionate rights in common areas, including the land to the association of allottees or a competent authority, thereby creating a statutory obligation on promoters.

55. Learned Amicus Curiae further submitted that under KAOA, each allottee receives an apartment along with an undivided interest in the land. Under KOFA, the land and building are conveyed to the association of allottees, with members enjoying units through the association. While under RERA, apartments are conveyed to individual allottees and the project land/common areas to the association. He contends that given RERA's overriding effect and Article 254 of the Constitution, KAOA and KOFA would apply only to projects outside RERA's scope, such as smaller projects or completed developments, which are excluded under Section 3(2) of RERA. He further contended that the State Real Estate (Regulation



and Development) Rules, 2017 require a registered owners' association, leading to ambiguity on permissible legal forms, though in large projects a company or co-operative society is effectively necessary.

56. Learned Amicus Curiae, however, submitted that certain hurdles may arise if the owners form a co-operative Society, which is to be governed by KCS Act. Therefore, as per KCS Act, only one Society could be permitted and not multiple Societies. There is restriction on holding more than 5% share, without government permission. The management is liable for supercession by the Government. There will be restriction on voting, till completion of one year and further one person one vote will have to be implemented, irrespective of the holdings held by the person. The provisions of KCS Act provides for cancellation of membership. There will be difficulties in obtaining loans as the members will own only shares and not property. Additional stamp duty is to be paid on land and common areas to be conveyed to the Society. Auditing of the accounts on the election will be governed by KCS Act. The object of KCS Act may be slightly different from the object with



which the enactment governing the apartments were brought into effect.

57. Learned Amicus Curiae submitted that in ***Forum for People's Collective Efforts*** (*supra*), the Court considered the repugnancy between RERA and WB-HIRA. However, in ***Akhilesh Anand*** (*supra*), the co-ordinate Bench of this Court discussing at length formed an opinion that there is no repugnancy between provisions of RERA and KAOA, while holding that there is repugnancy between certain provisions of RERA and KOFA. The Court also held that RERA being the Central enactment shall prevail over KAOA, wherever there is repugnancy or conflict in the provisions. It is submitted that decision in ***Akhilesh Anand*** (*supra*) is challenged but no interim order of stay granted.

58. Learned Amicus Curiae referring to the decision in ***Proposed Starnest Apartment Owners Co-operative Society Ltd.*** (*supra*) submitted that this decision was rendered without reference to RERA. He submits that a review petition is pending against the said order.



59. Learned Amicus Curiae referred to the decision of the co-ordinate Bench in ***Saraswati Prakash and others vs State of Karnataka and Others***¹⁰, submitted that the Court has formed an opinion that the owners being the members of Association are entitled to be registered under KAOA and there cannot be any association registered under KCS Act, to form a Society for managing and maintaining the Society comprising of only residential flats. It is also highlighted that if the project consist of both commercial and residential units, then the provision of KOFA could be made applicable. Therefore, the Court has restrained the Registrar of Co-operative Society from registering the proposed Society. He submitted that even though Writ Appeal is preferred against this order, there is no stay granted and the appeal is still pending consideration.

60. In view of the rival contentions urged by learned counsel for both the parties, the points that would arise for my consideration is:

"(i) Whether the petitioner has made out any grounds to allow the petition?"

¹⁰ WP 3779/2023 DD 28.02.2025



(ii) Whether IA.3 of 2024 filed by respondent No.3 seeking directions against the petitioner is liable to be allowed? "

My answer to the above point No.1 in the 'Affirmative' and point No.2 in the 'Negative' for the following:

REASONS

61. The petitioner - M/s Sobha Limited, a Company registered under the Companies Act, has approached this Court seeking issuance of a writ in the nature of Certiorari to quash the order dated 07.02.2024, passed by respondent No.1 as per Annexure-A and registration of respondent No.3 by respondent No.2 as per Annexure-B as a Co-operative Society.

62. The facts of the case disclose that the petitioner is the builder/developer who developed a housing project by name 'Sobha HRC Pristine', consisting of row houses and multi-storied residential apartment buildings in 4 phases, said to contain 395 units i.e., 381 apartments and 14 row houses, with a clubhouse and other common amenities. The project was registered with RERA. The construction of the apartments and villas is stated to be completed and the Occupancy Certificate



dated 26.05.2023 was obtained from the Bruhat Bengaluru Mahanagara Palike (BBMP).

63. It is the contention of the petitioner that, after completion of construction and upon obtaining the Occupancy Certificate, all the owners in whose favour sale deeds have already been executed, formed an Association by submitting the Deed of Declaration dated 12.06.2023 in the name of Owners' Association, as per Form-A, under the provisions of KAOA and KAOR. The same was registered as Document No.3458 of 2023-24.

64. It is the contention of the petitioner that respondent No.3 - Society was formed on 06.09.2023 i.e., subsequent to the registration of respondent No.5 - Association under the provisions of KAOA. The petitioner contends that respondent No.3 was formed at the instance of one Mr. T.K. Parashuraman, claiming to be the Chief Promoter, who approached respondent No.2 with misleading facts and secured registration of the Society, which is illegal and contrary to the objectives of KCS Act. It is the specific contention of the petitioner that respondent No.3 has hijacked the objectives of respondent



No.5 as provided under the Deed of Declaration and the bye-laws. Therefore, issuance of the Registration Certificate dated 06.09.2023 -Annexure-B is erroneous.

65. It is further contended that, out of 395 units, a handful of owners became members of respondent No.3 - Society, despite already being members of respondent No.5 - Association. Even persons who are merely allottees and not owners of the apartments, as no conveyance has been executed in their favour, have been admitted as members of the Society. Thus, two parallel bodies i.e., respondent No.3 - the Society under the provisions of KCS Act and respondent No.5 - the Owners' Association under KAOA are stated to be functioning in the project, each claiming to administer, maintain and manage the common areas and common amenities, as custodian thereof. Hence, the extraordinary writ jurisdiction of this Court has been invoked.

66. Based on the contentions raised by the parties, it is felt expedient to discuss and delineate the application of multiple statutes that were referred to by the parties.



A] Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972:

67. The State of Karnataka enacted the KOFA, which came into force upon publication in the Official Gazette on 10.03.1972, after receiving the assent of President. The Statement of Objects and Reasons of the Act declares that the State felt the necessity for a separate law to provide that flats and apartments in multi-storied buildings may, for all purposes, be heritable and transferable immovable property. It was considered expedient to make provisions for regulating the promotion of construction, sale, management and transfer of flats taken on ownership basis in the State.

68. Section 2(a) of KOFA defines the term 'flat' as a separate and self-contained set of premises, forming part of a building, used or intended to be used for residence, office, showroom, shop or godown, including a garage. Thus, the term 'flat' under KOFA includes both residential and commercial premises. The Act deals with the general liabilities of the promoter who undertakes development of the property and construction of flats, and imposes various conditions while



accepting advance payment, entering into and registering the agreement and paying outgoings, until the property is transferred. It mandates the promoter to maintain a separate account of sums taken as advance or deposit, in the capacity of a trustee for the purchaser. The promoter is required to refund amounts where due and is prohibited from mortgaging the property without their consent, after execution of the agreement for sale. It is also his duty to take steps for formation of a Co-operative Society or a Company and to convey title in favour of the purchaser in accordance with the agreement. The Act further deals with the general liabilities of the person who takes the flat. Thus, KOFA applies to development and construction of flats used or intended to be used for residence, office, showroom, shop or godown. It further imposes general liabilities on the promoter as well as on the person who agrees to purchase the flat.

B] Karnataka Apartment Ownership Act, 1972:

69. During the same period, the State of Karnataka enacted the KAOA with an intention to provide ownership of an individual apartment in a building and to make such apartment



heritable and transferable property and for matters connected therewith.

70. Section 3(a) of KAOA defines the word 'Apartment' to mean a part of the property intended for any type of independent use, with one or more rooms together with the part of the building, intended to be used for residential purposes. It is therefore clear that, KAOA deals only with residential apartments that are already constructed.

71. Section 3(b) defines the word 'Apartment Owner', to mean 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.

72. Section 3(d) defines 'Association of Apartment Owners' to mean an association of all the apartment owners acting as a group in accordance with the bye-laws and the declaration.

73. The word 'Competent Authority' is defined under clause (i) to Section 3, to mean in relation to a 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 under the KCS Act.

74. The word 'Declaration' is defined under clause (j) to Section 3 to mean an instrument by which the property is submitted to the provisions of this Act in the prescribed format. As per Section 5(2), each apartment owner is required to 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 under law.

75. Certain bye-laws adopted by respondent No.3 require specific emphasis. The bye-laws of respondent No.3 - Society is produced at Annexure-E. It is stated in the bye-laws that the jurisdiction of the Co-operative Society is confined to the locality in which the apartment is situated, and it is governed by the provisions of KCS Act, 1959 and the Rules of 1960. The term 'member' is defined to mean a person who has joined in the application for registration of the Co-operative Society, as well as any person subsequently admitted to the membership in accordance with law. The expression 'year'



refers to the Co-operative year as defined under the Act, and the term 'common area' is defined in terms of RERA.

76. The expression 'Chief Executive Officer(CEO)', in relation to respondent No.3, means an employee of the Co-operative Society and includes an official of the State Government on deputation who discharges the functions of the CEO.

77. The objectives with which respondent No.3 - Society came into existence as per its bye-laws produced as Annexure - E are as under:

"a) The Co-operative Society shall execute a registered conveyance deed in its favour along with the undivided proportionate title in the common areas and hand over the physical possession of the plot, apartment or building, as the case may be, to the member and the common areas to the Co-operative Society within the specified period.

b) To construct, erect, fabricate, execute, build, carry out, equip, alter, repair, remodel, decorate, maintain, demolish, develop, improve, furnish, administer, manage, or control, grade, curve, pave, macadamize, cement and maintain buildings, structures, houses, apartments, multi-storeyed



housing/commercial complexes, landscapes, paths, streets, sidewalks, gardens and pavements.

c) To own assets, acquire lands, buildings, movable assets like trucks, tankers, tractors, vehicles, etc.

d) To employ people for construction, carpentry, masonry, painting, tile works, plumbing, electrical, security, maintenance, accounting, marketing, supervision and other services.

e) To sell completed units, or enter into an Agreement of Sale, pledge or mortgage assets for borrowing from banks or financial institutions, etc. Also to represent or to be part of authorised signatories for the purpose of registration or any such regulatory, administrative or technical and compliance requirements.

f) To liaise, shortlist, negotiate and finalise builders/investors/promoters/suppliers for the purpose of project completion by way of investment proposals, joint development plans, construction agreements, material supply agreements and any such agreement or proposal that is required for completion of the project in all respects.

g) To represent collectively the members before the Government and related authorities and the Promoter/Builder and various persons to protect the interest of all the members of the Association to ensure timely completion of construction and



handover of possession of apartment units to the home buyers.

h) To liaise with Sobha HRC Pristine allottee/allottees and the Promoter/Builder for all matters connected with land, building and its construction and other amenities that would be provided by the Promoter/Builder, and also for availing all benefits and claims as owners/residents/buyers/investors of Sobha HRC Pristine Apartment and to approach the Promoter/Builder to redress grievances of members of the Association.

i) To institute, prosecute and defend suits and other proceedings in which the Association may be involved, to settle or negotiate any matter affecting the common rights and properties of the Association and to engage the services of any professionals like advocates, tax consultants etc. for the aforesaid purposes.

j) To represent before courts of law on behalf of all its members: (i) to protect the interest of its members to safeguard the money invested to purchase units in the said project 'Sobha HRC Pristine'; (ii) to ensure Promoters/Builders adhere to sanctioned plans and specifications promised to the home buyers; and (iii) to protect common assets and common areas as described in the plans and specifications during and after the development phase of the project.



k) To oversee, periodically review, and monitor the progress of construction that the Promoter/Builder undertakes in order to complete the project in a time-bound manner.

l) To ensure that the Promoter/Builder/Home Buyers timely comply with prevailing law provisions such as, and not limited to, RERA Act 2016, Rules 2017 and all applicable laws.

m) To maintain Common Areas and Common Facilities, which are the rights of all the owners (all the members of the Co-operative Society) in the Apartment.

n) To collect the expenditure incurred to maintain the Common Area in the Apartment and for repair or replacement of equipment providing common facilities in the Apartment from all the members, as per the resolution of the General Body Meeting, and to spend it for their maintenance upon obtaining approval of the Board of Management as per the provisions of law/rules.

o) To construct apartments by collecting funds from the members and to allot them to members.

p) To establish funds for the repair of the Apartment Building and construction of buildings, and to collect amounts from the members.

q) Maintenance of common areas and common facilities are the responsibility of all owners (all members of the Co-operative Society).



r) The costs of maintaining the common area in the Apartment and repairing or replacing the equipment providing common amenities in the Apartment shall be collected by the decision of the General Assembly of all owners and approved by the governing body in accordance with the law. Funds shall be established to repair the apartment building and to construct buildings.

s) To repair the apartment building with the approval of the administrative and technical authority from the competent authority.

t) To ensure that the completion of the rebuilt apartment building is approved by the competent authority at the same premises. The apartments must be rebuilt and resold to their respective owners.

u) To open a supermarket to sell essential commodities through the Society and to respond to emergency situations.

v) To book tickets for railway, bus and airline for members of the Society.

w) Government-provided services such as PAN card, ration card, passport, etc. should be facilitated to the members through the Society.

x) To undertake any necessary or appropriate measures for the fulfilment of the objectives of the Society specified in the Memorandum of Society.

y) To construct, preserve, administer and manage public spaces, restricted areas, conveniences



and amenities for use by members and to enhance the convenience and comfort of members and residents by applying the principle of co-operation.

z) To provide good governance for the management of the common area in the Apartment.

aa) Electricity, water, sewerage, watchdog management, garbage management, rainwater harvesting in the apartments and hygiene of members and others.

bb) Appointing staff to conduct the affairs of the Society properly.

cc) Consolidation of monetary resources to fulfil the objectives of the Society.

dd) To take all necessary steps for the purpose of conducting the affairs of the Society in accordance with the principles of co-operation and the principles of secularism.

ee) To use the funds of the Society with the consent of all members or to collect funds from the members when necessary, for building or facilitating public use by the members.

ff) To promote the economic interests of the members of the Society and to promote the spirit of frugality, savings and self-help with respect to household purposes.

gg) Involving additional resources of the Society as defined in Article 58 of the Act."



78. It is interesting to note that, in the bye-laws of respondent No.3 - Society as extracted above, some of the clauses were same as that of the clauses in the bye-laws of respondent No.5. But it is to be highlighted that the object of forming the Co-operative Society is not to have such bye-laws, especially with regard to maintenance, administration and management of the common areas, for its Societies.

79. If the objectives of respondent No.3 - Society as extracted above are taken into consideration in light of the objective with which the KAOA was enacted and respondent No.5 - Association was formed by the owners of residential apartments, objectives at Clause (b) and Clauses (c), (f), (o), (p), (u), (v), (w) and (dd) are entirely outside the object with which, respondent No.5 - Association is formed under the provisions of KAOA as the said statute is a Special Enactment, which provides for owners of the apartments in a building and to make such apartment heritable and transferable immovable properties and the matters connected therein pertaining to the residential apartment. It takes care of the requirement of each of the owners of the apartment providing to constitute an



association of apartment owners, which are having common interest and object.

80. The Act also deals with common areas and facilities, and each apartment owner is entitled to an undivided interest in such common areas and facilities in the percentage expressed in the declaration. It is made clear that the common areas and facilities shall remain undivided and no owner or any other person shall seek partition or division of any part thereof, unless the property has been removed from the provisions of this Act. The common profits of the property shall be distributed amongst, and the common expenses shall be charged to the apartment owners according to the percentage of the undivided interest in the common areas and the facilities.

81. As per Section 16, the administration of every property shall be governed by the bye-laws, a true copy of which shall be annexed to the declaration. Sub-section (2) mandates what the bye-laws of such apartment should provide for. It deals with method of calling meetings, election of the President, Secretary, Treasurer, etc., from amongst the members, maintenance, repairs and replacement of the



common areas and the facilities, and payments thereof, manner of collecting the common areas expenses, restrictions on the requirements in respect of use and maintenance of the apartments, common areas and facilities, as set forth in the declaration.

82. The authority of the Board of Managers to retain certain areas of the building and lease them to non-residents for commercial purposes and to distribute the proceeds to the apartment owners as income or to deduct the amount from the common charges for maintaining the building, etc., is also dealt with under this section.

83. Section 17 of KAOA makes it clear that no apartment owner may exempt himself from liability of contributing towards the common expenses by waiver of use or enjoyment of any of the common areas or facilities, or by abandonment of his apartment.

84. Section 18 of KAOA, with a *non-obstante* clause, mandates that each apartment in its percentage of undivided interest in the common areas and facilities shall be deemed to



be a separate property for the purpose of assessment of tax on lands and buildings leviable under such laws, and mandates the local authority to make suitable rules to carry out the provisions of this section. The section also makes it clear that neither the building, the property nor any of the common areas and facilities shall be deemed to be separate property for the purpose of levying such tax. The Act also deals with creating a charge on the apartment concerned regarding sums assessed by the Association of Apartment Owners, but unpaid as the share of common expenses, with the sale/purchase of apartments jointly, and with unpaid assessments. The Act provides for a remedy in case of destruction or damage to the property.

85. Section 24 of the Act speaks about the use of property by any of the owners, tenants, etc., shall be subject to this Act and to the declaration and the bye-laws of the Association of Apartment Owners, adopted pursuant to the provisions of this Act.

86. KAOR were framed pursuant to Section 25 of KAOA. KAOR prescribe Forms-A and B. Form-A, as per Rule 3, is for



the deed of declaration to be made by the sole owner or all owners for submitting their property to the provisions of KAOA. Form-B is prescribed as per Rule-4, for declaration to be executed by each apartment owner under sub-section (2) of Section 5 of KAOA.

87. Form-B contains almost all particulars relating to the apartment, its ownership, bye-laws, object of association, members of association, joint apartment owners, voting forum, powers and duties of the association and its management, powers and duties of the Board, etc., and includes the disqualification of the apartment owner from voting in the election of members of the Board or President and other office bearers, if he is in arrears of the contribution for common expenses for more than 60 days. An exhaustive provision is made to be part of Form-B, which is required to be submitted with a declaration in the prescribed form for registration of the same, as provided under Section 13 of KAOA.

88. Thus, KAOA read with KAOR deals exhaustively with the residential apartments that are constructed in the State of



Karnataka, their holding, management, maintenance and anything incidental thereto.

C] Real Estate (Regulation and Development) Act, 2016:

89. RERA is a Central enactment, which came into force with effect from 26.03.2016. It is an Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure the sale of plot, apartment or building, as the case may be, or the sale of a real estate project, in an efficient and transparent manner; to protect the interest of consumers in the real estate sector; and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer, and for matters connected therewith or incidental thereto.

90. The Statement of Objects and Reasons for enacting RERA highlights the need for regulating the real estate sector, which plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country, which has grown



significantly. In recent years, it was noticed that this significant sector was largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection.

91. The Statement of Objects and Reasons also refers to the Consumer Protection Act, 1986, which was providing the forum to the buyers in the real estate market, but note that the recourse to the said Act is only curative and is not adequate to address all concerns of buyers and promoters in that sector. It was observed that lack of standardization had been a constraint to the healthy and orderly growth of the industry. Therefore, it became necessary to have a Central legislation to safeguard the interests of effective consumer protection, and to bring uniformity and standardization of business practices and transactions in the real estate sector. The Act could ensure greater accountability towards consumers and significantly reduce fraud and delays, as well as the current high transaction costs. It is aimed at safeguarding the interest of both consumers and promoters alike by imposing certain responsibilities on both, and by ensuring symmetry of information between the promoter and purchaser, and



transparency of contractual conditions with a minimum standard of accountability and a fast-track dispute resolution mechanism.

92. As per Section 2(d) of RERA, the word 'allottee' in relation to a real estate project means, the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer, etc., excluding the person in whose favour such plot, apartment or building is given on rent.

93. The Real Estate Appellate Tribunal was established under the Act, to redress the grievance of any person aggrieved by any directions or decisions or orders made by the authority or by an adjudicating officer. The adjudicating officer is appointed under sub-section (1) of Section 71, with the power to adjudicate compensation under various provisions of the Act.

94. Section 4 of RERA mandates that every promoter shall make an application to the authority for registration of the



real estate project in a time-bound manner, with necessary documents and particulars. Upon receipt of such application, the authority shall register the project, which shall be valid for the period declared by the promoter for completion of the project or phase thereof. Such registration could be extended by the promoter by filing an application due to force majeure, on payment of the prescribed fees. The authority is vested with the power under Section 7 to revoke the registration on receipt of a complaint either *suo motu* or on recommendation of the competent authority. Default on the part of the promoter in doing anything required to be done under the Act, Rules or the Regulations, violation of any terms or conditions of the approval given by the competent authority, or involvement by the promoter in any kind of unfair practice or irregularities, may call for revocation of registration.

95. The term 'competent authority' is defined under Section 2(p) of the Act to mean a local authority created or established under any law for the time being in force by the appropriate Government to exercise authority over the land under its jurisdiction, and having the power to give permission



for development of such immovable property. The Act also refers to the registration of a real estate agent, his functions and duties, and the obligations of the promoter, including adherence to the sanctioned plan and project specifications, his obligations in case of transfer of the project to a third party, the requirement to obtain insurance for the real estate project, and the obligation to return amounts and pay compensation if he fails to complete or is unable to hand over possession of an apartment, plot or building as agreed.

96. Section 17 of RERA deals with 'transfer of title'. It is mandatory for the promoter to execute a registered conveyance deed in favour of the allottees along with the undivided proportionate title in the common areas to the Association of allottees or the competent authority, as the case may be, and to hand over the physical possession of the plot etc., to such association or the competent authority, as the case may be, in a real estate project, together with other title documents pertaining thereto, within the period specified as per the sanction plan provided under the local laws.



97. The proviso to Section 17 highlights that the promoter is duty-bound to transfer the title by way of a conveyance deed in favour of the allottees or the association of allottees or the competent authority, as the case may be, within three months from the date of issuance of the Occupancy Certificate, even in the absence of any local laws.

98. It is also the duty of the promoter to hand over necessary documents and plans to the association of allottees or the competent authority, as the case may be, after obtaining the Occupancy Certificate and after handing over physical possession to the allottees as per the local laws. Even in the absence of local laws, the promoter is duty-bound to hand over the documents within 30 days after obtaining the completion certificate.

99. RERA also deals with the rights and duties of the allottees, which include - getting proper information about the project and the timeline for completion; claiming possession of the apartment, plot or building and the common areas as per the declaration given by the promoter; claiming refund of amounts paid; demanding necessary documents and plans,



including those of common areas; making necessary payments in terms of the agreement entered into with the promoter; and taking physical possession of the apartment, plot or building, within a period of two months of the Occupancy Certificate, and participating in the registration of conveyance deed of the apartment, plot or building.

100. It is now expedient to consider the interoperability, interplay, and application of the above-mentioned Acts, namely KOFA, KAOA and RERA.

101. From the above, it is clear that in 1972, the State of Karnataka felt the necessity to provide regulation for multi-storied flats and apartments on ownership basis, owing to the shortage of land in urban areas, and accordingly enacted KAOA as an exhaustive enactment. KAOA was made applicable purely to residential apartments for the benefit of the owners, after they obtain conveyance in their favour to form an association as per the terms of agreements to sell and the sale deeds. Simultaneously, KOFA was enacted to regulate the promotion of construction, sale, management and transfer of flats taken on ownership basis in the State, and was applicable to premises



used or intended to be used either for residence, office, showroom, shop or godown, including garage.

102. In view of the above, before RERA came into force, KOFA was governing the field. When the Central legislation - RERA was enacted in 2016 with the object of providing a catalyst to fulfill the need and demand for housing and infrastructure in the Country, certain provisions in KOFA were found repugnant to RERA. As the Central legislation will prevail over the State legislation in view of Article 254 of the Constitution of India, it is only those provisions of RERA which can be made applicable, and not the provisions of KOFA, when they are in conflict.

103. The co-ordinate Bench of this Court in ***Akhilesh Anand*** (*supra*), categorically held that whenever there is repugnancy between RERA and KOFA, it is only RERA which can be made applicable and not the provisions of KOFA, as RERA is the Central enactment and KOFA is the State enactment and the former precedes the latter under the aegis of Article 254 of the Constitution of India.



104. When learned counsel for respondent No.3 repeatedly contended that the provisions under KAOA are repugnant to the provisions under RERA, which is the Central enactment and therefore, KAOA cannot be made applicable, he was called upon to highlight the specific provisions under KAOA which are repugnant to RERA. He undertook to submit a memo with the table of provisions, which according to him are repugnant between the two enactments. However, till date, he has not submitted any such memo or list. Thus, respondent No.3 has failed to highlight any repugnancy in any of the provisions of KAOA when compared with RERA. Under such circumstances, it is to be held that there is no repugnancy between the provisions of RERA and KAOA. Moreover, the application of the provisions of RERA will be to projects which are under development till handing over of possession of the apartment to the owners and the undivided share of the project in favour of the association of owners formed under the provisions of KAOA, whereas, the provisions of KAOA will be applicable once such handing over is complete and the association is formed in accordance with law. In other words, the provisions under RERA are applicable to the pre-ownership



stage, whereas the provisions under KAOA are applicable to the post-ownership.

105. The provisions of KAOA, if considered with the provisions under RERA, they make it clear that RERA provisions deal with development and sale of a real estate project in an efficient and transparent manner in favour of interested consumers and for establishment of an adjudicating mechanism for speedy dispute redressal. The moment the completion certificate and the Occupancy Certificate are received, the promoter is duty-bound to transfer the title in favour of the allottees by executing a registered conveyance deed, along with the undivided proportionate title in the common areas to the association of owners or the competent authority, as the case may be, and to hand over physical possession of the plot, apartment and building to the allottees and the common areas to the association of allottees, and also to hand over the title documents within a specified period. The moment this procedure is undertaken by the promoter, the provisions of RERA, for all practical purposes, cease to apply. Since the provisions of RERA and the provisions of KAOA apply at



different stages of a real estate project, this Court does not find any repugnancy worth mentioning. However, it is to be stated that the promoter remains responsible for any defects or shortcomings in his project, which may be challenged by an allottee, before an appropriate authority in accordance with law. It is made clear that mere handing over of possession of the apartments/flats in favour of the owners, along with the undivided share in favour of the association of allottees/owners, will not absolve the promoter from his liability to make good any loss that may be suffered by such allottees or owners, as the case may be. RERA specifically deals with the rights and duties of the allottees as referred to in Sections 14(3), 18, 19, 67 and 68 of RERA.

106. In ***Akhilesh Anand*** (*supra*), the co-ordinate Bench, after discussing at length the interplay between the provisions under RERA and KAOA, concluded in paragraph 22.11 as under:

"22.11. Hence, I answer point No.3 by holding that there is no conflict between KAOA 1972 and RERA 2016, inasmuch as RERA 2016 is applicable pre-ownership, KAOA 1972 is applicable post-ownership. Insofar as KOFA and RERA 2016 are concerned, there is a conflict. However, RERA 2016



would override KOFA 1972, and it is the rights and remedies which are provided under RERA 2016 which would override those under KOFA 1972."

D] Karnataka Co-operative Societies Act, 1959:

107. Now, let me consider the KCS Act under which respondent No.3 was registered as a Co-operative Society. This Act came into force after receiving the Report of the Committee of Direction of All India Rural Credit Survey appointed by the Reserve Bank of India, published during December 1954, and the deliberations held in that regard. The Committee felt that the scenario that was in existence for the Co-operative Societies needed to be revisited in different States, with a view to bring about a large degree of uniformity in the legislation governing such Co-operative Societies throughout the country. Thus, the KCS Act is an Act to promote voluntary formation, autonomous functioning, democratic control and professional management of the Co-operative Societies in the State of Karnataka.

108. Since respondent No. 3 is registered under the KCS Act, it is a Co-operative Society as defined under Section 2(c)



of the KCS Act. Co-operative Societies registered under this Act function on co-operative principles. The Co-operative Movement stands on Co-operative Principles. The first principle being voluntary and open membership; meaning thereby the membership is open to all persons able to use its services. But in the case of KAOA, it is only the owner of an apartment having share in the common areas could be the member of the association. The principles of Co-operative Movement believes in equal voting rights i.e. one member one vote, irrespective of his share in the society. But in the case of KAOA, the members will not have any share, but they own an apartment with undivided share in the common areas. There is no restriction for a person for owning multiple apartments, thereby be entitled for voting rights depending upon the number of apartments he is owning. It is also the principle of the Co-operative society to have equitable economic participation. But in case of KAOA, the owner will contribute on the basis of actual measurement of his apartment and the common areas he is owning. There is no question of equitable contribution. As per the principle of Co-operative Movement, there must be education, training, information and cooperation among co-



operatives, which are alien to the association under KAOA. Therefore, all the principles of Co-operative Movement cannot be made applicable to the association of owners formed in a residential complex, consisting of owners mainly for the purpose of maintaining the common areas, facilities etc., and working for the benefit of such owners.

109. Section 4 of the KCS Act deals with the Societies which may be registered, where the object of the Co-operative Society is highlighted, according to which, such objects shall be the promotion of economic interests or general welfare of its members or of the public, in accordance with co-operative principles; or a Co-operative Society established with the object of facilitating the operations of such a Society may be registered under the Act. The proviso to Section 4 of the KCS Act bars registration of the Co-operative Society if it is likely to be economically unsound. Section 7 of the KCS Act deals with registration and Sub-section (1)(e) mandates the Registrar to be satisfied that the proposed Society complies with the requirements of sound business and has a reasonable chance of



success; without that, the Society cannot be registered under the Act.

110. Section 17 of the KCS Act deals with the disqualification of membership under various circumstances. If a person is adjudicated as an insolvent, or is an undischarged insolvent, he is not eligible for admission as a member. If a person is sentenced for any offence, etc., he is barred from being registered as a member as per clause (b), and as per clause (c) if a person carries on business of the kind carried on by such Co-operative Society, again he is not eligible to be registered as a member. Sub-section (2) to Section 17 highlights that if a member becomes subject to any of the disqualifications specified in Sub-section (1), there is deemed cessation of membership from the date of disqualification is incurred. As per sub-section (2-A), if a person is found to be a member or continuing as a member in two or more Co-operative Societies carrying on similar business, it shall be obligatory on his part to retain membership in any one Society of his choice, within a period of ninety days from the date of commencement of the KCS (Amendment) Act, 2021. If he fails



to do so, his membership shall be deemed to have ceased in the Co-operative Society, to which he is newly admitted.

111. Section 20 of KCS Act deals with votes of members. A member cannot have more than one vote in a general meeting or in the election of members of the Board of the Co-operative Society. Sub-section (2) restricts the right to vote of a member at a general meeting under certain circumstances, including where a member fails to attend at least two annual general meetings, out of the last five annual general meetings duly communicated to him, or if he fails to utilize such minimum services or facilities as may be specified in the bye-laws of the Co-operative Society. As per the proviso, such members shall not have the right to vote at the general meeting for a period of one year.

112. Section 22 of KCS Act restricts a member from holding more than five percent of the total share capital of the Society. Further, as per Section 28(b) of KCS Act, if the election to the Board is not conducted before the expiry of term of the Board, the members of Board who failed to make arrangements for conducting such election shall be deemed to



have vacated their office and an administrator appointed by the Registrar of Co-operative Societies shall assume charge for the purpose of conducting the election.

113. As per Section 30 of KCS Act, the Registrar of Co-operative Societies, who forms an opinion as required under Sub-section (2), may even suspend the Board or supersede the same by appointing an administrator to manage the affairs of the Society for a period of 6 months.

114. Since the petitioner herein has approached this Court seeking to cancel the registration granted by respondent No.2 in favour of respondent No.3 - Society, the provisions highlighted above under the KCS Act are to be considered in light of the provisions under RERA and KAOA and in the context of the objective with which these enactments were enacted.

115. It is pertinent for this Court to consider the precedents relied on by both the sides to buttress their arguments and to highlight the position of law as interpreted through such decisions.



116. Learned counsel for respondent No.3 placed reliance on the decision of the Hon'ble Apex Court in ***Sobha Hibiscus Condominium*** (*supra*) to contend that respondent No.5 is not a consumer within the meaning of the Consumer Protection Act, 1986 and cannot sue or be sued under the said Act to have the grievances of either allottees or owners redressed.

117. In that case, the appellant - Sobha Hibiscus Condominium, being an association of owners that came into existence pursuant to the declaration made under the provisions of KAOA, filed a complaint claiming certain reliefs against Sobha Developers Limited (the promoter), before the National Consumer Disputes Redressal Commission (NCDRC). The said complaint came to be rejected on the primary ground that the complainant is not a consumer within the meaning of Consumer Protection Act, 1986 and therefore had no *locus standi* to file the complaint. The NCDRC referred to Section 12(1)(b) of the Consumer Protection Act, 1986 to hold that only a recognized consumers association could, amongst others, file a complaint before the District Forum. It is held that when the



complainant is a statutory body under the provisions of KAOA, which came into existence pursuant to a declaration made by the respondent promoter under the provisions of KAOA, it cannot be termed as a voluntary association.

118. The Hon'ble Apex Court, on a conjoint reading of the various provisions of KAOA, the bye-laws of Condominium and Section 12(1)(b) of the Consumer Protection Act, 1986, formed an opinion that the complainant came into existence as per the mandatory provisions under KAOA. Therefore, it cannot be said to be a voluntarily registered association for the purpose of filing a complaint before the competent authority under the Consumer Protection Act. It was highlighted that a 'recognized consumer association' as referred to under Section 12(1)(b) of the Act means a voluntary consumer association registered under the Companies Act or any other law for the time being in force. It is pertinent to note that the NCDRC disposed of the complaint during 2015, i.e., before RERA coming into force in 2016. Moreover, Section 12(1)(c) of the Consumer Protection Act, 1986 (repealed Act), which is



equivalent to Section 35 of the Consumer Protection Act, 2019 was never brought to the notice of the Hon'ble Apex Court.

119. Section 12(1)(c) of the repealed Act and the present Section 35(1)(c) of the Consumer Protection Act, 2019, permit filing of a complaint by one or more consumers where there are numerous consumers having the same interest, for the benefit of and on behalf of all such consumers so interested. The only legal requirement provided under these provisions is getting permission from the District Commission. Therefore, if there are more such consumers having the same interest or grievance, they can move the District Commission or the State Commission, as the case may be, seeking permission to file the complaint on behalf of or for the benefit of all such consumers so interested. Therefore, the association of owners registered under KAOA need not necessarily be the complainant before the Consumer Forum for redressal of the grievance of either the allottees or the owners, as the case may be.

120. Learned counsel for the petitioner placed reliance on the decision in **Arunkumar** (*supra*) to contend that, since the project does not involve commercial units, the provisions of



the KCS Act cannot have any application. The co-ordinate Bench of the Court considered a similar situation where the petitioners therein, being the owners of certain flats, were opposing the registration of a similar Co-operative Society as respondent No.4 therein under the KCS Act, on the ground that the owners who purchased the flats as per the terms of sale deed are bound by the contractual obligation to form an association under the provisions of KAOA and a Co-operative Society cannot be formed for the purpose of maintaining and managing the residential apartment in question. The Court considered the rival contentions and held in paragraphs 17, 18 and 19 as under:

"17. Since, the project does not involve commercial unit, the Registrar of Cooperative Societies could not have granted permission dated 18.10.2023 marked at Annexure-A. Accordingly, same is quashed.

18. Respondent No.2 is prohibited from registering the proposed respondent No.4 Society to manage and maintain the residential apartment complex known as "DS-Max Star Nest"

19. Direction is issued to the 3rd respondent builder to comply all the requirements under law and cooperate with the petitioners and members of the 4th respondent proposed Society to form an association



under the Act of 1972 in the project known as "DS- Max Star Nest" referred to above."

(emphasis supplied)

121. Learned counsel for the petitioner has also placed reliance on the decision in ***Proposed Starnest Apartment Owners Co-operative Society*** (*supra*), where the Division Bench of this Court considered the contention of the appellant before it, which was a Society proposed to be registered under the provisions of KCS Act. It had filed an application before the Registrar of Co-operative Societies seeking permission to register and obtained such permission, which was objected to by the respondents therein, on the ground that an association of owners of the apartment was already formed under the provisions of KAOA and the permission granted to form a Co-operative Society to maintain and manage the residential apartment was illegal. The Division Bench considered the rival contentions of the parties in light of the provisions under both enactments and held as under:

"18. The contention of learned counsel for the appellant that in view of the project being registered under the provisions of RERA in compliance of Section 11(4)(e), (f), (g) of RERA. a Co-operative Society is to



be formed, is not acceptable. The said provisions of RERA would mandate the builder to enable formation of Association or Society or Co-operative Society, as the case maybe, of the allottees. As the project under consideration consists only residential units, the said provisions only mandate formation of association of the allottees under the applicable laws. The law applicable in the present case is the Karnataka Apartment Ownership Act, 1972.

19. The contention of learned counsel for the appellant that even if the project consists only residential houses/flats, conversion of the flats for commercial or use of such flats for commercial purpose is not prohibited, in such circumstances, provisions of KOF Act. 1972, would be attracted and in compliance of Section 10 of the said Act, the Co-operative Society is to be formed is farfetched and is rejected."

122. It is relevant to refer to the decision in **Rekha Kannan and Ors Vs. The State of Karnataka and Ors.¹¹**, wherein the co-ordinate Bench of this Court considered a petition filed by the petitioners therein, seeking to quash the registration of a similar Co-operative Society consisting of the owners of an apartment which is purely a residential complex. The Court framed the question as to whether a Co-operative

¹¹ WP No.27821/2024 DD 02.05.2025



Society under the KCS Act could be constituted when there is a special enactment i.e., KAOA, which specifically provides for maintenance, management and regulation of such residential apartments. It considered various provisions under both enactments, the decision of Division Bench in ***Proposed Starnest Apartment Owners Co-operative Society Ltd.*** (*supra*), and various other decisions, to hold that it is only the association formed by the builder under KAOA that will manage and maintain the apartments and the common areas, and that the registration of a Co-operative Society under the KCS Act is not sustainable.

123. In ***Mrs. Saraswathi Prakash and Others v. State of Karnataka***¹², the co-ordinate Bench considered a similar situation and, after referring to various decisions including ***Arunkumar R*** (*supra*), ***Proposed Starnest Apartment Owners Co-operative Society Ltd.*** (*supra*) and ***Shantharam Prabhu v. Mr. K Dayanand Rai***¹³, and various provisions under KAOA, held in paragraphs 17 and 18 as under:

"17. In light of the decisions stated supra and considering the provisions of KAO Act, it can be safely

¹² WP No. 3779/2023 DD 28.02.2025

¹³ CRP NO.96 OF 2021 C/W CRP NO.64 OF 2021 dt: 08/09/2021



held that the lis stands covered, that the petitioners and the members of the association are entitled to be registered under the KAO Act and that there cannot be any association registered under the Act, 1959, to form a society to manage and maintain the property comprising of only residential flats. It is also relevant to state here that the KOFA Act, 1972 and the Rules 1975, are applicable, if the property has both commercial and residential units.

18. In the instant case, the project does not include any commercial unit and as such, the KOFA has no application and since the KOFA has no application, the registration under the Act, 1959, is not permissible. It is relevant to state that respondent No.4 is the association of the owners of the flats situated in an apartment for which a specific enactment, viz., the KAO Act has been enacted and therefore, the registration of the association has to be made under the KAO Act.

(emphasis supplied)

124. Learned counsel for the petitioner has also placed reliance on the decision in **Akhilesh Anand** (*supra*) to contend that the co-ordinate Bench considered a similar situation and pointed out the conflict between KAOA, KOFA and RERA, and discussed as to which enactment would prevail and held that it is only KAOA which would prevail in the matter of management



and maintenance of the common area facilities. The Court framed point No.3 as under:

"Whether there is any conflict between KAOA 1972 and KOFA 1972 on the one hand and RERA on the other? If so, which enactment would prevail?"

and answered it in paragraph No. 22.11 as under:

"22.11. Hence, I answer point No.3 by holding that there is no conflict between KAOA 1972 and RERA 2016, inasmuch as RERA 2016 is applicable pre-ownership, KAOA 1972 is applicable post-ownership. Insofar as KOFA and RERA 2016 are concerned, there is a conflict. However, RERA 2016 would override KOFA 1972, and it is the rights and remedies which are provided under RERA 2016 which would override those under KOFA 1972."

(emphasis supplied)

125. It is interesting to note that even the learned counsel for respondent No.3 has placed reliance on **Akhilesh Anand** (*supra*) in support of his contention that a Co-operative Society could be formed by the majority of allottees and there is no bar under any statute. The facts of the case in **Akhilesh Anand** (*supra*) are slightly different. The co-ordinate Bench had considered a dispute where the majority of allottees had booked their apartments, but the construction had not been



completed, despite the period fixed for such completion and several allottees have formed themselves into a Co-operative Society as referred to in RERA, to have their grievances against the promoter redressed. Under those circumstances, the coordinate Bench held in paragraph 29.6 as under:

"29.6. Several of the provisions in RERA 2016 containing non-obstante provisions, RERA 2016 would override KOFA 1972. Apart from this, RERA 2016, being a central enactment that occupies the field relating to disputes between allottees and developers/Promoters, would override KOFA 1972, a State enactment, in order to maintain uniformity across the country. Taking into account these aspects and factors, I am of the considered opinion that the decision of the Division Bench of this court in STARNEST APARTMENT OWNERS CO- OPERATIVE SOCIETY LTD, holding that a Co-operative Society can only be registered in respect of KOFA 1972 if there is a commercial unit, would no longer be applicable after RERA 2016 has come into force, more so since RERA 2016 was not considered in STARNEST APARTMENT OWNERS CO OPERATIVE SOCIETY LTD. This would also have to be taken into consideration with reference to the proviso to clause (e) of Subsection (1) of Section 14, which requires that such an Association is required to be formed within a period of 3 months of the majority of the allottees having booked their plot or apartment. Thus, the Association



of allottees in terms of clause (e) of subsection (1) of Section 14 could be an Association or Society or co-operative Society but if such an Association were required to carry out maintenance activity also, then it could only be a Co-operative Society under the KSCA 1959 and such a Co-operative Society is required to be formed within a period of three months or the majority of allottees having booked their plots or apartments.”

126. In the present case, admittedly, the construction of residential apartment is already complete. The petitioner, being the promoter, has obtained the completion certificate and the Occupancy Certificate. As per Section 17 of RERA, there was transfer of title. There is already a transfer of title by the promoter by executing the registered conveyance deed in favour of majority of allottees, along with the undivided proportionate title in the common areas in favour of the association of owners i.e., respondent No.5, which was formed as an association of owners as per the provisions of KAOA. When the project is already complete and the transfer of title is also complete by the promoter as required under RERA, the application of the provisions of RERA insofar as it relates to handing over of such apartments and the common areas ceases



to apply. Admittedly, respondent No.5 was formed as per the provisions of KAOA at the first instance on 12.06.2023 by submitting the declaration as required under KAOA. Sections 11 and 12 of KAOA specifies about the contents of declaration and the deed of apartments and Section 13(1) mandates registration of such declaration and deed of apartments along with copies of floor plans under the Registration Act, 1908. Sub-Section (2) mandates filing of floor plans of buildings showing the layout location, dimension of the apartments etc., along with the declaration. Sub-Section (3) mandates maintaining of register of declarations and deed of apartments under KAOA in all registration offices. As per Sub-Section (5), the Sub-Registrar or the Registrar as the case may be shall register the declaration along with the floor plan under KAOA and as per Sub-Section (6), except as provided in the Section, the provisions of Registration Act, 1908 is made applicable *mutatis mutandis* to registration of such declaration and deed of apartments. It is respondent No.5 which has complied with all these requirements and got registered the declaration and deed of apartments with the Registrar under the Registration Act, 1908 and is required to maintain the common areas and



common facilities and discharge its duties in accordance with the provisions of KAOA, KAOR and the bye-laws. Therefore, the contention of learned counsel for respondent No.3 that respondent No.5 - Association is not a registered association, cannot be accepted.

127. It is pertinent to note that in the agreement to sell and the sale deeds executed by the petitioner as promoter in favour of various allottees, the words 'association' or 'association of owners' or 'owners' association' are defined to mean an association of owners established by the vendor and developer in respect of the apex body 'Sobha HRC Pristine' and the sub-committee/association for 'Sobha HRC Pristine Phase-2 Block-2' and also for the project as a whole, as per the provisions of KAOA. Therefore, the contractual obligation for the owners to be part of such association cannot be ignored, apart from the statutory requirement.

128. Annexure-C contains the bye-laws relating to the Owners' Association, which is arrayed as respondent No.5 in this petition. As per the bye-laws submitted under KAOR, the applicable Act is KAOA. The object of the Association is to



provide for maintenance, repair and replacement of the common areas and facilities by receiving contributions from the apartment owners, and if necessary by raising loans for that purpose; to maintain and be fully responsible for water, electrical, fire, lift, and other equipment, including annual maintenance; to comply with conditions stipulated in permissions and No Objection Certificates issued by statutory authorities; to frame additional rules with the approval of the General Body after consulting the competent authority; to establish such funds as the General Body deems fit; to comply with applicable statutory requirements; to invest or deposit monies for the benefit of the members; and to do all acts necessary for fulfillment of all other objects specified in the bye-laws.

129. The bye-laws further provide that the persons who have purchased apartments or row houses shall be members of the said Owners' Association. In the event of transfer of an apartment by sale, gift, or otherwise, the transferee shall compulsorily become a member of the Association. In case of the death of an owner, the apartment shall devolve upon the



person or persons to whom it is bequeathed in accordance with law, or upon the legal representatives, as the case may be, and such persons shall automatically become members of the Association by operation of law.

130. The bye-laws also provide for joint apartment ownership, where an apartment is purchased jointly by two or more persons who shall be jointly entitled thereto and shall be members in respect of that apartment. An apartment owner shall be disqualified from voting in the election of members to the Board only if he is in arrears of common area expenses payable to the Association for more than 60 days. Each apartment shall carry one vote, irrespective of whether it is owned singly or jointly.

131. The bye-law highlights that the Association is responsible for the maintenance of the building and common areas, approval of the annual budget, collection of monthly assessments, and overall management of the condominium. The Board of office bearers is entrusted with the upkeep and surveillance of Sobha HRC Pristine, including common and restricted common areas and facilities, and with the collection



of maintenance charges and municipal taxes relating to common areas. Board members hold office for a period of two years and are empowered to appoint the President, Secretary, and Treasurer from amongst themselves.

132. The bye-laws further set out the obligations of apartment owners regarding payment of annual assessments, maintenance charges, repairs, day-to-day outgoings, and necessary repair or reconstruction of their apartments. Owners are not entitled to make any structural modification or alteration to their units.

133. It provides for the funds collected from apartment owners form part of the reserve or sinking fund as authorized by the General Body. The Board is empowered to invest such funds in nationalized or scheduled banks or in approved securities. The Association shall maintain a bank account and publish audited annual financial statements relating to the common areas and facilities, including the Profit and Loss Account and the Receipts and Expenditure Account for the previous year.



134. The bye-laws clarify that the project is purely residential, and the primary obligation of the Association is to manage and maintain the common areas and the facilities for the benefit of all its members, who are the apartment owners. The Association has been registered in accordance with the provisions of the RERA and KAOA.

135. The word 'association agreement' is also defined to mean the maintenance agreement between the association and the service provider for maintenance of the common areas, common amenities and facilities of 'Sobha HRC Pristine Phase-2 Block-2' and the project as a whole. Therefore, in the initial document styled as an 'agreement to sell' executed by the petitioner in favour of various allottees, formation of an association either known as 'association of owners' or 'owners' association' was undertaken as per the provisions of KAOA, and it is such association which is required to maintain the common areas and the common amenities for the project as a whole. Admittedly, similar clauses were found in the sale deeds executed by the petitioner in favour of various owners. It is not in dispute that almost all the owners in whose favour sale



deeds were executed by the petitioner, conveying the right, title and interest over their respective apartments, are members of respondent No.5 - Association, which was formed initially on 12.06.2023. It is only thereafter respondent No.3 - Society came into existence on 06.09.2023. It is not in dispute that few owners who are also members of respondent No.5 joined hands in forming respondent No.3 - Society, being its members, as they were having some grievance against the petitioner.

136. Now, the question arises as to whether the allottees in whose favour sale deeds were not executed by the petitioner, conveying the title over the apartment and the common areas, could form a Co-operative Society for maintaining the common areas and common facilities, for and on behalf of all the owners who have already acquired title not only to their apartment but also in respect of the common areas and common facilities, etc. The answer will be in the negative, as it is only the apartment owners who have acquired title to the apartments and also to the common areas and common facilities who are entitled to maintain, administer and



manage the same by forming an association. Moreover, when there is admittedly an agreement between the petitioner and the allottees or owners to submit the project i.e., the apartment and the common areas under the provisions of KAOA, a contractual obligation also lies on all such allottees and owners to comply with the same. Learned counsel for respondent No.3 could not explain as to how the members of respondent No.3 - Society could overcome the contractual obligation which they themselves voluntarily undertook under various agreements to sell and the sale deeds in respect of its members.

137. When respondent No.5 - Association is already formed as per the contractual obligation and in view of the provisions under RERA and KAOA, undertaking to maintain, administer and manage the common areas and facilities, whether a separate Society under the Co-operative Societies Act could be formed for similar purposes is a question to be considered.

138. KAOA, as highlighted above, is a special enactment brought into force in the State of Karnataka way back in the



year 1972, which takes care of almost all situations where the project is complete and the conveyance was executed in favour of the apartment owners by the promoters, and an association of apartment owners as defined under Section 3(d) of the Act was formed. When such an association is formed in accordance with law and is in place, forming a different Co-operative Society to run parallel to respondent No.5 cannot be encouraged. It is to be borne in mind that the project is purely a residential apartment purchased by the owners with an intention to live peacefully by investing their hard-earned money. If there could be two parallel associations, a Co-operative Society and an Owners' Association with the common object of maintaining, administering and managing the common areas, facilities etc., the very purpose of purchasing the apartment by the owners for their peaceful living will be frustrated.

139. It is to be highlighted that the KCS Act, which governs Co-operative Societies formed in the State, makes it clear that the object of forming such Society is promotion of the economic interests of its members in accordance with co-



operative principles. A Co-operative Society established with such primary object raises a question as to its applicability to a residential apartment which is definitely not meant for protecting the economic interest of its member. Moreover, if it is found that a Co-operative Society is likely to be economically unsound, its registration shall have an adverse effect on the development of the co-operative movement, and such Society cannot be registered as per the proviso to Section 4 of KCS Act. Admittedly, the owners of the apartments in question will not have any such economic interest or an intention to develop the co-operative movement by forming the Co-operative Society. The object with which the KCS Act came into existence was only to encourage the co-operative movement by adopting co-operative principles. KAOA, on the other hand, was enacted for the specific purpose of providing for ownership of an individual apartment in a building and to make such apartment heritable and transferable property and to provide for matters connected therewith.

140. The bye-laws of respondent No.5 produced as per Annexure-C, is in accordance with the spirit of the provisions



under RERA and KAOA mainly to maintain, repair and provide replacement of the common areas and facilities by receiving contributions from its members who are the apartment owners. Incidentally, many other objectives are also provided under the bye-laws which go hand in hand with the main objective of forming the owners' association. Whereas, the bye-laws of respondent No.3 as mentioned above even though contain a few of bye-laws which are similar to those of respondent No.5 relating to maintenance of common areas and facilities, etc., many of the bye-laws are unconcerned with the welfare of owners of the apartment. A major portion of the bye-laws cannot be applied or reconciled with the requirements of an owner of a apartment residing in the residential complex.

141. I have considered the submissions of learned counsel for respondent No.3 who was more particular about the object with which respondent No.3 - Society is formed as he contends that many of the allottees who are members of respondent No.3 have not been provided with the conveyance by the petitioner/promoter/builder. It is also his contention that many allottees and owners are having several grievances



against the petitioner and that respondent No.5 not being a voluntary Association as held in ***Sobha Hibiscus Condominium (supra)***, cannot sue or be sued on behalf of such allottees or owners for redressal of their grievances. The main crux of the arguments addressed by learned counsel for respondent No.3 is that the grievances raised by the allottees and the owners against the petitioner need to be addressed, and that is the main reason for which respondent No.3 - Society came into existence.

142. Under Consumer Protection Act, 2019, Section 2 (31) defines the word 'person' to include an individual, a firm, a Hindu undivided family, a Co-operative Society, association of persons whether registered under the Societies Registration Act or not, any Corporation, Company or a body of individuals, whether incorporated or not, any artificial juridical persons not falling within any of the preceding Sub-clauses. Similarly under RERA, the explanation appended to Section 31(1) states that the word 'person' used therein shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. Therefore, for the



purpose of RERA, a 'person' includes an association of allottees or any voluntary consumer association registered under any law for the time being in force. But whereas under Consumer Protection Act, it could be an individual, a Hindu Undivided Family, a Co-operative Society, an association of persons etc., as referred to above. Such complaints, either before Consumer Forum or before RERA authority, could be filed by an individual allottee or owner, who is aggrieved by non compliance of any contractual or statutory obligation by the petitioner or anybody else.

143. The Hon'ble Apex Court in ***Imperia Structures Limited V/s Angelo Patni***¹⁴, while addressing the issue of parallel proceedings before RERA Authority and the Consumer Forum held in paragraphs 34, 35 and 36 as under:

"34-It is true that some special authorities are created under the RERA Act for the regulation and promotion of the real estate sector and the issues concerning a registered project are specifically entrusted to functionaries under the RERA Act. But for the present purposes, we must go by the purport of Section 18 of the RERA Act. Since it gives a right "without prejudice to any other remedy available", in effect, such other

¹⁴ (2020) 10 SCC 783



remedy is acknowledged and saved subject always to the applicability of Section 79.

35-At this stage, we may profitably refer to the decision in Pioneer Urban Land and Infrastructure Ltd. v. Union of India¹⁵, where a Bench of three Judges of this Court was called upon to consider the provisions of the Insolvency and Bankruptcy Code, 2016, the RERA Act and other legislations including the provisions of the CP Act. One of the conclusions arrived at by this Court was:

"100.RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code"

36-We, therefore, reject the submissions advanced by the appellant and answer the questions raised in para 28 hereinabove against the appellant."

144. Thus, the position of law is made very clear that RERA gives an option to the allottee either to approach RERA authority or to the Consumer Forum under the Consumer Protection Act, for redressal of his grievance against the promoter/builder. Even though this position of law is admitted

¹⁵ (2019) 8 SCC 416



by learned counsel for respondent No.3, the only grievance highlighted by him is that, since respondent No.5 - Association is held to be not a voluntary association by the Hon'ble Apex Court in ***Sobha Hibiscus Condominium*** (*supra*), it is not authorized to represent the grievances of the allottees or owners against the petitioner before the Consumer Forum. But Sections 11 to 13 of KAOA makes it clear that declaration of deed of apartments along with the floor plans and other details was registered with the register of declaration and deed of apartments under KAOA and it is entered in the index kept under Sub-Section (3) of Section 13. As per Sub-Section (6) of Section 13, the provisions of Registration Act, 1908 has made applicable *mutatis mutandis* to such registration and declaration of deed of apartments. Therefore, the decision in ***Sobha Hibiscus Condominium*** (*supra*), cannot be made applicable to the facts in the present case.

145. If at all, the allottees or the owners are having any such grievances against the petitioner and if they want to get it resolved either by approaching the Consumer Forum or the RERA authority, they can do so independently, as formation of



respondent No.5 - Association is for a different purpose and it is not for fighting the cause against the petitioner on behalf of the allottees and the owners.

146. As already stated, ***Sobha Hibiscus Condominium*** (*supra*) was delivered without reference to RERA and Section 35(1)(c) of the Consumer Protection Act, 2019 or Section 12(1)(c) of the then Consumer Protection Act, 1986 or Section 13 of KAOA. Even if it is to be assumed that an allottee, or a owner or a group of allottees or owners have any grievance against the petitioner, they can definitely invoke Section 35(1)(c) of the Consumer Protection Act, 2019 to complain against the petitioner before the Consumer Forum by seeking permission of the Consumer Commission in that behalf. Section 31 of RERA provides for filing of complaints with the authority or the adjudicating officer by any person aggrieved by any violation or contravention of the provisions of the said Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.

147. Even though learned counsel for respondent No.3 contends that the main reason for forming respondent No.3 -



Society is to have the grievances of various allottees and even some of the owners redressed, the bye-laws pertaining to respondent No.3 do not highlight any such objects. There is no explanation as to why the bye-laws pertaining to respondent No.3 do not make any provision to safeguard the interest of such allottees and the owners, if they are having any grievance against the petitioner. Moreover, learned counsel for the petitioner specifically submitted that, till date, respondent No.3 has not raised any dispute under the provisions of any of the Acts, before any of the forums against the petitioner. This fact is never disputed by the learned counsel for respondent No.3. Under such circumstances, the contention of learned counsel for respondent No.3 that the Co-operative Society in question was formed mainly with an intention to have the grievance of the allottees and the owners redressed, cannot be accepted.

148. Learned Amicus Curiae while addressing his arguments, highlighted various provisions under KOFA, KAOA and RERA along with the objectives with which each of these enactments were enacted. As per Section 17 of RERA, the promoter is required to register a conveyance deed in favour of



the allottees, along with the undivided proportionate title in the common areas to the association and to hand over physical possession of the apartment and the common areas to the association of allottees or the competent authority, as the case may be, in the real estate project within the specified period. In compliance with the same, the petitioner has produced the letter dated 14.12.2023 addressed to the Deputy Registrar of Co-operative Societies regarding filing of a copy of the Deed of Declaration dated 12.06.2023 in respect of the Association, under the provisions of KAOA.

149. RERA defines the word 'person' under Section 2(zg) to include a Co-operative Society registered under the law relating to Co-operative Societies. However, it also includes an association of persons or a body of individuals, whether incorporated or not. Sub-Section (9) of Section 19 of RERA, while dealing with the rights and duties of allottees, mandates every allottee of the apartment, plot or building to participate towards the formation of an Association or Society or Co-operative Society of the allottees or even a federation of the same. Therefore, under provisions of RERA, an option is given



to the parties either to form an Association or a Society or a Co-operative Society or a federation under the local laws. In Karnataka, when KAOA is the robust enactment to take care of the interest of the owners of the apartment and when none of its provisions are repugnant to the Central legislation i.e., RERA, and that too, when KAOA is the special enactment enacted for the very purpose of dealing with maintenance, administration and management of the undivided interest in the common areas and facilities in the residential apartment, this Court does not find any justification for formation of a Co-operative Society like respondent No.3.

150. Learned Amicus Curiae highlighted the following points being the hurdles that arise if a Co-operative Society is formed in place of an Owners' Association in respect of a residential project:

i. A person can be a member of only one Society and not multiple Societies.

ii. There is a restriction on holding more than 5% of the share capital without Government permission.

iii. The management is liable to be superseded by the Government.



iv. There is a restriction on voting till the completion of one year and only one vote per person.

v. There are provisions permitting cancellation of membership under the Co-operative Societies Act.

vi. There are difficulties in obtaining loans as only shares are owned and not property.

vii. Additional stamp duty would be attracted if land and common areas are to be conveyed to the Society.

151. These practical hurdles, that may be faced by the owners of a residential apartment if in case a Co-operative Society is formed, will definitely have to be taken into consideration while deciding the fate of respondent No.3. The KCS Act never enables the members to hold the property and to maintain and manage the undivided share and the facility. There is always a danger of the management being superseded by the Government in a peculiar situation and appointment of an administrator who is an employee appointed by the Registrar of Co-operative Societies, and who is definitely an outsider being put in charge. The restriction on holding more than 5% of the share capital cannot be reconciled with the object with which the Society is formed. Even though the bye-



laws pertaining to respondent No.3 refer to the holding of shares, it is not made clear as to which is the share that is referred to in the bye-law and how much share each owner is entitled to hold, who will quantify the share of each owner etc., The restriction on voting till completion of one year and only one vote per person will definitely defeat the object with which KAOA was enacted, where it safeguards the interest of owners where there is no restriction to own more than one apartment and can exercise one apartment one vote and are entitled to vote, the moment they become members of the association.

152. Learned Amicus Curiae, referring to Section 2(n), Section 11(4)(f) and Section 17 of RERA, contended that from these provisions it is evident that as per RERA, the apartments/flats/buildings must be conveyed to the allottee and the undivided proportionate title in the land on which the said building or apartment is constructed must be conveyed in favour of the association of the allottees or the competent authority. When this requirement under RERA is taken into consideration with the provision of KAOA, it also provides for conveyance of the undivided interest in the land in favour of



the Association and the individual apartment in favour of the allottee, in terms of the deeds contemplated therein. But the provisions of KCS Act do not have any such provision to enable the Co-operative Society to own/hold such undivided interest in the land, amenities or facilities.

153. Learned counsel for respondent No.3, placing reliance on the decision of the Hon'ble Apex Court in ***Forum for People's Collective Efforts*** (*supra*), vehemently contended that a similar local enactment like KAOA, which was enacted in the State of West Bengal by the name 'WB-HIRA', was struck down as being repugnant to the provisions of RERA, and therefore, according to him, KAOA itself is repugnant and is liable to be struck down. The Hon'ble Apex Court in ***Forum for People's Collective Efforts*** (*supra*) considered the repugnancy between WB-HIRA and RERA while dealing with various provisions under these enactments in detail. In light of the constitutional scheme of Article 254, the Court highlighted three principles to find out the repugnancy between two statutes, as follows:

i. Whether there is a direct conflict between two provisions.



ii. Whether Parliament intended to lay down an exhaustive Code in respect of the subject matter, replacing the Act of the State Legislature.

iii. Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

154. The Court held in paragraphs 174 and 178 as under:

"xxx

174. From our analysis of the provisions of the RERA on the one hand and of WB-HIRA on the other, two fundamental features emerge from a comparison of the statutes. First, a significant and even overwhelmingly large part of WB-HIRA overlaps with the provisions of the RERA, These provisions of the RERA have been lifted bodily, word for word and enacted into the State enactment. Second, in doing so, WB-HIRA does not complement RERA by enacting provisions which may be regarded as in addition to or fortifying the rights, obligations and remedies created by the Central enactment. The subject of the provisions of the State enactment is identical, the content is identical. In essence and substance, WB-HIRA has enacted a parallel mechanism and parallel regime as that which has been entailed under RERA. The State Legislature has, in other words, enacted legislation on the same subject-matter as the Central



enactment. Not only is the subject-matter identical but in addition, the statutory provisions of WB-HIRA are on a majority of counts identical to those of RERA. Both sets of statutes are referable to the same entries in the Concurrent List - Entries 6 and 7 of List III - and the initial effort of the State of West Bengal to sustain its legislation as a law regulating "industry" within the meaning of List II Entry 24 has been expressly given up before this Court (as we have explained, for valid reasons bearing on the precedents of this Court).XXX...

XXX

178. The statutory overlaps between WB-HIRA and RERA cannot be overlooked, as noted above. But quite apart from that, there is an additional reason why the test of repugnancy engrafted in clause (1) of Article 254 is attracted. This is because several provisions of the WB-HIRA are directly in conflict and dissonance with RERA. Where a State enactment in the Concurrent List has enacted or made a statutory provision which is in conflict with those which have been enacted by Parliament, it may in a given case be possible to excise the provision of the State statute so as to bring it into conformity with the parliamentary enactment. But the present case, as we shall demonstrate, involves a situation where valuable safeguards which are introduced by Parliament in the public interest and certain remedies which have been created by Parliament are found to be absent in WB-HIRA."



(emphasis supplied)

In conclusion, the Court by referring to each and every provisions in WB-HIRA and comparing with RERA concluded in paragraph 183 as under:

“ 183. xxx

The above provisions are repugnant to the corresponding provisions which are contained in RERA. These provisions of the WB Act, 1993 impliedly stand repealed upon the enactment of RERA in 2016, in accordance with Sections 88 and 89 read with Article 254(1) of the Constitution. Hence, we clarify with abundant caution that our striking down of the provisions of WB-HIRA in the present judgment will not, in any manner, revive WB Act, 1993, which was repealed upon the enactment of WB-HIRA since WB Act, 1993 is itself repugnant to RERA, and would stand impliedly repealed.”

Thus, the court declared that those provisions are repugnant to the corresponding provisions contained in RERA.

Accordingly, the Court held in paragraphs 184 and 185 as under:

“184. For the above reasons, we have come to the conclusion that WB-HIRA is repugnant to RERA, and is hence unconstitutional. We also hold and declare that as a consequence of the declaration by this Court of the



invalidity of the provisions of WB-HIRA, there shall be no revival of the provisions of the WB Act, 1993, since it would stand impliedly repealed upon the enactment of RERA.

185. Since its enforcement in the State of West Bengal, the WB-HIRA would have been applied to building projects and implemented by the authorities constituted under the law in the State. In order to avoid uncertainty and disruption in respect of actions taken in the past, recourse to the jurisdiction of this Court under Article 142 is necessary. Hence, in exercise of the jurisdiction under Article 142, we direct that the striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment."

155. Even though this decision was very much relied upon by the learned counsel for respondent No.3 to seek striking down of the provisions of KAOA, as already stated, no such repugnancy was highlighted and brought to the notice of this Court. On consideration of the various provisions of KAOA in light of RERA, this Court does not find any such repugnancy and therefore, finds no merits in the contention taken by learned counsel for respondent No.3.



156. Learned counsel for respondent No.3 placed reliance on the decision in ***Suman Jindal*** (*supra*), wherein, the Hon'ble Apex Court considered a dispute relating to a residential apartment which the appellant therein had booked with the respondent - developer to contend that the provisions under RERA are made applicable to the allottees and that the promoters cannot avoid their obligations by relying on the contractual terms under the agreement to sell and the sale deed. There cannot be any dispute with regard to this proposition of law. Whatever the statutory and contractual obligations that are undertaken by the petitioner, he is bound to discharge the same. The provisions of KAOA do not come in the way of suing the petitioner for any of the shortcomings or failures he might have committed in complying such statutory or contractual obligations.

157. As I have already stated, there is no repugnancy between RERA and KAOA. Even if there are any shortcomings in KAOA, the same is to be overcome by bringing appropriate amendment to the Act. But the remedy does not lie in forming a Co-operative Society under the Co-operative Societies Act,



which is having an entirely different object to be served or fulfilled. In other words, when KAOA, the Special Enactment is capable of fulfilling the needs of the owners of the residential apartments, even if any minor shortcomings or drawbacks are to be noted, the same cannot be a ground for registration of different Association or Society under different enactments, which do not co-relate with the objectives with which the KAOA was enacted. At the most, the Government may think of bringing suitable amendment to the provisions of KAOA.

158. In view of the discussions held above, I am of the opinion that there cannot be two parallel associations in a residential apartment which will be against the interest of the owners and the inmates in the matter of maintenance, administration, management and other incidental functions and also in safeguarding the interest of its members. If the allottees or the owners are having any grievance against the petitioner, they are free to approach the competent authority, be it under the provisions of RERA or the Consumer Protection Act for redressal of their grievance individually or by forming a separate association, in accordance with law.



159. Respondent No.5 - Association is formed in accordance with the statutory obligation as provided under RERA and KAOA and also as per the contractual obligation in terms of the clauses in the agreements to sell and the sale deeds executed in favour of the allottees or owners, as the case may be. Therefore, respondent No.3 - Society could not have been registered by the allottees and the owners to maintain, administer or to manage the residential apartments and to maintain the common areas and common facilities. The Co-operative Society is not a good vehicle to fulfill the objectives of maintaining, administering, managing the residential apartments or the common areas on behalf of the owners. Hence, I am of the opinion that registration of respondent No.3 - Society is to be cancelled. Consequently, the order impugned dated 07.02.2024 is also liable to be quashed.

160. In view of the above, IA.3 of 2024 filed by respondent No.3 seeking certain directions against the petitioner is also liable to be dismissed. Accordingly, I proceed to pass the following:



ORDER

- (i) The petition is **allowed**.
- (ii) The order dated 07.02.2024 produced as per Annexure-A passed by respondent No.1 in Appeal No.30/2023-24, is quashed.
- (iii) Registration of respondent No.3 - Co-operative Society by respondent No.2 dated 06.09.2023, produced as per Annexure-B, is cancelled.
- (iv) Consequently, IA.3 of 2024 is dismissed.

**Sd/-
(M G UMA)
JUDGE**

BGN/MKM/BH/PNV