



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2023

PRESENT

THE HON'BLE MR. JUSTICE G.NARENDAR

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A PATIL

RERA APPEAL NO. 1 OF 2023

BETWEEN:

M/S. UNISHIRE BUILTECH LLP,
A LIMITED LIABILITY PARTNERSHIP CONCERN,
HAVING ITS REGISTERED OFFICE AT
NO.36, RAILWAY PARALLEL ROAD,
NEHRU NAGAR, BANGALORE - 560 020.

NEW ADDRESS:
NO.42, CASTLE STREET,
ASHOK NAGAR,
BENGALURU - 560 025

REP. BY ITS AUTHORISED SIGNATORY
SRI. PRATIK MEHTA
S/O KIRTI K. MEHTA
AGED ABOUT 39 YEARS.

...APPELLANT

(BY SRI. G S VENKAT SUBBA RAO., ADVOCATE)

AND:

1. THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY
NO.1/14, II FLOOR,
SILVER JUBILEE BLOCK,
UNITY BUILDING,





BACK SIDE CSI COMPOUND,
3RD CROSS, MISSION ROAD,
BANGALORE 560 027,
REP. BY ITS SECRETARY.

2. M/S. UNISHIRE SPACIO ASSOCIATION
AN ASSOCIATION REGISTERED
UNDER THE PROVISION OF
KARNATAKA APARTMENT
OWNERS ACT, 1972
HAVING ITS REGISTERED OFFICE AT
No.85/1, 85/2, ARAKERE VILLAGE,
OFF BANNERGHATTA ROAD,
BENGALURU SOUTH TALUK-560008
REPRESENTED BY ITS
AUTHORISED SIGNATORY
SRI. LOKESH REDDY
3. M/S. ALTICO CAPITAL
INDIA PRIVATE LIMITED
A COMPANY INCORPORATED
UNDER THE PROVISIONS,
OF THE COMPANIES ACT 1956,
HAVING ITS OFFICE AT 21,
2ND FLOOR, 5 NORTH AVENUE,
MAKER MAXITY, BANDRA KURLA COMPLEX,
BANDRA EAST, MUMBAI - 400 051.
REP. BY ITS AUTHORIZED SIGNATORY
MR. DHRUV JAIN.
4. SRI. C. KRISHNA REDDY
AGED ABOUT 69 YEARS,
S/O LATE CHANNAPPA REDDY
5. SMT. PUSHPA KRISHNA REDDY
AGED ABOUT 62 YEARS
W/O SRI. C KRISHNA REDDY

NO.4 & 5 RESIDING AT
NO.9, ARAKERE VILLAGE,
BANNERGHATTA ROAD,
BANGALORE - 560 070.



6. M/S. KEYA HOMES PRIVATE LIMITED
A COMPANY INCORPORATED
UNDER THE PROVISIONS OF
THE COMPANIES ACT, 1956,
HAVING ITS OFFICE AT
REGENT COURT, #17,
80 FEET ROAD,
KORAMANGALA 4TH BLOCK,
BANGALORE 560 034,
REP. BY ITS AUTHORISED SIGNATORY
MR. DINESH KEJRIWAL.

...RESPONDENTS

(BY SRI. GOWTHAMDEV C.ULLAL, ADV. FOR R1,
SRI. B.VACHAN AND BHEEMSEN METI, ADV. FOR C/R2,
SRI. P.N.RAJESWARA, ADV. FOR C/R4 & R5.)

THIS RERA APPEAL IS FILED UNDER SECTION 58 OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 READ WITH SECTION 100 OF CPC, PRAYING TO SET ASIDE THE IMPUGNED JUDGEMENT AND ORDER DATED 28.10.2022 PASSED BY THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU IN APPEAL (K.REAT) NO.27/2022 CONFIRMING THE ORDER DAED 08.11.2021 PASSED BY THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY, BENGALURU I.E, THE 1ST RESPONDENT IN COMPLAINT NO.CMP/201001/0006742.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, G.NARENDAR J., DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. The appeal arises out of the judgment and order of the appellate Tribunal under the Real Estate (Regulation and



Development) Act, 2016 whereby the Appellate Tribunal by its judgment was pleased to dismiss the appeal directed against the order of the competent authority dated 08.11.2021 under which order the competent authority was pleased to pass an order and directions under Section 8 of the Act.

3. After hearing for some time, the counsels sought time to work out an amicable solution for the issues. The interested parties are the developers and the home buyers. Counsels on both side submit that after negotiation the parties have drawn up a compromise and have placed it before the Court by way of compromise petition under the provisions of Order 23 Rule 3 of C.P.C., 1908. The same is taken on record.

4. The appellant is represented by its authorized signatory one Sri Pratik Mehta. The respondents – home buyers are represented by the President of their Apartment Owners' Association one Sri Lokesh Reddy. The respondents 4, 5 and 6 are also before the Court.

5. It is submitted that the third respondent is a financial institution and neither the rights of the financial institution nor



its liabilities are affected by the compromise in any manner. The first respondent is the regulatory authority which works to protect the interest of the home buyers. The terms of compromise reads as under:

*"COMPROMISE PETITION UNDER ORDER 23 RULE 3
OF THE CODE OF CIVIL PROCEDURE, 1908*

*The Appellant and the Respondents 2, 4, 5 & 6 above
named humbly submit as under:*

*1. The Appellant and Respondents have settled the
matter with the intervention of well-wishers and
friends and have accordingly come forward to
record this compromise on the terms contained
hereunder.*

*a. The Appellant agrees to abide by the Order dt.
8.11.2021 passed by the Hon'ble Real Estate
Regulatory Authority, Bengaluru, in Com.
No.CMP 201001/0006742 and as such the
Appellant does not have any objection for 2nd
Respondent to take over the project viz.
Unishire Spacio, developed on the property
bearing No. 85/1 & 85/2, Arakere Village,
Begur Hobli, Bangalore South Taluk totally
measuring 3 acres 5 guntas. Accordingly, the
Appellant shall withdraw the present Appeal*



and all or any claims against the Respondents, the property bearing No.85/1 and No.85/2, situated at Arakere village, Begur Hobli, Bengaluru South Taluk, totally measuring 3 acres 05 guntas and the project Unishire Spacio.

- b. The Appellant and the Respondents withdrew the allegations and counter allegations made by each other and the Compromise is arrived at upon their volition, free will and consent, shall in no threat, coercion and undue influence upon one another.*
- c. The Appellant and the Respondent Nos. 4 & 5 agree and confirm that the Joint Development Agreement dated 27.05.2013 stands cancelled forthwith. The General Power of Attorney dated 27.05.2013 stands revoked. Pursuant to the cancellation and revocation, the Appellant will not have any further claims/ rights over the Respondent Nos. 4 & 5 and the said property. The Joint Development Agreement dated 27.05.2013 is duly cancelled by a cancellation Deed dated 10.02.2023 and the General Power of Attorney is also revoked under a registered Deed of Revocation made and executed before the Sub-Registrar.*



- d. The Appellant does not have any objection for Respondent No. 2 to develop Unishire Spacio in the manner they deem fit and in this regard, do not have any objection for engaging the services of Respondent-6 as Developer for completing the development of project.*
- e. The Appellant withdrawn the civil suit in O.S.No.1848/2022 filed against Respondent Nos. 4 & 5 before the Hon'ble City Civil Court at Bangalore, by filing Memo dated 09.02.2023 withdrawing the suit as settled out of Court. The Hon'ble City Civil Court has vide order dated 09.02.2023 dismissed the suit in view of the compromise arrived at.*
- f. The Appellant, shall not have any claims on all the used/ unused material, construction material, equipment and all other assets belonging to them/ third party kept at the project site of Unishire Spacio. The Appellant agrees that save and except the construction crane, all its other assets owned/ leased/ licensed by it has been relinquished by the Appellant. The Appellant agrees that henceforth, the construction crane which was in a non-working condition as on 08.11.2021 installed in the Unishire Spacio project shall belong to Respondent No. 6.*



- g. The Appellant agrees that the refundable deposit of Rs.3,50,00,000/- (Rs. Three Crore Fifty Lakhs only) paid by the Appellant to Respondent No. 4 & 5 under the Joint Development Agreement dated 27.05.2013 shall be paid by Respondent No. 4 & 5 to Respondent No. 6 for the purpose of using the same for development of the project.*
- h. The Appellant represents and agrees that out of total of 138 Apartments falling to the share of the Appellant as per the Joint Development Agreement dated 27.5.2013, the Appellant has executed Agreement of Sale for 129 Apartments only in favour of third parties who are the members of Respondent No. 2. The balance 9 Apartments are unsold on which Respondent No. 6 would be entitled to sell the same and appropriate the consideration thereof.*
- i. The parties agree that the Respondent Nos. 2 & 6 shall not in any way be liable for any act, deed or thing done by the Appellant pursuant to the Joint Development Agreement dated 27.5.2013 and General Power of Attorney dated 27.5.2013.*



- j. The parties agree that the Respondent No. 6 is entitled to construct and sell additional Apartments over and above the 235 Apartments by obtaining TDR at its cost. The said additional Apartments constructed by taking the TDR shall belong absolutely to Respondent No. 6.*
- k. The Appellant agrees that the Respondent No. 6 shall not in any way be liable for the actions of the Appellant pursuant to the Joint Development Agreement dated 27.05.2013 and General Power of Attorney dated 27.05.2013.*
- l. The Respondent Nos. 4, 5 & 6 have no further claim against the Appellant, save and except the enforcement of the terms of this compromise.*
- m. The Appellant has executed a Memorandum of Construction of Contract Barter Cum Sale Agreement dated 10.12.2018 with M/s. S.A. Enterprises for the purpose of development of Unishire Spacio project. The said contract has not been acted upon by the Appellant and M/s. S.A. Enterprises. The Appellant confirms that as on date M/s. S.A. Enterprises has not carried on any development or construction activity nor completed any obligation under the said Memorandum of Construction Contract Barter*



Cum Sale Agreement dated 10.12.2018 in so far as the project Unishire Spacio is concerned. As the Appellant has settled all its claims as stated herein above, the Appellant has terminated the Memorandum of Construction Contract Barter Cum Sale Agreement dated 10.12.2018, in so far as it relates to Unishire Spacio project and in this regard, the Appellant and M/s. S.A. Enterprises have on 09.02.2023 executed an Addendum to Memorandum of Construction Contract Barter Cum Sale Agreement dated 10.12.2018. The Appellant states that all or any claims of M/s. S.A. Enterprises under Memorandum of Construction Contract Barter Cum Sale Agreement dated 10.12.2018 shall be as against the Appellant only.

- 2. In consideration of the above settlement, the Respondent No. 6 has agreed to pay a sum of Rs.5,25,00,000/- (Rs. Five Core Twenty-Five lakhs only) to the Appellant. Out of the said sum of Rs.5,25,00,000/-, a sum of Rs.2,50,00,000/- (Rs. Two Crore Fifty Lakhs only) has already been paid by the Respondent No. 6 in favour of the Respondent No. 3 for the release of the mortgaged property on which project Unishire Spacio is being developed. The said Deed of Partial Redemption of mortgage dated 09.05.2022*



is executed and registered by the Respondent No. 3 in favour of Respondent Nos. 4 & 5 is accepted by the Appellant. The balance sum of Rs.2,75,00,000/- (Rs. Two Crore Seventy-Five Lakhs Only) has on this day been paid by DD of Rs. Rs.2,69,75,000/- (Rs. Two Crore Sixty-Nine Lakh Seventy-Five Thousand Only) in favour of Kirti Kantilal Mehta SBI Current Account No 3738047138 vide D.D. bearing No. 008864 dated 09 February 2023 drawn on HDFC Bank, Koramangala II Branch Bangalore post deduction of TDS of Rs. 5,25,000/ (Rupees Five Lakh Twenty-Five Thousand only). Thus, the payment of Rs.5,25,00,000/- (Rs. Five Crore Twenty-Five Lakhs only) shall be the full and final settlement of all claims whatsoever of the Appellant as against Respondent Nos. 2 to 6 and the property bearing No. No.85/1 and No.85/2, situated at Arakere village, Begur Hobli, Bengaluru South Taluk, totally measuring 3 acres 05 guntas and the project Unishire Spacio.

- 3. Pursuant to the settlement, the Appellant agrees that henceforth it shall not in any way interfere with the development of the project Unishire Spacio. The Appellant also agrees that the Appellant and Respondent Nos.2 to 5 agree that Respondent No. 6 is entitled to change the name*



of the project to "Keya Spring" and in this regard, they shall not have any objection whatsoever.

Wherefore, it is most humbly prayed that this Hon'ble Court may be pleased to pass a Decree in terms of the compromise stated above, in the interest of justice and equity.

*Sd/-
Advocate for Appellant*

*Sd/-
Appellant*

*Sd/-
Advocate for Respondent No. 2*

*Sd/-
Respondent No. 2*

*Sd/-
Advocate for
Respondent Nos. 4 & 5*

*Sd/-
Respondent
Nos. 4 & 5*

*Sd/-
Advocate for
Respondent No. 6*

*Sd/-
Respondent No. 6*

*Bangalore;
Date: 10/2/2023"*

6. We have perused the terms. The terms of the compromise have been voluntarily founded and are not prohibited by law. In that view of the matter, the compromise petition is taken on record and the appeal is disposed of in terms of the compromise petition dated 10.02.2023.



7. The parties shall strictly abide by the terms and conditions of the compromise petition without giving room for any further litigation. The appeal is accordingly allowed.

8. Learned counsel for the appellant has filed an application under Order I Rule 10(2) read with Section 151 of CPC seeking permission to delete the third respondent. The same is taken on record. Accordingly, the application is allowed.

In view of the compromise entered into, the parties are directed bear their respective costs.

The office to examine the refund of permissible Court fee.

The Registry is directed to draw up decree accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

YKL
List No.: 1 Sl No.: 21