

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

WP No. 5934/2024

BETWEEN:

M/s Sobha Limited

.... Petitioner

AND

**The Deputy Registrar of Co-Operative Societies & Appellate
Authority and others**

.....Respondents

**ADDITIONAL OBJECTIONS ON BEHALF OF THE RESPONDENT
No. 3**

The Respondent No. 3 above named begs to submit, as follows:

- 1.** It is humbly submitted that the impleaded Respondent No. 5 has filed its statement of objections containing various false and incorrect statements and has made attempts to misrepresent various provisions of the RERA act and other non applicable inconsistent provisions under the Karnataka Apartment Ownership Act, 1972 (KAOA) and The Karnataka Ownership Flats Act, 1972 (KOFA) . In view of the same the Respondent No. 3 craves the leave of this Hon'ble Court to take on record additional objections by the Respondent No. 3 in the interest of justice and equity.
- 2.** It is submitted that, in spite of clear provisions under RERA the Petitioner with an intention to handover the project to the Petitioner

controlled unregistered association of exclusively apartment owners depriving rights of the allottees who are yet to register the units in their favour due to dispute regarding non compliance of RERA provisions by the Petitioner and other violations, has claimed to have formed an association of the apartment owners called as "Sobha HRC Pristine apartment Owners Association". The said association represented by one Mr. Srinivasa S Udupa appeared before this Hon'ble Court on 19.03.2024 and moved the motion seeking to implead the association in the instant petition.

- 3.** The Respondent No. 3 raised objections against the said motion with respect to the legal standing of the said association. This Hon'ble Court for the purpose of passing an enforceable order against the said association issued direction which is extracted below:

"The Shobha HRC Pristine Owners Association Seeks To Be Impleaded And Motion Is Made. It Is The Contention Of Respondent No.3 That The Said Association Has No Legal Standing, However, The Petitioner Has Been Transferring Certain Funds To The Said Association. It Is Further Submitted That The Association And The Petitioner Need To Be Put On Terms. Without Entering Into The Validity Of The Said Association As Asserted By The Learned Counsel For Respondent No.3, However For The Purpose Passing An Enforceable Order Against Such Entity, The Said Entity Is Permitted To Be Arrayed As Additional Respondent. It Is Made Clear That Any Payment Made By The Petitioner To The Newly Added Respondent Would Be Subject To The Orders Passed By This Court. Necessary Amendment To Be Carried Out To The Cause Title Forthwith. Office To Show The Name Of Smt. Beena P.K. As Appearing For The Said Respondent. Re-List The

Matter At 2.30 P.M., On 27.03.2024"

It is submitted that pursuant to the said direction by this Hon'ble Court the said association was impleaded as Respondent No. 5

4. The petitioner has approached this Hon'ble Court with unclean hands, seeking to misuse the judicial process to stall proceedings initiated by Respondent No. 3 under the Real Estate (Regulation and Development) Act, 2016 (RERA). The petitioner has intentionally violated its own undertaking with the RERA Authority and contravened multiple provisions of RERA, including but not limited to Sections 11(4)(e), 11(4)(h), 17, 13(1), and Rule 8A. The interim relief sought by the petitioner clearly reveals an intent to obstruct the formation of a registered "association of allottees" as mandated under Section 11(4)(e) read with rule 2(b) of Karnataka RERA Rules 2017 and in contravention to section 79 of RERA, thereby preventing such an association from addressing grievances before the RERA Authority or the adjudicating officer, as per Section 31(1) of RERA. The petitioner is well aware that an "association of apartment owners" established through a Deed of Declaration (DOD) under the Karnataka Apartment Ownership Act, 1972 (KAOA), Respondent No. 5 in this case, does not qualify as a 'complainant' under Section 2(b) of the Consumer Protection Act, 1986, nor as a 'person' under Sections 31(1) and 43(5) of RERA. This position was explicitly upheld by the Hon'ble Supreme Court in *Sobha Hibiscus Condominium vs.*

Managing Director, M/s. Sobha Developers Ltd., (2020) 11 SCC 328, where it was ruled that a condominium formed under KAOA 1972, consisting of members of flat owners in a building, cannot be deemed a voluntary association capable of maintaining a complaint under the Consumer Protection Act. By similar reasoning, such an association cannot lodge a complaint as a 'person' under RERA. In light of RERA objectives, read with the submissions made by the petitioner in the aforementioned case and the directions of the Hon'ble Supreme Court therein, the petitioner is estopped from forming an association of apartment owners by filing a DOD. The petitioner's actions demonstrate a deliberate intent to deny the legal protections and rights afforded to allottees under RERA 2016 and the Consumer Protection Act, 2019. Moreover, Respondent No. 5, not being a registered association, cannot demand compliance with Section 17 of RERA 2016, allowing the petitioner to unlawfully retain their name in the revenue records and use it as collateral for generating business revenue, in direct violation of Section 13(1) of RERA. The petitioner has further refused to comply with Karnataka Rule 8A, despite the mandate given in the RERA registration certificate and requests from the allottees, as evidenced in Annexure-F submitted with the objections of Respondent No. 3. The petitioner's refusal to register the 'Agreement for Sale' in compliance with Section 13(1) of RERA,

citing that "Registration of the Agreement is not possible at this stage," constitutes an outright defiance of legal requirements. Such conduct is contrary to the principles of equity and justice and constitutes an abuse of the process of law. Therefore, this Hon'ble Court is urged to dismiss the petition with appropriate sanctions against the petitioner.

- 5.** It is submitted that as stated in the objection filed by the Respondent No. 3, the Karnataka Ownership Flats (Regulation of the Promotion of the Construction, Sale, Management and Transfer) Act, 1972 and RERA directs the promoters for formation of the "Association of allottees", which include agreement holders and even persons who have booked the apartment, whereas the Karnataka Apartment Ownership Act, 1972(Karnataka Act 17 of 1973) stipulates formation of "association of apartment owners" which is inconsistent with the RERA provisions and is non applicable in view of section 89 of RERA act. It is submitted that the sequence of events during the formation of the Respondent No. 3 cooperative society and the manner in which the petitioner created the Respondent No. 5 are of important relevance in this instant petition. The table below shows the sequence of events that led to the formation of the Respondent No. 3 cooperative society and the petitioner's role in installing a parallel unregistered "association of apartment owners".

Date	Document Name and Link
13.03.2023	Petitioner sent an email to all allottees requesting to form an Adhoc Association for managing day-to-day maintenance of the project. Notably, this communication comes after a significant delay of over 4 years from the time when most allottees booked their apartments. True copy of the said email dated 13.03.2023 along with attachment is produced herewith as Annexure-A.
31.03.2023	Petitioner initially proposed the names of nine members for the formation of an Adhoc Association vide email dated 31.03.2023 and sought for objection if any. True copy of the said email is herewith produced as Annexure-B.
31.03.2023	The proposal from Petitioner faced strong opposition from several allottees. True copy of an email from Mr. Prabhulla Chandran stating strong disagreement to the proposal is produced herewith as Annexure-C.
07.04.2023	Petitioner sent an email misrepresenting in para 4, that, as per RERA, the association could be formed after the sale of 51% of apartments. This misrepresentation indicates that Petitioner did not intend to fulfil its obligations under section 11(4)(e) of RERA to form an association of allottees. True copy of the said email dated 07.04.2023 is produced herewith as Annexure-D.
09.04.2023	An email objecting to the formation of an Adhoc committee and requesting to enable formation of a registered association of allottees to ensure smooth transfer of property and responsibility. True copy of the said email dated 09.04.2023 is herewith produced as Annexure-E.
09.04.2023	Mr. Prabhulla Chandran VK (an Allottee) sent a communication to Petitioner regarding the facilitating the formation of a registered "Association of allottees". In this communication, he emphasised that addressing this matter through an interactive session, with the participation of all allottees, would have been

	<p>more effective. Furthermore, Mr. Prabhulla Chandran VK highlighted the importance of establishing a representative body of allottees to gradually and seamlessly assume responsibility for property maintenance during the maintenance period. True copy of the said email is herewith produced as Annexure-F.</p>
13.04.2023	<p>In view of the various objections raised by multiple allottees, a meeting was convened for a select group of allottees to meet with the Petitioner, at their corporate office on 14.04.2023. True copy of an email dated 13.04.2023 from the Petitioner to Mr. Prabhulla Chandran inviting for the meeting is herewith produced as Annexure-G.</p>
18.04.2023	<p>Petitioner circulated the names of eight members who attended the meeting on 14.04.2023. The communication conveyed that it was decided that this team of eight members would form the Adhoc Association, provided there are no objections or observations from the community of 395 owners. Confirmation or any observations are expected by 25.04.2023. True copy of the said email is herewith produced as Annexure-H.</p>
27.04.2023	<p>Petitioner officially confirmed that there were no objections and the 8 allottees were selected as the representatives of the 395 allottees for conducting the elections and formation of the permanent association. Additionally, these eight allottees were designated as the Adhoc association and also forwarded the email IDs & Contact Numbers of all the 395 owners of Sobha HRC Pristine to the team of 8 members. True copy of the said email is herewith produced as Annexure-J.</p>
06.05.2023	<p>An email dated 06.05.2023 was sent to the sub-registrars of Karnataka (with a copy to the petitioner) by a few allottees of Sobha HRC Pristine Project. The email requested them to refrain from entertaining DOD (Deed of Declaration) registration and other related documents without first notifying the allottees and allowing them an opportunity to</p>

	<p>present their side. The allottees emphasised that they had not yet received the Occupancy Certificate (OC), despite having fully paid the sale consideration. The allottees expressed their intention to form an association under Clause 11(4)(e) of RERA and register it under the provisions of the Karnataka Co-operative Societies Act, 1959 (KCSA). Although the allottees had requested the draft copy of the DOD and bye-laws, it had not been provided by the Petitioner. As a result, the allottees requested to be intimated and included in the process. Subsequently, this communication was filed in the office of the Inspector General of Registration (IGR) on 08.05.2023 and acknowledgment obtained. True copy of the said document is herewith produced as Annexure-K.</p>
11.05.2023	<p>Lt Gen Mathew Mammen (Retd), Advisor to the Petitioner, responded stating that they acknowledge that the allottees are seeking clarifications from the Registrars regarding the policy on forming and registering the Association. Petitioner has no objections to this approach and suggests that discussing the matter with them beforehand would have been beneficial. True copy of the said email is herewith produced as Annexure-L.</p>
16.05.2023	<p>Mr. Navaneel Kar, an allottee, requested the Petitioner to organise a 'town hall' meeting at the project site, inviting all allottees with proper notice. He reiterated his request for the draft Deed of Declaration (DOD) and the draft Sale Deed for review. Mr. Navaneel Kar also urged the petitioner to register the Association under the Cooperative Society Act, 1959, in accordance with RERA and other relevant law. True copy of the said email is herewith produced as Annexure-M.</p>
17.05.2023	<p>An email notice was sent to all allottees using the contact details provided by the Petitioner. The notice called for an hybrid online and in-person meeting on 21-05-2023 to discuss the process of establishing an Association. True copy of the said email is herewith produced as Annexure-N.</p>

21.05.2023	A hybrid in-person and online meeting was conducted in which about 54 allottees attended in-person and an equal number attended online. True copy of the signed attendance list of allottees who attended the meeting in-person is herewith produced as Annexure-P.
03.06.2023	An email was sent to all allottees by Mr. Manish Katyan (an allottee), inviting all apartment owners to join this initiative and be part of the Co-op Society. True copy of the said email along with the positive response from Mr. Kartik (An allottee), appreciating the interactive sessions organised towards formation of Cooperative Society is herewith produced as Annexure-Q.
08.06.2023	An application was filed for the registration of the Cooperative Society, accompanied by all necessary documents. Notably, out of the eight representatives selected by the Petitioner to represent all 395 allottees, six allottees/ co-owners were promoters of the Cooperative Society. The ARCS (Authority for Registration of Cooperative Societies) accepted and acknowledged the application after ensuring compliance with all procedures and documentation requirements. True copy of the said acknowledgement copy is herewith produced as Annexure-R.
12.06.2023	Petitioner registered the Deed of Declaration without providing a draft copy to the allottees or revealing its contents.
19.06.2023	The Petitioner informed the allottees that they have already registered the DOD under KAOA 1972.
22.06.2023	Petitioner informed the allottees by email that, Sobha HRC Pristine's Deed of Declaration (DOD) has been published in the Petitioner's Customer Portal.
24.07.2023	An email was sent to all allottees by Prabhulla Chandran VK (An Allottee) requesting to enroll as a member of the Cooperative Society. True copy of the said email is herewith produced as Annexure-S.
06.09.2023	Cooperative Society received its Registration

	certificate.
15.09.2023	An email was sent to all allottees by T K Parasuraman (Chief Promoter), informing that the "Sobha HRC Pristine Apartment Owner's Co-operative Society Ltd.", a "Body corporate" has become a reality, with a request for enrollment (if not already enrolled) and participation towards having an effective registered association. True copy of the said email is herewith produced as Annexure-T .
19.09.2023	The Cooperative Election Authority appointed Mr. K. Chandraseker (Inspector of Cooperative Society) as the Returning Officer (RO) for the conducting the election to the Board of Directors (BOD) of "Sobha HRC Pristine Apartment Owners Cooperative Society Ltd". True copy of the Election Schedule published by the Returning Officer (RO) for the conducting elections to the Board of Directors (BOD) of "Sobha HRC Pristine Apartment Owners Cooperative Society Ltd" is herewith produced as Annexure-U .
24.09.2023	The Chief promoter of the "Sobha HRC Pristine Apartment Owners Cooperative Society Limited" informed the Petitioner by email that the society has successfully obtained registration and received a registration certificate from the Competent Authority. With this registration, the association now has legal standing as the representative entity for our community's interests. The cooperative society has compiled an extensive voters list, including all members who applied for membership and fulfilled formalities. The election process for the Board of Directors is underway, with the Returning Officer appointed by the competent authority releasing the election schedule and events calendar. The board's establishment is anticipated soon. True copy of the said email is attached as Annexure-V .
25.09.2023	Petitioner cited the High Court ruling on CRP No. 96 & CRP No. 64 of 2021. The promoter clarified that it had already registered the Deed of Declaration (DOD) and cannot recognize the 'Sobha HRC Pristine Apartment Owners Cooperative Society Limited' as the official

	"Association of the allottees".
28.09.2023	Nominations were received from members contesting to the Board of Directors (BOD) of the Cooperative Society. True copy of the list of nominations that were received as on the last date of receiving the nominations is enclosed as Annexure-W.
29.09.2023	The Returning Officer of the Cooperative Election Authority scrutinised the nominations and published the list of accepted nominations, True copy of the said document is enclosed as Annexure-X.
30.09.2023	The Returning Officer of the Cooperative Election Authority published the election results to the Board of Directors of the Cooperative Society. True copy of the same is enclosed as Annexure-Y.
01.10.2023	An email was sent by Mr. Parsasuraman to the Petitioner announcing the Board of Directors. Several issues were also raised by the Cooperative society with the Petitioner. The email is herewith enclosed as Annexure-Z.
01.10.2023	The Returning Officer of the Cooperative Election Authority published the schedule of elections of the office bearers of the Cooperative Society. The said document is enclosed as Annexure-AA.
08.10.2023	The results of Office bearers election was published on 08.10.2023. The same is produced herewith as Annexure-AB.
04.11.2023	Petitioner filed complaint No. DRB-1/Appeal/30/2023-24 under sections 106(1)(a) & 2(a) of the Karnataka Cooperative Societies Act, 1959. The complaint was lodged with the Appellate Authority (Deputy Registrar of Cooperative Societies) to challenge the registration of the "Sobha HRC Pristine Apartment Owners Cooperative Society Limited." The Petitioner also sought an ex-parte interim order to prevent the Cooperative Society from holding its General Body Meeting.
07.11.2023	A legal notice was issued against the chief promoter

	by the Petitioner, through its counsel stating that the Petitioner has preferred an appeal before the appellate authority, which is pending before the authority for consideration and passing of appropriate orders. The notice also called upon the promoter to desist from calling the General Body Meeting of the Cooperative Society. True copy of the said Legal notice enclosed is Annexure-AC.
21.11.2023	Petitioner, unilaterally appointed Mr. Nandeesh K. N., an Advocate & Legal Consultant as the returning officer for the Conducting Election to the Board of Managers (BOM) for the parallel "Sobha HRC Pristine Owners Association" (Respondent no. 5). The appointment was communicated vide an email dated 21.11.2023, The non-transparent election process, including the absence of a published voters list and clear eligibility criteria for standing in the elections, raised concerns. Notably, only owners could be nominated and had voting rights, while fully paid-up allottees were neither allowed to vote nor become association members, potentially violating section 11(4)(e) of RERA. An amount of Rs. 2,50,000 was paid to the Advocate & Legal Consultant for conducting the election as per the wishes of the promoter and the same was debited to the account of the allottees, only to later retract due to heavy objection from the allottees. The said email from the promoter dated 21.11.2023 is enclosed as Annexure-AD.
02.12.2023	Strong Protest and Vehement objections were raised by several allottees against the interference by the Petitioner with the rights of the Allottees guaranteed under RERA 2016. Emails of protest from Mr. Prabhulla Chandran VK, Mrs. Lakshmi Vijayaraman, Mr. Kalyan B.V, Mr. Ajay R, Mr. Chandrashekar Rao and Mr. Narayan Shenoy is collectively enclosed as Annexure-AE (Colly).
17.12.2023	Petitioner conducted sham elections to the Board of Managers of Respondent no.5 by allowing only owners who had registered the one-sided sale deed to participate. Fully paid-up allottees were excluded from

	voting, resulting in the establishment of a promoter-controlled parallel unregistered association.
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- 6.** It is submitted that the Respondent No. 5 has stated in its objection that it supports the cause of the Petitioner which demonstrates that the Respondent No. 5 is a builder controlled association which was created illegally to facilitate the oblique motives of the petitioner.
- 7.** It is submitted that without prejudices to the Petitioner's objection with respect to the validity and legal existence of Respondent No. 5 the Petitioner states that the said association has not secured the authorisation from its members to represent the said association before this court by impleading itself on 19.03.2024. Further contrary to the claim made by the learned advocate for the Respondent No. 5 that, the bye-law authorises the president of Respondent No. 5 with powers to appoint an advocate to represent the association in the instant petition. The bye-law produced by Respondent no. 5 as Annexure R1 does not provide such powers to the president. The bye-law is an exhibit to the deed of declaration which is at Annexure R1 and the bye-law is available from pages 102 to 115.
- 8.** It is submitted that, on 24.03.2024 the Respondent No. 5 association held an Annual General Meeting (AGM) in which 9 agenda items were proposed and the 10th item being any other matter with the permission of the chair. Voting slips, containing pre-printed resolution

against each agenda item, were serially numbered to identify the individual member who cast his vote. These voting slips were distributed to the members who were permitted to enter the AGM hall before the meeting started. A new resolution, item no. 10, was pre-determined and introduced, being revealed to the members only at the AGM venue. The pre-decided text of the resolution contained in the uniquely numbered voter slip, is as follows

ITEM NO 10. APPOINTMENT OF LAWYER/ LAWYERS/ LAW FIRM BY THE ASSOCIATION.

HOW DO YOU WANT THE BOARD TO PROTECT THE INTEREST OF THE ASSOCIATION, OWNERS AND RESIDENTS AS LAID OUT IN THE DEED OF DECLARATION OF SOBHA HRC PRISTINE OWNERS ASSOCIATION THAT MIGHT INVOLVE APPOINTING LAWYER/ LAWYERS/ LAW FIRM TO FILE CASES, APPEAR IN COURT AND DO ALL SUCH NECESSARY ACTS NECESSARY PURSUANT TO A DIRECTION OR REQUIREMENT?

- USING THE CORPUS
- WITHOUT USING THE CORPUS

9. The resolution, introduced without prior notice, faced scrutiny from members and ultimately failed to secure majority support. Specifically, 47 members voted against it, while 41 members voted in favor, resulting in its defeat. This outcome highlights the opposition of Respondent No. 5's members to the association's action in supporting the petitioner before this honorable court. Subsequently, Respondent No. 5 created minutes of the meeting, including information that was never discussed, voted on, or approved during

the AGM. The pre-printed voting slips were collected by the association office bearers, allowing for potential manipulation of the voting results. In the minutes of the meeting, the content of the agenda item no. 10 was completely changed as compared to the resolution which was put to vote. The discrepancy between the pre-printed resolution in the voting slip and the text in the minutes clearly indicates that the minutes were falsified. Notably, the minutes of the AGM held on 24.03.2024, were released almost a month later, on 20.04.2024, facilitating manipulation of the minutes. Furthermore, it is clarified that the AGM proceedings were recorded by a professional videographer.

- 10.** It is submitted that, despite several members requesting access to the recorded video, it has not been provided till date. Consequently, the submissions made under oath and the documents filed are false, amounting to perjury before this court. Respondent No. 3 prays that this Hon'ble Court initiate action against Respondent No. 5 for committing perjury. The copy of the printed resolution that was put to vote during the AGM is produced herewith as **Annexure-AF**. The copy of the concocted and fabricated AGM Minutes of the Meeting released by Respondent No. 5 is produced herewith as **Annexure-AG**. The copy of the e-mail correspondence from members, wherein they requested a copy of the video and expressed

concerns about the association's irregularities, lack of transparency and impartiality in conducting the AGM and recording the minutes, is produced herewith as **Annexure-AH (Colly)**.

11. It is submitted that the Respondent No. 5 claims to be an Association registered under the provisions of the Karnataka Apartment Ownership Act, 1972 (KAOA) by executing a Deed of Declaration in Form A as well as in Form B as prescribed under Section 2 and 5 of the KAOA, 1972 and also under Rule 3 and 4 of the Karnataka Apartment Ownership Rules, 1974. It is submitted that the said provisions of KAOA, 1972 and its rules are inconsistent with the provisions of RERA, 2016 and hence repugnant to the act. Admittedly the Deed of Declaration is registered as Document No. BK I-3588/2023-2024 registered in the office of the Senior Sub Registrar, Byantarayanapura along with which the bye-law is exhibited. Admittedly the procedure adopted shows that the Respondent no. 5 is an unregistered association. As already stated the form B was created fraudulently and mischievously by the petitioner and therefore the claim of the petitioner and the respondent No. 5 with respect to legal validity of the Respondent is totally false.

Para-wise traverse:

12. The above being the factual matrix of the case and the

Respondents controvert the allegations by the Petitioner parawise

13. Re. Para 1: It is submitted that it is a matter of record and hence not traversed.

14. Re. Para 2: It is submitted that this claim is contradicting the admission made by the petitioner. In the Rejoinder filed by the petitioner to the statement of objections filed by Respondent No. 3, the petitioner has admitted that the Respondent no. 5 is not a registered association.

15. Re. Para 3: It is submitted that it is a matter of record and hence not traversed.

16. Re. Para 4: It is submitted that as stated in the sequence of events in the table above, it is clear that Respondent No. 3 came into force and was registered much before respondent no. 5 was installed by the promoter as a parallel un-registered association contrary to the obligation of the promoter under Section 11(4)(e) of RERA.

17. Re. Para 5 to 8: The Karnataka Ownership Flats Act, KOFA 1972 (KOFA) Section 3, which outlines the "General Liabilities of Promoter," is in conflict with the corresponding provision in the Real Estate (Regulation and Development) Act (RERA), 2016 Section 11, which defines the "Functions and

Duties of Promoter.” As per constitutional principles, when such repugnancy exists, the provisions of KOFA, 1972 are impliedly repealed upon the enactment of RERA in 2016. This conclusion is supported by Sections 88 and 89, read in conjunction with Article 254(1) of the Constitution and these principles are outlined in the conclusion of the Supreme Court judgement (2021) 8 Supreme Court Cases 599 Forum for People’s Collective Efforts and Another V/s State of West Bengal and another in Writ Petition No. 116 of 2019. Consequently, any claim made by Respondent No. 5 under the KOFA provision is not legally sustainable.

18. Re. Para 9 to 10: Respondent No. 5 relies on the definition of “Association or Association of Owners or Owners Association” provided in the unilateral sale agreement and “Association or Association of Allottees or Allottees Association” provided in the few registered sale deeds, which contradicts the definition of “Association of allottees” as outlined in Rule 2(b) of the RERA Rules 2017. It is firmly established in legal jurisprudence that an agreement or contract cannot override statutory provisions. Consequently, the claim put forth by Respondent No. 5 lacks legal sustainability.

19. Re. Para 11: It is hereby forcefully contended that the material presented as Annexure-4, annexed to the objections

preferred by Respondent No. 5, has been procured through undue influence and duress. Furthermore, it is asserted that these documents have been manipulated and falsified, rendering them legally unenforceable.

20. Undue Influence and Duress: It is emphatically contended that the petitioner's representatives exerted undue influence and coercion on the allottees, compelling them to sign a document, ostensibly Form-B, printed on plain paper. This document was neither furnished to them in advance for perusal nor for obtaining legal advice. Many allottees who reached the sub-registrar office with the fond hope of registering their property in their name were constrained to affix their signatures on the two pages under duress and due to pressure imposed from banks, their advanced age, and the apprehension of adverse consequences given the superior bargaining power that the petitioner asserts. It is also pertinent to note that the petitioner took undue advantage of the situation and the allottees had to oblige given their substantial investment at stake. For instance, Mr. Cherian K. Baby, aged 72, was coerced into signing under challenging circumstances at the Sub-Registrar's office and subsequently expressed his endorsement for legal action. An original affidavit, delineating the facts and sequence of events as they transpired, furnished by Mr. Cherian K. Baby, is herewith

produced as **Annexure-AJ**. Similarly, Mrs. Medha Shenoy and Mr. Narayan Sudhaker Shenoy, who signed under duress, registered their protest via an email to the Petitioner. An original affidavit, delineating the facts and sequence of events as they transpired, and the protest email furnished by Mr. Narayan Sudhaker Shenoy, is herewith produced as **Annexure-AK**. Mr. Vipul Jain was subjected to threats of penalties by his bank, compelling him to sign against his free will. An original affidavit, delineating the facts and sequence of events as they transpired, furnished by Mr. Vipul Jain, is herewith produced as **Annexure-AL**. Mr. Devesh Kalia and his wife, Ridhima Raina Kalia, also signed under protest, as noted in an email sent on the same day. An original affidavit, delineating the facts and sequence of events as they transpired and the protest email, furnished by Mr. Devesh Kalia, is herewith produced as **Annexure-AM**. Mr. Narayan Kanchi Kandadai and his wife Sudha Kanchi Kandadai, Mr. Laxmish Rajaram Hegde and Mr. Siddharth Suresh Shanbhag and his wife Roopa Kini also experienced similar coercion and were compelled to sign under duress. Original affidavits, delineating the facts and sequence of events as they transpired, furnished by Mr. Narayan Kanchi Kandadai, Mr. Laxmish Rajaram Hegde and Mr. Siddharth Suresh Shanbhag and his wife Roopa Kini are herewith produced as **Annexure-AN to AQ** respectively. As mentioned above, many

allottees registered their protest and lodged vehement objections via email to the Petitioner for compelling them to sign Form-B as a pre-condition to register their sale deed, which the petitioner was legally obligated to register within three months of obtaining the OC. Those who "Signed under Protest and Duress" were unjustly denied registration, despite the Sub-Registrar's willingness to register the sale deed. In the case of Mr. Jayakrishnan Divakaran (Co-allottee of Flat No. 2081) who documented his protest in an email to the Petitioner, highlighting that the Sub-Registrar had no issue with his exercising the right to sign "under protest and duress," yet the Petitioner's representatives still refused to proceed with registration. The postponed registration was subsequently done about two months later, that too only after Mr. Jayakrishnan Divakaran signed the Form-B without the comments. True copy of two email messages from Jayakrishnan Divakaran to the petitioner dated 28.03.2024, evidencing that the petitioner had insisted on signing Form-B as a precondition for registering the sale deed, are produced herewith as **Annexure-AR** and **Annexure-AS**. This substantiates that the signatures on certain pages of this document were obtained through undue influence and duress, rendering the document legally unenforceable.

21. Falsification of Document: It is submitted that the affidavits

purportedly executed by the allottees and produced by the petitioner as annexure-R4 are falsified and therefore legally untenable. Each deponent unequivocally denies having executed and admitted the alleged affidavits before the Notary K. Manohar Babu, as claimed. Specifically, Mr. Cherian K. Baby states that the stamp paper on which the alleged affidavit was executed was obtained several days after the purported date of execution, indicating postdating and forgery. Mrs. Medha Shenoy and Mr. Narayan Sudhaker Shenoy highlight that the stamp paper was purchased 24 days after the alleged execution, and their names were written on the stamp paper without their consent. Mr. Vipul Jain asserts that the stamp paper was purchased 38 days after the supposed execution of Form B and does not bear his signature. Mr. Devesh Kalia and his wife Mrs. Ridhima Raina Kalia affirm that the stamp paper was obtained 38 days post-execution, and their names were written without their knowledge. Mr. Narayan Kanchi Kandadai and his wife Mrs. Sudha Kanchi Kandadai emphasize that the stamp paper was dated 37 days after the purported execution, with their names inscribed without consent. Mr. Laxmish Rajaram Hegde confirms that the stamp paper does not bear his signature and was obtained without his knowledge. The notarization of these documents was carried out with post dated stamp papers, seals, and signatures of the Notary affixed in the

absence of the deponents, falsely stating that it was executed and admitted in his presence, which amounts to professional misconduct and forgery by the notary and the petitioner's representatives. This pattern of falsification and unauthorized actions renders the documents legally invalid and unenforceable. The deponents' consistent testimonies underscore that these affidavits were manufactured without their knowledge or consent, substantiating the claim of document falsification.

22. The dates on which all these affidavits produced as evidence Annexure-R4 have been purported to be executed and admitted before the Notary and the actual dates of issue of the affixed stamp paper on which the alleged affidavit is claimed to have been executed as sealed and signed by the notary are summarized in the table below.

Sl. No.	Names of alleged Deponents/ Allottees	"Executed and Admitted before me" date Affirmed by Notary	Stamp Paper Issue Date	Days after which Stamp paper issued
1	Mr. Manish and Mrs. Aditi Katyan	11.10-23	22.11.23	42
2	Mr. Vijayabaskar and Mrs. Girija Ravichandran	31.08.23	05.10.23	35
3	Mrs. Medha Shenoy and Mr. Narayan Sudhaker Shenoy	13.09.23	07.10.23	24

4	Mrs. Pravitha Nair A and Mrs. Pradeep Kumar M P	31.10.23	08.12.23	38
5	Mr. Narayan Kanchi Kandadai and Mrs. Sudha Kanchi Kandadai	27.09.23	03.11.23	37
6	Mr. Siddarth Suresh Shanbhag and Mrs. Roopa Kini	27.09.23	03.12.23	37
7	Mr. Laxmish R Hegde	29.09.23	28.11.23	60
8	Mr. Devesh Kalia and Mrs. Ridhima Kalia	31.10.23	08.12.23	38
9	Mr. Jagadish Narayanan and Mrs. Hema Devi Jagadish	17.11.23	16.11.23	-1
10	Mr. Cherian K Baby	27.09.23	04.11.23	38
11	Mr. Vipul Jain and Mrs. Harsha Koshal	31.10.23	08.12.23	38

This practice violates Section 2(1)(r) of the Consumer Protection Act, 1986, which defines unfair trade practices, and the falsification of Form B documents and misuse of stamp papers amount to forgery under Section 463 of the Indian Penal Code (IPC). Additionally, the notary's actions constitute professional misconduct contravening the Notaries Act, 1952, and the submission of fabricated documents to the court constitutes perjury (Section 191 IPC) and the fabrication of false evidence (Section 192 IPC).

In support of this submission, the case of **V.R. Kamath vs. Divisional Controller, Karnataka** is relevant. This Hon'ble Court emphasized the necessity of following proper procedures in attesting affidavits, highlighting that failure to adhere to these procedures—such as

recording transactions in the notary's register and ensuring the presence of the deponent—constitutes serious misconduct and renders the affidavit legally defective. The court underscored that affidavits are solemn documents intended to serve as evidence, and any deviations in the process undermine their validity and integrity.

The falsification of Form B documents and misuse of stamp papers amount to forgery under Section 463 of the Indian Penal Code (IPC). The notary's actions constitute professional misconduct, contravening the Notaries Act, 1952. Respondent No. 5's submission of fabricated documents to the court constitutes perjury (Section 191 IPC) and fabricating false evidence (Section 192 IPC). It is respectfully prayed that this Hon'ble Court takes appropriate legal action against the Petitioner, Respondent No. 5, and the Notary for Forgery, Perjury, and Misrepresentations.

23. Re. Para 12: it is submitted that the definitions of "Apartment," "Apartment Owner," and the unregistered "association of apartment owners" as defined in KAOA 1972, specifically sections 3(a), 3(b), and 3(d)) are inconsistent with the definition of a registered "Association of allottees" under Karnataka RERA Rule 2(b). Additionally, RERA section 11(4)(e) imposes an obligation on the promoter to enable the formation of an association, society, or

cooperative society of allottees within three months of the majority of allottees booking their apartments in the project. As per constitutional principles, When such repugnancy exists between state and central laws, the provisions of KAOA are impliedly repealed upon the enactment of RERA. This conclusion is supported by Sections 88 and 89, read in conjunction with Article 254(1) of the Constitution. The Hon'ble Judge in the case of Forum for People's Collective Efforts and Another v. State of West Bengal (Supreme Court judgment (2021) 8 SCC599) underscores these principles. Consequently, any claim made by Respondent No. 5 for having formed an unregistered "Association of apartment owners" under KAOA by filing DOD instead of enabling an "Association of allottees" is legally unsustainable. RERA, being a central act promulgated in 2016, supersedes the older state act, KAOA 1972.

24. Re. Para 13: It is submitted that Respondent No. 5's claim—that "to the utter dismay of the apartment owners, despite the above undertakings given in the Sale Deed as well as in the Declaration, a few of the apartment owners along with the allottees with mala fide intentions joined together and formed a Co-operative Society under the Karnataka Co-operative Societies Act, 1959 on 06.09.2023" is emphatically denied for being totally false and misleading. Respondent No. 5 obtained all documents pertaining to

the registration of Respondent No. 3 Cooperative Society through RTI. However, Respondent No. 5 intentionally withheld the covering letter dated 08.06.2023 (which has the dated acknowledgment from the office of registrar of cooperative societies), and produced only the undated application form. Concealing this crucial information is with a mischievous intention to claim that the Cooperative society formation was initiated subsequent to filing of deed of declaration. Whereas the allottees had already initiated registration of the cooperative society and had filed the proposal along with documents on 08.06.2023 and the cooperative society was registered on 06.09.2023. It is submitted that when the Petitioner came to know about the formation of the cooperative society, with a mischievous intention to thwart the formation of a body corporate hurriedly registered the Deed of Declaration (DOD) and commenced registration of Sale Deeds. The conduct of both the Petitioner and Respondent No. 5 goes to prove their oblique motives.

25. Re. Para 14: It is respectfully asserted that the Respondent No. 5 has engaged in unfounded denial of facts. It is claimed that, para 4 of the "statement of objections" of respondent no. 3 is incorrect and has unjustly accused Respondent No. 3 of misrepresenting facts, without providing any rationale or justification for denial.

26. Re. Para 15: Respondent No. 5 contends that membership is exclusively limited to owners (excluding even fully paid allottees), while the petitioner asserts having initiated the formation of the "Association of allottees" (which should include all the Allottees) as mandated by section 11(4)(e) of RERA. This contradictory position highlights a conflict between the formation of Respondent No. 5 association and RERA provisions, rendering the association's Bye-laws void ab initio. It is submitted that as per Section 17 of RERA, the promoter is legally bound to register the common areas to the registered "association of allottees". This legal provision has been misinterpreted and used to unjustly accuse the cooperative society of ill intentions, even suggesting that the Cooperative Society should be dissolved solely on this basis. It is respectfully submitted that respondent no. 5 has attempted to challenge the membership of certain members based on their residential status in the apartment. However, as per section 11(4)(e) of RERA, the promoter is obligated to form an "Association of allottees" or a Cooperative Society within three months of the majority of allottees having taken flats. It should be noted that at the time of booking flats, the allottees cannot be residing in the allotted flats. Furthermore, it is settled law that if there are inconsistencies between central and state acts, the central act takes precedence. Similarly, a more recent act supersedes an

earlier one. Therefore, the provisions of RERA 11(4)(e) supersede the provisions of KCSA section 16 with respect to eligibility to become members of the cooperative society. Additionally, as per section 10 of KOFA 1972, the promoter is required to take steps for the formation of a co-operative society or company as soon as a minimum number of persons required to form a co-operative society or a company have taken flats. Here again, it is not mandatory to be residing in the apartment to be eligible to be a member. It is submitted that the vice president of respondent no. 5 unregistered association has threatened several members of respondent no. 3 cooperative society to resign via anonymous calls and threat messages through social media. This has led to widespread contempt and complaints to the president of the respondent no. 5.

27. Re. Para 16: The statement made without any basis and is denied.

28. Re. Para 17: It is respectfully submitted that the claim made by Respondent No. 5, which asserts that the majority of the owners are affiliated with the Respondent No. 5 Association, is false and a baseless claim. This contention is predicated on the count of allottees who have executed the Sale Deed and, as a result, Form B. The promoter's insistence on making the signing of Form B a mandatory prerequisite for registering the apartment could be

construed as accepting of the same. The Petitioner's conduct amounts to unfair trade practice under Section 2(1)(r) of the Consumer Protection Act, 1986.

29. Regarding Para 18 and 19:

The project is registered under RERA, 2016 and as per the affidavit cum Declaration filed by the petitioner with RERA dated 23.06.2023, the petitioner has solemnly affirmed, declared and undertaken on oath as follows:

- a) The project "Sobha HRC Pristine" is registered with Karnataka Real Estate Regulatory Authority.
- b) Undertake to execute the registered conveyance deed in favour of allottees and handover the possession of the apartment, as per the agreement of sale executed.
- c) In respect of common areas, open area and undivided proportionate share of the land, shall be handed over to the registered Association of the allottees.

Copy of the affidavit dated 23.06.2023 downloaded from the RERA website is herewith produced as **Annexure-AT**.

30. As per Section 17 of RERA, the Promoter shall execute a registered conveyance deed in favour of the allottee alongwith the undivided proportionate title in the common areas to the association

of allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of allottees or the competent authority, as the case may be. As per Section 2 (a) of Karnataka Real Estate (REgulation and Development) Rules, 2017, "Association of allottees" means a collective of the allottees of a real estate project by whatever name called registered under any law for the time being in force, acting as a group to serve the cause of its members and shall include the authorised representatives of the allottees. As already stated above, the Respondent No. 5 is not a registered "Association of allottees". So the Petitioner is obligated by law to hand over the common areas to Respondent No. 3 which is a body corporate registered under the Karnataka Cooperative Societies Act, 1959 and the members are the allottees of the project Sobha HRC Pristine.

It is submitted that the right to formation of a Cooperative Society is a fundamental right of all citizens. The Cooperative Society legally constituted and registered cannot be dissolved, other than by a process known by law.

31. Re. Para 20: The project is registered under RERA, 2016 and the petitioner is obligated by law to convey the undivided proportionate title in the common areas to the registered

"association of the allottees" and hand over the physical possession of the common areas. As per Section 8A of RERA the format containing the terms and conditions that are required to be incorporated in the agreement of sale is notified and the Petitioner is bound to adopt the terms and conditions consistent with the format notified and cannot incorporate convenient terms and conditions depriving the allottees rights and entitlements. Admitted the Petitioner deviated from the notified terms and conditions and has violated the regulations with respect to, the parking slot, the area of the parking slot, the value of the parking slot, mentioning the actual sale consideration for the allotment etc. In addition, there are several perpetual rights assigned to the promoter in the sale deed. All these are imposed on the allottees unilaterally. Therefore, the sale deed format imposed by the promoter is a unilateral document. It is surprising that the Respondent No.5 who should have ideally be representing the interest of the allottees are justifying and joining hands with the Petitioners in its violations and misdeeds

32. Re. para 21: It is humbly submitted that the contents in this para are irrelevant for consideration by this Hon'ble Court.

33. Re. Para 22: It is submitted that the contentions are denied for being highly misconceived Respondent No. 5 appears to mislead the court. The prayer of the Respondent No. 3 is compliance to

section 17 of RERA which cannot be disputed by the Respondent No. 5.

34. Re. Para 23 and 24: The Respondent No. 3 reiterates that, the execution of Form-B by the owners was under undue influence and duress. As already stated, many allottees have executed Form B under duress inorder to get their sale deeds executed. Therefore the respondent no. 5's claim that all the 264 allottees who have executed the sale deed have willingly executed the Form B and thereby submitted their unit to the provisions of the KAOA, 1972 is denied for being false.

35. Re. Para 25: Respondent No. 5 is an illegal association floated by the Petitioner with ulterior motive to avoid compliance of the laws of the land. Few of the allottees have submitted a caveat to the sub-registrars on 06.05.2023 with a copy to IGR and the Petitioner requesting not to proceed with the registration of the DoD without being heard. The said acknowledgement is already produced as Annexure-K herewith. The proposal for registration of cooperative society was initiated with Asst. Registrar of Cooperative Societies on 08.06.2023 which was before initiating the formation of an unregistered association by the Petitioner by registering the DoD on 12.06.2023. It is clarified that the Respondent No. 5 was formed by the Petitioner promoter to stall the allottees association by excluding

the allottees in contravention to section 11(4)(e) of RERA much after the Respondent No. 3 Cooperative society was formed. Therefore it is misleading to state that the formation of the Respondent No. 3 has jeopardised the functioning of the Respondent No. 5 association by creating a parallel Association.

36. Re. Para 26: The contentions that the registration of Respondent No. 3 Society contravenes the law established in the Judgment of the Hon'ble High Court of Karnataka, dated 08.09.2021 passed in CRP No.96/2021 c/w CRP No. 64/2021, are categorically refuted as being fundamentally misconstrued. The aforementioned judgement pertains to a suit which falls outside the purview of the RERA Act 2016, and the issues addressed in the suit are entirely distinct. The facts and disputes in the said matter and the present case bear no resemblance. It is crucial to note that the Hon'ble High Court has not decreed that the co-operative society registered before the competent authority pursuant to the Karnataka Co-operative Societies Act 1959 is unlawful. The coordinate bench of this Court in its judgement in CRP No. 96 of 2021 C/w CRP No. 64 of 2021 dated 08.09.2021 was considering facts and circumstances pertaining to a pre-RERA project in which the issues deliberated were entirely different. Therefore, the judgement of CRP No. 96 of 2021 C/w CRP No. 64 of 2021 cannot be deemed a binding precedent. The

applicability of state acts like KOFA and KAOA subsequent to the promulgation of RERA has been comprehensively addressed by the Hon'ble Supreme Court in the matter of Forum for People's Collective Efforts and Another V/s State of West Bengal and another (Supreme Court (2021) 8 SCC 599). For a RERA registered project like the one adjudicated in the suit, the Supreme Court order is the authoritative reference and not the judgement of CRP 96 where the facts and issues adjudicated were entirely different. It is contended that the formation of an association by filing a Deed of Declaration (DOD) as envisaged under KAOA 1972 is in conflict with RERA section 11(4)(e) read with RERA rule 2(b). An "association of apartment owners" established through a Deed of Declaration (DOD) under the Karnataka Apartment Ownership Act, 1972 (KAOA 1972), does not qualify as a 'complainant' under Section 2(b) of the Consumer Protection Act, 1986, nor as a 'person' under Sections 31(1) and 43(5) of RERA. This position was explicitly upheld by the Hon'ble Supreme Court in Sobha Hibiscus Condominium vs. Managing Director, M/s. Sobha Developers Ltd., (2020) 11 SCC 328, where it was ruled that a condominium formed under KAOA 1972, consisting of members of flat owners in a building, cannot be deemed a voluntary association capable of maintaining a complaint under the Consumer Protection Act. By similar reasoning, such an association

cannot lodge a complaint as a 'person' under RERA. Further, the Hon'ble Supreme Court in the matter of Forum for People's Collective Efforts and Another V/s State of West Bengal and another (Supreme Court (2021) 8 SCC 599) has stated that the effect of Section 88 is to ensure that remedies which are available under consumer legislation, including the Consumer Protection Act, 2019, are not ousted as a consequence of the operation of RERA. Since the jurisdiction of the Consumer Protection Act is completely ousted for a KAOA 1972 association as upheld by the Supreme Court in Sobha Hibiscus Condominium vs. Managing Director, M/s. Sobha Developers Ltd., (2020) 11 SCC 328, the association of apartment owners as envisaged by KAOA 1972 is completely repugnant to the objectives of RERA. Additionally, In light of RERA objectives, read with the submissions made by the petitioner in the aforementioned case and the directions of the Hon'ble Supreme Court therein, the provision for formation of an association of apartment owners is totally inconsistent with section 11(4)(e) of RERA where the harmonious reading of section 11(4)(e) read with the legislative intent and pre-legislative proceedings would clearly indicate that the legislature intended to form an association of allottees immediately within 3 months of majority of flats being booked and not formation of "association of apartment owners" after completion of construction,

obtaining OC and registering the apartment, thereby becoming owner. Furthermore, in accordance with the observations made by the Supreme Court of India in Civil Appeal No(s). 6745 to 6749 of 2021 in M/s. Newtech Promoters and Developers Pvt. Ltd. vs State of UP & Ors., dated 11th November 2021, the Honourable Supreme Court underscored the discernible differentiation between the rights, duties, and obligations of allottees/homebuyers and promoters under the RERA Act 2016. This was done with the objective of safeguarding the interests of consumers against promoters in the real estate sector. Consequently, the rights of the allottees to form an association of allottees cannot be superseded by the promoter by stipulating his own terms and conditions for the formation of an association of apartment owners, thereby excluding the allottees from the association. This ruling further fortifies the position of allottees and their rights under the RERA Act 2016.

37. Re. Para 27: It is submitted that, the coordinate bench of this Court in the WP 25528 of 2023 was considering a matter in which the Cooperative society was not registered and the directions made was based on the observations in CRP No. 96 of 2021 C/w CRP No. 64 of 2021. It is humbly submitted that the facts of both the referred judgement are totally different. In the instant case, the project is a RERA registered project and additionally the Cooperative society

registration was initiated even before the DOD was registered. The Petitioner is challenging the constitutional rights of the allottees and the Respondent No. 5 with oblique motives by supporting the Petitioner's cause. It is also pertinent to note that the Petitioner has conveniently ignored the Court's directions in CRP No. 96 of 2021 C/w CRP No. 64 of 2021. This Hon'ble Court has clearly observed while answering the issue point whether the provisions of KOFA apply if there is no declaration and deed of apartment executed and/or submissions made there under the KAOA. The below retracted observation was made by this Court.

" I answer point No. 3 by holding that the provisions of KOFA would apply if there is no declaration , deed of apartment or bye-laws executed and or if the building and property not having been submitted to the provisions of KAOA."

It is submitted that no declaration and deed of apartment was registered nor was the project submitted to KAOA at the time when the promoters of Respondent No. 3 filed proposal for its registration.

38. Re. Para 28: It is incorrect to state that the above is an unchallenged precedent and cannot be overlooked. Applicability of state acts like KOFA and KAOA after promulgation of RERA is dealt

comprehensively by the Hon'ble Supreme Court in the matter of Forum for People's Collective Efforts and Another V/s State of West Bengal and another(Supreme Court (2021) 8 SCC 599).

39. Re. Para 29: It is stated that it is the obligation of the petitioner to form an association of allottees and not association of apartment owners. As per the admission of the petitioner and respondent no. 5, many of the allottees are yet to register their apartments due to the unilateral sale deed and unfair trade practices followed by the petitioner. Also, respondent no. 3 and many of the allottees filed several complaints before RERA against the petitioner. It is submitted that the instant petition is filed with oblique motive to stall the proceedings in RERA by planting a promoter controlled association to silence the voice of the allottees and delay the process of handing over the maintenance of the property for the entire duration of the maintenance period and escape the liability of the petitioner under RERA and leave the project after locking up the association of allottees in litigation for the entire one year maintenance period.

40. Re. Para 30: Cooperative society has been registered as per KCSA 1959 with the required number of promoters after obtaining the contact details from the Petitioner and calling a meeting of all the allottees to arrive at a consensus. The entire process is documented

and is produced as Annexure-A to Annexure-AE of this document which specifically includes Annexure-N and Annexure-P (Meeting notice and signed attendance list of allottees who attended the meeting in-person respectively).

41. Re. Para 31 to 34: It is submitted that RERA overrides inconsistent provisions in other laws. Jurisdiction of the Cooperative society is only within the premises of the apartment complex.

42. Re. Para 35 and 36: Admittedly the promoter installed a promoter controlled owners association in contravention of RERA provisions and without registering it and the said fictional non-legal entity cannot challenge the validity of the Respondent No. 3.

43. Re. Para 37: The averments put forth by Respondent No. 5 are categorically refuted as they are not only fallacious but also deceptive in nature. However, the contention that members of Respondent No. 3 Cooperative Society steadfastly refused to relinquish their memberships from Respondent No. 3, despite being subjected to coercion, threats, and undue influence from the Petitioner and his associates, is indeed accurate. This includes instances where members were compelled to sign Form-B under duress. This contention stands as a testament to the unwarranted pressure tactics employed by the Petitioner.

44. Re. Para 38: It is submitted that the contentions of

respondent no. 5 contradicts the claims made by Respondent No. 3. On one hand, they contend that Respondent No. 5 is an association constituted under KAOA 1972, comprising all owners who have registered their apartments; on the other hand, they contend that members of a voluntary registered association of allottees (respondent no. 3) ought to be expelled on the grounds of being deemed suspicious owners. This, despite them being registered owners with a vested interest in the unlawful decisions that may be taken in the AGM and imposed upon other owners claiming majority, albeit within a select group of owners meticulously chosen by imposing arbitrary and unlawful restrictions for permitting participation. This unveils the ulterior motives of Respondent No.5, which seeks to exclude certain owners who question their unilateral actions from such Annual General Meetings conducted in contravention to its own bylaws and statutes. Moreover, only owners were allowed, and fully paid allottees were barred from attending the said AGM in contravention to RERA, while decisions impacting all owners and allottees alike were attempted to be made. Respondent No. 5 conducted the AGM in an overbearing manner by employing bouncers at the meeting venue. The presence of bouncers at the AGM venue is evident in the photographs of the event.

45. Re. Para 39 and 40: The Respondent No. 3 reiterates its

earlier contentions with respect to repugnancy of earlier enactments which are inconsistent with RERA.

46. Re. Para 41 and 42: It is submitted that the unregistered promoter created respondent no. 5 association was formed after the Cooperative society was registered and therefore the submission of respondent no. 5 is false.

47. Re. Para 43: It is respectfully submitted that, as per Section 11(4)(e) of the Real Estate (Regulation and Development) Act, 2016 (RERA) envisages formation of a cooperative society which was included in the Act by the legislatures as it is the most essential requirement in a real estate project. The claim of unnecessary government interference is unfounded. The presence of an adjudicating authority as a competent authority is essential, the absence and non-availability of an adjudicating authority in the structure of Respondent No. 5 unregistered association undermines the rights and entitlements envisaged in favour of the allottees under RERA. Furthermore, the unregistered association will not be protected under the Consumer Protection Act, as ruled by the Hon'ble Supreme Court in *Sobha Hibiscus Condominium vs Managing Director, M/S. Sobha Developers Ltd.*, (2020) 11 SCC 328. Therefore, the registration of the Respondent No. 3 Society under the Karnataka Cooperative Societies Act is legal, essential,

unavoidable and beneficial for the residents and owners of the apartment complex. It ensures the allottees rights and entitlements are protected for generations perpetually. It is pertinent to consider the observations made in the 13th report of the standing committee on urban development which was presented in the 15th Lok sabha. The said observation is extracted for kind perusal of this Hon'ble Court.

" The Committee feel that in today's time where cooperative group housing societies have become the need of the hour specially in urban areas the conveyance for the cooperative society or any other corporate constituted by the allottees is indispensable. Thus the Committee strongly recommend that in addition to present provision of conveyance deed in favour of allottee, suitable provisions for providing the conveyance to cooperative society or any other corporate formed by the allottees may also be incorporated under Clause 15 of the Bill. The Committee also desire the Ministry to define the definite time frame of two months from the date of handing over possession to the allottee, within which conveyance deed needs to be registered by the promoter. "

48. Re. Para 44: It is respectfully submitted that the allegations made by Respondent No. 5 are inconsistent with the Deed of Declaration (DOD). According to the DOD, the landowner holds ownership of all the apartments, and the builder/promoter does not possess any apartment unit. After registration of DOD, there has been no transfer of title from the landowner to the builder.

Therefore, this claim alone contradicts the content of the DOD, rendering it inaccurate, falsified, and void ab initio. The further contention that 127 units are in the possession of the builder merely indicates that these units have not yet been registered in the name of the allottees due to the unilateral clauses being imposed by the petitioner in the sale deed. The claim that the Respondent No. 3 society is a 20-member society, forming less than 10% of the total strength of the apartment complex is emphatically denied for being totally false. It also contradicts the statement in paragraph 42 of the objections filed by Respondent No. 5, where it is stated that the Respondent No. 3 society consists of less than 50 people. It is submitted that 20 allottees submitted the proposal for registration of the cooperative society as required under the provisions of the Act and thereafter members are added as per the procedures in the rules governing the registration of cooperative society. Eventually, all the allottees in the project shall become members of the cooperative society as per rules and regulations of the body corporate. On the other hand Respondent No. 5 lacks most essential authenticated documentation and is vulnerable for destruction and manipulation at the hands of unscrupulous members or any persons with oblique motives.

49. Re. Para 45: It is respectfully submitted that the contention

made by Respondent No. 5, suggesting that Respondent No. 3 society's actions are infringing upon the apartment buyers' right to property as guaranteed under Article 300 A of the Constitution, is false and vehemently denied. The claim that the society is attempting to restrict the ownership and enjoyment of the apartment buyers over their private properties is totally misleading. In accordance with Section 17 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the ownership of the land is merely a form of joint ownership where the undivided share of each allottee or owner remains intact. This mode of joint ownership was extensively debated during the pre-legislation discussions and was subsequently enacted in Section 17 of RERA. Compliance of Section 17 of RERA cannot be termed as violation of Article 300A of the Constitution.

50. Re. Para 46 & 47: Neither the petitioner nor Respondent No. 5 possesses the locus standi to seek the cancellation of registration of respondent No.3. Both parties have failed to substantiate any valid and legal grounds to seek cancellation of the registration of Respondent no. 3 under any provisions of law. However, the petitioner's approach to this honorable court is marred by the doctrine of "unclean hands." This equitable principle mandates that a party seeking relief must come with clean hands—acting fairly,

honestly, and in good faith in the matter for which they seek a remedy. The unclean hands doctrine precludes a party from obtaining equitable relief if their own misconduct directly relates to the claims or defenses of the Petitioner and Respondent No. 5. It is pertinent to note that, the petitioner intentionally refused to comply with RERA section 11(4)(e) read with rule 2 of Karnataka RERA Rules 2017, which mandates enabling the formation of a registered "association of allottees" within three months of the majority of apartments being booked. Additionally, the petitioner disregards RERA section 17 and other obligations toward the "association of allottees".

REPLY TO PRAYER

51. In view of the aforesaid additional objections, detailed facts, and para-wise reply on merits, this Hon'ble Court may be pleased reject the petitioner's claim along with the objections of the Respondent No. 5 and considering the ramifications that the issue may create, this Hon'ble Court may be pleased to issue the following directions:

- a) The Respondent No. 5 to produce documents of authorisation to represent the owners/ allottees of the Sobha HRC Pristine project.
- b) Restrain Respondent No. 5, which lacks legal validity, from engaging in any activities pertaining to the maintenance and

management of the Sobha HRC Pristine project.

- c) Direct Respondent No. 5 to return all the amount particularly the corpus fund transferred by the Petitioner from the funds belonging to the allottees.
- d) Direct Respondent No. 5 to cancel all contracts/ agreements/ MOU entered with the Petitioner/ third parties / any owners/ allottees representing the owners/allottees of the Sobha HRC Pristine project.
- e) Direct Respondent No. 5 to produce complete account statements, including bank statements with respect to all remittances and spendings.
- f) Pass such other order as this Hon'ble Court may deems fit in favour of the Respondents no. 3 and against the Petitioner and respondent no. 5.

This Hon'ble Court is respectfully requested to grant these directions to ensure justice and uphold the legal rights of the Respondents.

Respondent No. 3

Through

Advocate for the Respondent No. 3