

**BEFORE THE HON'BLE REAL ESTATE REGULATORY AUTHORITY,
BENGALURU, KARNATAKA.**

Complaint No. CMP/ —————

BETWEEN

**SOBHA HRC PRISTINE APARTMENT OWNERS CO-OPERATIVE
SOCIETY LIMITED,**

..... Complainant

And

SOBHA HRC PRISTINE & OTHERS

....Respondents

**INTERIM APPLICATION BY THE COMPLAINANT UNDER SECTION 36
R/W SECTION 37 OF THE REAL ESTATE (REGULATION AND
DEVELOPMENT) ACT, 2016**

The counsel for the complainant humbly submits that for the reason stated in the accompanying affidavit of the President of the Complaint, this Hon'ble authority be pleased to order the Respondents to Refrain from conducting the election of the unregistered association scheduled on 17.12.2023 in the interest of justice and equity.

Bangalore

Advocate for the Complainant

Date: 13.12.2023

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AFFIDAVIT

I, Tharamangalam Kailasam Parasuraman, S/o Late TR Kailasam, Aged 60 years, R/o H-3044, Sobha HRC Pristine Apartment, Amruthahalli Main Road, Jakkuru, Bangalore-560064, the president representing the Complainant, in the above matter, do hereby solemnly affirm and state on oath as follows:

1. I state that I am the President of the complainant, authorized to present and prosecute the above complaint before this Hon'ble Authority.
2. I state that I am fully aware and conversant with the entire facts and circumstances of the case and hence, I swear this affidavit.
3. I state that the complainant is a legally constituted and registered co-operative society of the allottees in the real estate project known as **SOBHA HRC PRISTINE** developed by the Respondent No. 3.

4. I state that the project situated in a prime residential location was launched in the year 2017, many of the members of the complainant purchased dwelling units in the project due to its proximity to the airport and other facilities including the amenities, quality of the construction promised by the Respondents. The allottees in the project realized the respondent promoters gravely deviated from the agreed terms of the Agreement to sale and sale offers including serious violation of RERA Provisions.
5. I state that the Respondent No. 3 called for representatives of allottees for forming an Adhoc association which procedure was though not acceptable to the allottees, 8 allottees volunteered to represent the allottees to form a permanent association of allottees. The name and details of the volunteers was published among the 395 allottees for objections if any. Thereafter, Respondent No. 3 confirmed by email-dated 27.04.2023 addressed to all allottees that no serious objection was raised to the names of the 8-member team, who had agreed to take the responsibility of conducting the elections on behalf of all the 395 allottees. This team was termed as Adhoc committee by Respondent No. 3. The majority members of this Adhoc committee, initiated discussion with the Respondent No. 3 on various issues, primarily the requirement for registering the association as a co-operative society under Karnataka co-operative societies act 1959 as advised by the legal cell of Government of Karnataka for RERA registered projects. The said committee insisted on registering the association as per Karnataka apartment ownership act 1972 before the registrar of co-operative societies under the Karnataka co-operative societies act 1959 to ensure that it is a registered association which is a juristic body having perpetual succession to govern the activities of the apartment complex and eligible to represent the allottees under various provisions of RERA and the Consumer Protection Act 2019. The formation

of the association was initiated by Respondent No. 3 to the extent of confirming 8 members as a representative body of the 395 allottees to conduct elections for the formation of an association. However Respondent No. 3 was not keen to register the association as a co-operative society under Karnataka co-operative societies act 1959.

6. I state that the Co-operative society was registered following the due process and the complainant came into existence. The Respondents were reluctant to co-operate and address the issues in a professional manner, probably apprehending financial and legal implication in the event the issue raised are ignored. The Respondents intents to invalidate the complainant and for that purpose adopted intimidation tactics. The Respondents resorted to such tactics with a sole intention to escape the liabilities and compliance. The Respondents with an oblique motive to silence the complainant and all allottees who raised complaints initiated formation of an additional association having members representing the Respondents interest. The Respondent succeeded in finding few allottees to spread misinformation about the complainant and its legal validity. The respondents communicated to the allottees that the complainant is not recognized by it and demanded the allottees not to co-operate with the complainant fearing that the complainant shall initiate legal action to collectively redress the pending issues and also initiate legal remedies for all the breach and violation committed by the respondents.
7. I state that the Respondents instead of enabling the allottees form and register the allottees association having a status of a legal entity, the Respondents with malicious intention initiated formation of an association on the terms dictated by the Respondents. In the process E-Mail communications were mailed commencing from March 2023, dictating the manners and procedures for forming the associations. The Respondent made sure that the procedure followed shall cripple the association so

formed, which shall not use its collective bargaining power to legally proceed against the Respondents.

8. I state that the Respondent called 8 member committee an Ad hoc committee whose selection was published to all the 395 allottees calling for objection if any. The said Ad hoc committee of 8 members are continuing in the said position unopposed by allottees and confirmed by the Respondents baring objection by few members of the committee itself for being called the Ad hoc committee.
9. I state that the selected members of the Ad hoc committee along with other allottees ascertained details (from the available documents and by conducting physical inspections) of the project completion, sanction plans, statutory permissions, documentations made by the Respondents and the manner and procedure proposed to be adopted for the formation of the association only to realize that the Respondents breached and violated agreed terms of the sale and the RERA Regulations. It is pertinent to note that the Respondent adamantly refused sharing of important details and proposed documents for registration and thereby kept the Adhoc committee and allottees in dark.
10. I state that the primary objections raised by the Ad hoc committee along with several other allottees was with respect to formation of the association. The Karnataka apartment ownership act and the RERA stipulates registration of the co-operative society under the Karnataka co-operative society act 1959 and its registrar the competent authority. When the Respondent intentionally ignored and multiple times refused the representations made by the allottees with respect to legal requirements for forming registered co-operative society under the Karnataka co-operative society act 1959, a group including majority of the Ad hoc committee initiated the process for registering the society as required under the act. Accordingly 20 volunteers who responded to the call for

forming a co-operative society initiated the formation of the society as promoters and got registered the complainant society with a around 50 members, diligently maintaining the transparency required for the process. Many more members joined the complainant society after the registration and the complainant society is growing in strength.

- 11.** I state that the legally created co-operative society entitled with the powers to take over the maintenance and allied activities of the project came to be opposed by the Respondents and couple of allottees who represented Respondents interest. The complainant found no reason for opposing its entitlements by the Respondent for legal reasons or otherwise.
- 12.** I state that, alarmed by the legal actions initiated by the complainant the Respondents with the malicious intention to thwart the legitimate efforts of the complainant to effectively take over the maintenance and allied activities and to adjudicate on unresolved issues hereinabove mentioned primarily denuding the maintenance deposit collected has now called for election to bypass the authority and entitlements of the complainant. The maintenance of the project for a period of 1 year was agreed to be done using the interest accumulated on the maintenance deposit collected in advance by the Respondent. The respondent with an oblique motive to suppress the possible demand that may be made by the association, initiated formation of an association which will represent the interest of the promoters. The association so formed on behest of the Respondents limits the allottees rights in several ways. The election for the governing body of the proposed illegal association is scheduled to be held on 17.12.2023. The participation in the nomination to the MC was limited to the registered owners and the voting is limited to the owners and non-transparent proxies who are physically present and will cast their vote through a secret ballot.

13. I state that, the entire process of election and formation of proposed association is vitiated for the following reasons:

- a. The election process is highly irregular and unacceptable that an Owners' Association was purportedly established without the consent or involvement of all stakeholders, particularly the fully paid-up allottees. The unilateral implementation and insertion of an arbitrary byelaw and registering of a faulty Declaration of Deed (DOD) that does not reflect a true copy of a registered association byelaw is both illegal and a blatant disregard for the commitments made to the stakeholders. This has understandably led to widespread objections from many allottees.
- b. Moreover, the engagement of a law firm by Respondent No. 3 to oversee the election of the Management Committee (MC) is a clear conflict of interest. It is evident that the firm, being financially obligated to the Respondent, cannot claim impartiality. This arrangement, aimed at installing a MC preferred by the Respondent compromises the election's integrity and transparency.
- c. An observer aligned to the Respondent No. 3 was appointed by the respondent himself and communicated through an email, to all allottees, misrepresenting him as an official of the Karnataka Co-operative department using his earlier designation as a rank to mislead the allottees. The contact detail of the said observer was also not provided to the allottees even after written email complaint to the respondent and the so-called returning officer.
- d. The approach employed in constituting the MC under a so-called Owners' Association directly contravenes the principles of transparency and fairness. Inserting a unilateral byelaw into the DOD, particularly one that restricts the association's scope and

undermines the powers granted to allottees by RERA 2016, KOFA 1972, and KAOA 1972, is both deceptive and illegal.

- e. Additionally, the claim that registering 50% of allottees who are forced to sign for the unilateral terms in the sale deed and Form-B and thereafter claiming that it constitutes majority consent is misleading. It is pertinent to note that few of these registered owners have already moved RERA. The exclusion of fully paid-up allottees from the association is a direct violation of RERA 2016, which mandates the formation of an allottee association within three months of a majority of the apartments being booked.
 - f. A legitimate association by the name "Sobha HRC Pristine Apartment Owners Cooperative Society Ltd.," has already been formed and is operational. Attempts by Respondents to establish another MC seem to be a deliberate effort to undermine the Complainant's objectives, reflecting an ulterior motive that disregards the best interests of the allottees.
 - g. Furthermore, the lack of transparency in the election process, including the non-publication of the voters list bringing out clearly the list of eligible voters, their eligibility for standing for the elections etc., is alarming. This opaque process serves only to fulfil Respondents objectives at the expense of allottee rights.
14. I state that Respondents promoters with oblique motives are indulging in activities detrimental to the interest of the allottees. The Respondents with an intention to grab and to retain unlawful control on the property alienated at premium rate to the allottees are unlawfully interfering with the allottees rights to manage the common areas, common properties. The Complainant being a juristic body formed under the legal process by the allottees has all the rights to manage the common areas, common properties and also whenever required initiate legal process to secure the

common properties and protect the allottees interest. This juristic body has been formed and registered by the allottees including the members selected by the Respondents.

15. I state that the Respondents are concerned that the allottees association becoming the juristic body with a right to sue the Respondents on the breach and violation committed. The Respondents wants to pass on the responsibilities and liabilities to the association constituted on its behalf with no powers or legal rights to act as a juristic person to accept the handover of the common property in the project as per section 17 of RERA act. The Respondents also wants to ensure that the association shall be crippled off its ability to question respondents their deficiencies, seek resolution of unresolved issues, question the violations of statutory norms rules and regulations before any legal forums particularly consumer forum.
16. I state that the Respondent with the aforesaid oblique motive is creating an unregistered association by ignoring the already existing registered co-operative society formed by the allottees under Karnataka co-operative societies act 1959. The Respondents are intentionally excluding participation of all the allottees in the election process by contesting in the election to ensure that no voices that question the Respondents about their illegalities get elected.
17. I state that the Respondents has filed an appeal before the Deputy registrar of co-operative societies and appellant authority in appeal No. 30/2023-24 seeking cancel / set aside the registration granted to the complainant by the Assistant registrar of co-operative societies I zone Bangalore and the said appeal is pending adjudication. The Respondent also made futile attempts to obtain interim orders to cripple the rights of the complainant and stop the complainant from functioning.

18. I state that the Respondents have indulged in unfair trade practice and are interfering with the legitimate rights of the allottees with unlawful intention to retain their rights in the sold property illegally. If the Respondents are allowed to continue their activities the allottees of the apartment units shall be deprived of all their rights. The election and formation of the association with no legal validity will cause irreparable loss and damage to the complainant and all the allottees. Hence the Complainant humbly pray that this Hon'ble Court be pleased to grant an ad-interim order as prayed for in the interim prayer.

19. I state that in view of above facts and circumstances of the case the complainant humbly prays that if the application is allowed no prejudice will be caused to the respondents, contrarily the complainant will be deprived of their rights in the project and ownership of their apartments and shall be under huge financial losses. Therefore it is humbly prayed that the application may be allowed in the interest of justice and equity.

What is stated above is all correct and true.

Bangalore

Date: 13.12.2023

Deponent

Identified by me

Advocate