Appeal No.116/2025

IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

PRESENT

HON'BLE Ms. JUSTICE J.M. KHAZI,
CHAIRPERSON

AND

HON'BLE SRI SANTHOSH KUMAR SHETTY N.
JUDICIAL MEMBER

APPEAL NO. (K-REAT) 116/2025

BETWEEN:

Sri. C K Narotham,
S/o. Late C.V. Keshavamurthy,
Aged about 89 years,
Residing at : No.15, North Park Road,
Kumara Park East,
Bengaluru – 560 001.

...APPELLANT

(By Sri D U Senthil Kumar, Advocate)

: AND :

1. The Karnataka Real Estate
   Regulatory Authority,
   Having its office at:
   No.1/14, 2nd Floor,
   Silver Jubilee Block,
   Behind Unit Building,

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CSI Compound, 3rd Cross,
Mission Road, Bengaluru -27.
Represented by its Secretary,

2. Sri M.R. Baskaran Vasudevan,
S/o. Sri Vasudevan,
Aged about 69 years.

3. Smt. Sujayalakshmi Baskaran,
W/o. Dr. Baskaran,
Aged about 68 years.

Both Respondents No.2 & 3
Residing at :Plot No.HIG-I-30,
3rd Main Road,
Nolambur Phase-I,
Mogappair West,
Chennai – 60 037.
Also at : Villa No.35,
"Arbors by the Lake"
Kyalasanahalli Village,
Jigani Hobli,
Bengaluru – 560 105. **...RESPONDENTS**

(By Sri. Rajashekhar K. Advocate for R.1 - RERA
Sri. M.D. Rajkumar, Advocate for R.2 & R.3)

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This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 01.09.2025, passed by the 1st Respondent-RERA in Complaint No.00416/2024.

This appeal having been heard and reserved for Judgment, coming up for pronouncement of Judgment, this day, the **Hon'ble Chairperson** delivered the following:

Appeal No.116/2025

JUDGMENT

The captioned appeal arises out of the Judgment and Order dated 01.09.2025 passed by the Karnataka Real Estate Regulatory Authority ('the Authority' for short) in Complaint No.00416/2024, whereby the Authority allowed the Complaint filed by the Respondents No.2 & 3 against the Appellant.

2. For the sake of convenience, the parties are referred to by their ranks in this appeal.

3. Briefly stated the complaint averments are as under:

3.1. The Appellant developed the project by name "Arbors by the Lake" located in Kyalasanahalli (for short Project). When completed it was to have 85 villas with varying plot size. Respondents No.2 & 3 offered to purchase Villa No.35, for total consideration of Rs.2,54,02,783/-. Out of the said amount, Rs.97,25,000/- was towards cost

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of the land, Rs.1,41,77,783/- towards cost of construction of the building and Rs.15 Lakhs towards the House Owners Association (for short 'HOA'). As per the Agreement to Sell and Construction Agreement dated 21.04.2016, the construction was to be undertaken and completed by the Appellant as per the design and specification fixed by him within 12 months Plus 3 months grace period. The Appellant promised various amenities such as state of art gym, club house, super market, badminton court, chipping and putting green etc., as per the brochure. He also collected Rs.10 Lakhs towards amenities and membership of the club and sports complex.

3.2. The HOA formed was run by the Appellant and other Promoter members till October 2023. Even today as per the Memorandum of Association (for short MOA) of the HOA, the full power in running the HOA and phenomenal voting rights are vested with the Appellant and his family members.

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3.3. Unfortunately the construction was not completed within the specified period. Since the Respondents No.2 & 3 were not staying in Bengaluru, they were not in a position to know, whether the construction was completed and they did not receive any written communication. However, possession was given to the Respondents No.2 & 3 in January 2018 without completion and Occupancy Certificate, ie., more than 3 years after payment of first instalment. Till date, Occupancy Certificate is not received by the Respondents No.2 & 3.

3.4. Since January 2018 itself, Respondents No.2 & 3 found efflorescence on the granite floor and during rainy season, water seepage was there from the roof and walls in many part of the building. Appellant was aware of these defects. Despite bringing it to his notice, Appellant has not addressed these problems. Respondents No.2 & 3 got possible repairs and interior work and performed Gruhapravesham on 28.4.2018. Since he failed to carryout repairs, Respondents No.2 & 3 got water proofing and

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terrace and crack filling of the walls at a cost of Rs.1,00,750/- in September 2019.

3.5. Unfortunately, further seepage was noted and through Asian paints water proofing work was carried out by spending Rs.3,75,462/- during February, 2022. When seepage did not stop, through Asian paints further repairs were carried out during October and November 2022 at a further cost of Rs.1,35,000/-. Despite the same the Villa is uninhabitable. The professionals opined that due to poor quality of flooring and high water table, associated with the field drain/tertiary drain (ಕೊರಕಲು ಆಳ) running by the site of the flat in Sy.No.8 this problem persist. As per Sec.11.3.8 of Master Plan for Anekal Local Planning Area 2031 zoning regulations, the buffer zone stipulation is 3 meters from the boundary of the field, but the Appellant has left only 2 feet from the edge of the drain and the property, which may be the reason for seepage.

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3.6. The Respondents No.2 & 3 have also spent Rs.1,15,000/- for repairing the floor without any result. Therefore it was completely resurfaced with fresh vitrified tiles at an additional cost of Rs.3,25,000/-. The Respondents No.2 & 3 have also suffered loss of rental revenue to the tune of Rs.35 Lakhs. The Appellant is liable to pay the same along with expenses of Rs.12 Lakhs spent for repairs.

3.7. After all the repairs, when the Respondents No.2 & 3 occupied the premises, they found that the problem of low quality of the building is not limited to the roof and floor, but it also extend to electrical, plumbing, roof top tile etc. The following problems were noted:

(i) Two toilets were blocked as there was no outlet drain from the sanitary chambers. In addition, the outlet pipes from the kitchen and utility room sinks were wrongly connected to the rainwater collection sump which caused it to stink.

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(ii) There were frequent electrical tripping problems necessitating replacement of all the RCBs/MCBs and rewiring of part of the house circuit.

(iii) Serious problem of water seepage from the two toilets on the first floor leading to water seeping through the roof of the drawing room and also the roof of the kitchen requiring grout repair twice. Unfortunately, the problem of seepage has recurred again and the drawing room and the kitchen continue to have disgusting seepage warranting major and costly repairs.

(iv) The entire Mangalore tiled roof over the maser bedroom was uneven with loosening of the tiles due to faulty placement of the metal strips under the tiles and this necessitated complete redoing.

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3.8. The project in question is an ongoing project, even though it was started before RERA came into force. It ought to have been registered. Earlier complaint No.**28/14** dated 9.4.2014 was filed, which the Appellant was well aware of. Despite the same, he is deliberately evading the registration and accordingly the Respondents No.2 & 3 are seeking the following reliefs:

(a) The project Arbors by the Lake and its promoter should be registered u/s.3 of RERA Act, 2016 (for short "Act") to make him accountable to the buyers as per provisions of the Act.

(b) Vide Sec.14 (3), reimbursement of costs of all repairs undertaken by Respondents No.2 & 3 totaling approximately Rs.12 Lakhs plus due interest along with cost of future repairs to arrest water seepage from the bathrooms.

(c) Vide Sec.12, refund of Rs.10 Lakhs collected in 2014 and 2015 towards amenities and membership of club and sports complex along with interest and compensation.

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(d) Vide Sec.18(1), the Appellant should pay them compensation for delayed construction of the villa, and the interest to be calculated @ 24% for delayed period upto January 2018 vide Sec. 6b of the construction agreement and interest/ compensation as per this act on the compensation interest amount accrued from January 2018 till date.

(e) Registration of the project under RERA, 2. Refund all expenses incurred in building repairs along with interest and compensation. 3. Refund of Rs.10 lakhs collected for amenities plus interest.

4. After due service of notice by the Authority, Appellant appeared and filed statement of objections denying the allegations made in the complaint as false. The Respondents No.2 & 3 are guilty of suppressio veri and suggestio falsi. The complaint is not maintainable in law or on facts. As per Sec.3.2(b) of RERA r/w Rule 4 of Karnataka Rules the project does not require registration as it does not come within the ambit of Act and Rules.

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Consequently Respondents No.2 & 3 are not entitled for any relief.

4.1. The Appellant was the owner lands in Sy.No.4 to 9, 82 and part of Sy.No.84, totally measuring 15 acres 21 guntas, having purchased through common sale deed dated 24.08.1968. These properties are situated adjacent to each other. His name was mutated in the revenue records. In order to form a residential layout, he got the said property, converted for non-agriculture purpose vide order dated 22.2.2005. He secured sanction of comprehensive development plan for formation of residential sites through BMRDA vide resolution dated 11.4.2005. The project was named "Arbors by the Lake". He developed the same into a finest layout. Vide letter 10.2.2006 he sought final approval from BMRDA. He approached the Jigini village panchayat who after inspection of the project, have issued letter dated 10.10.2006 and confirmation letter dated 23.1.2007 regarding completion of the development.

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4.2. After completing the development, the Appellant had secured individual katha in respect of the sites and paid taxes. He has offered for sale of the sites to those persons who are willing to put up construction on certain terms and conditions. Since the Appellant is a civil engineer and a construction contractor, he offered to build villas/ houses to the people who purchased the sites, with a sole intention primarily to keep the design of the villas / house in compliance with the vision of the project. Some of the purchasers have got the construction agreement with others. HOA was formed during 2008.

4.3. After being satisfied with the development made by the Appellant, Respondents No.2 & 3 have approached him to purchase the site and entrust construction work to him in site No.35 measuring 18 X 27 meters ie., 486 sq. meters, through sale deed dated 21.4.2016. He has constructed the house and handed over possession during 2017 itself. However they had locked the house for more

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than 4 years without maintenance and it may have caused damage. Since the project was completed prior to the coming into force of RERA Act and Rules, it is not an ongoing project and as such Respondents No.2 & 3 are not entitled for any relief. Even though completion certificate was not issued by the competent authority, since the project was completed before coming in to force of the Act and Rules, the complaint is not maintainable. After 21.4.2016, the Appellant has not sold any sites or villas. Therefore he does not come under the definition of promoter u/s.2(z) of RERA.

4.4. It is denied that the quality of construction is poor and the Respondents No.2 & 3 have carried out repairs by spending huge amount as narrated in the complaint. After taking possession and enjoying the property for more than 7 years, Respondents No.2 & 3 are seeking compensation to make unlawful gain. It is denied that Respondents No.2 & 3 have lost rental income to the tune of Rs.35 Lakhs. He has put up construction as per the

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advice of the Respondents No.2 & 3 and therefore Respondents No.2 & 3 cannot claim that Appellant has not followed the buffer zone.

4.5. The Respondents No.2 & 3 have no right over the club house and sports complex as Appellant has not sold any undivided share or right over the larger property. They are the exclusive property of Appellant. Appellant could not operate the fitness club due to the non-cooperation of members. Rs.10 Lakhs allegedly collected during 2014 & 2015 is not paid to the Appellant but it is given to the Association and as such Respondents No.2 & 3 are not entitled for refund of the same from the Appellant. Except the Respondents No.2 & 3 and another purchaser by name Nikil Thomas, no other purchasers have any complaints. Even Nikil Thomas has voluntarily withdrawn the complaint. Though not obliged the Appellant has provided additional amenities such as solar plants etc. Respondents No.2 & 3 are not entitled for any of the reliefs and sought for dismissal of the complaint.

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5. Vide the Impugned Order, the Authority has partly allowed the Complaint bearing No.00416/2025 by passing following order:

5.1. The Project 'Arbors by the Lake'is held to be an ongoing project requiring registration under section 3 of the Act read with Rule 4 of the Karnataka Rules. The Appellant is hereby directed, to register the project within two weeks from the date of this order.

5. 2. The Appellant shall file all the necessary project details, including layout approvals, sanctioned plans, development status, financial disclosures, external/internal development works and pro-formas of agreements, a demarcation of CA sites, parks, open spaces, roads, STP/WTP and utilities; current inventory of sold/unsold plots/ villas and encumbrances in accordance with Section 4 of the Act and Rule 3 of the Karnataka RERA Rules, 2017.

5.3. The Authority further directs the Appellant to refrain from marketing, advertising, booking, selling or offering for sale any of the Villas/plot / amenities space and from creating third-party interest in CA

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sites/open spaces/roads in the said project until such registration is completed, in compliance with Sec.3(1) of the Act.

5.4. The Appellant is also given an opportunity to submit his explanation within three weeks, as to why penalty proceedings u/s.59(1) of the Act, should not be initiated for violation of Section 3 of the Act.

5.5. The prayer for completion, reimbursement of costs incurred for the seepage repairs and other damages from the Appellant cannot be considered by the Authority as it falls within the jurisdiction of the Adjudicating Officer. The Respondents No.2 & 3 are therefore at liberty to file a separate complaint before the Adjudicating Officer, KRERA for compensation from the Appellant. Hence the prayer is rejected.

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6. Being aggrieved by the same, the respondent has filed this appeal on the following among other;

GROUNDS

6.1. The authority has erred in relying solely on the assertions made by the Respondents No.2 & 3, without

properly considering documentary evidence submitted by the appellant. It has erred in holding that the project requires registration under RERA 2016. It was sanctioned by the BMRDA which is a competent authority under the Karnataka Town and Country planning Act. The layout was approved by the BMRDA and it was executed in accordance with sanctioned plans.

6.2. The Jigini panchayat being the local civic body with jurisdiction over the project sites is the designated authority for issuing the completion certificates and Occupancy Certificate. It is denied that BMRDA is competent authority to issue the completion certificate. Village panchayat is the competent authority u/s.2(q) and rule 4 (1) to issue the katha.

6.3. The project does not fall within the definition of real estate project requiring registration u/s.3 of RERA, Act. The Authority has failed to appreciate the legal distinction between planning approval and completion

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certificate and thereby rendering the order jurisdictionally unsustainable.

6.4. The Appellant has not constructed or offered any built up structure as part of sanctioned layout. The sale of flats was independent of any construction obligation. The villas if any are constructed by the individual plot owners. Plot Nos.11, 12, 26 & 27 were sold as plots and not villas. Appellant has duly obtained completion certificate from Jigini panchayat, which satisfies Sec.4(2)(1)(c) of RERA and Rule 4(5) of Karnataka Rules. The Authority has wrongly attributed the role of promoter to the appellant in respect of villas constructed by the individual flat owners. He has not entered in to any agreement for construction of villas nor marketed any built up units. The construction of villas undertaken by the Respondents No.2 & 3 is in their individual capacity.

6.5. Appellant has completed the project and has handed over the same to the HoA and therefore the

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grievance of Respondents No.2 & 3 is not maintainable and prayed to dismiss the complaints by allowing the Appeal.

7. In response to the notice, the Respondents appeared through their counsels.

8. Respondents No.2 & 3 have filed statement of objections, as under.

8.1. The Appeal is wholly misconceived, untenable in law and devoid of merits. It is a blatant attempt to evade statutory compliance of Sec.3 of RERA. There is overwhelming material to show that the project is ongoing. Appellant has not secured completion certificate from jurisdictional Town Planning Authority ie., BMRDA. The Jigini Village Panchayat has no jurisdiction to issue completion certificate in respect of BMRDA approved layout. Development and construction work is continuing. There are fresh allotment of villas. The civic amenities and open space are not relinquished in favour of the

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jurisdictional BMRDA. Appellant continues to collect money from the new allottees as well as Respondents No.2 & 3.

8.2. Even after coming in to force of RERA, Appellant continues to act as Promoter, marketing the project extensively both off line and online, issued brochures, collected monies from purchasers, entered into composite Agreement to sell the site as well as for construction of villas. He has also continued to alienate unsold villas. As on the coming into force of RERA came in to force, 59 villas remained unsold. 30 villas have been sold post RERA. 12 villas are under construction. Utility infrastructure is incomplete. Completion certificate is yet to be secured from BMRDA. Relinquishment Deed in respect of parks, roads, open space and civic amenities are is yet to be executed.

8.3. The contents of Agreement to sell and Agreement for construction clearly establish that Appellant is the Promoter who has undertaken to sell land and construct

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villas under the composite development scheme. The terms of the Agreement to sell mandate that the purchaser must construct the villa through Appellant only and as such, the project come under the purview of section 2(zn) of RERA.

8.4. The appeal is a colourable attempt to defeat the rights of Respondents No.2 & 3 who have invested Res.2,54,02,783/- and also paid Rs.10 Lakhs towards amenities and club membership. Appellant has failed to provide promised amenities, violated buffer zone norms, encroached the tertiary drain area and caused massive financial loss and hardship to the Respondents No.2 & 3. There is serious structural defect. These issues cannot be adjudicated unless the project is registered under RERA. Without project registration, Respondents No.2 & 3 have no effective recourse to enforce Promoters obligations u/s.11, 14, 18 & 19.

8.5. The Arbors by the Lake HOA was allegedly registered on 21.4.2007, even before a single villa was

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constructed. Under Clause 3.1(a) only villa owners would become members. Until 9.5.2025 the entire HoA remained under the exclusive control of the Appellant and 8 Promoter members with no elected representative of actual villa allottees. There are no statutory handing over of roads, CA sites, parks or open spaces either to Jigini Municipal Authority or to BMRDA. There is no completion certificate, final layout approval or registered relinquishment deed u/s.17(2)(A) & (B) of Karnataka Town Country Planning Act, 1961 r/w Rule 4(1)(a) of RERA Rules, which requires that all development work to be completed and handed over to the competent authority and not to a private HoA before the project can be treated as complete.

8.6. Appreciating the matrial placed on record, the Authority has rightly allowed the complaint. There are no justifiable grounds to interfere with the impugned order and pray to dismiss the appeal.

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9. We have heard elaborate arguments of learned counsel appearing for appellant and respondents. We have also gone through the impugned order and the documents placed on record.

10. The points that arise for our consideration are :

1. Whether, the Appellant proves that the Impugned Order passed by the Authority is illegal, arbitrary and opposed to facts and circumstances of the case and the same is liable to be set aside?

2. What order?

11. Our findings on the above points are

Point No.1 : In the Negative

Point No.2 : As per final order, for the following:

REASONS

12. Point No.1: Thus, Respondents No.2 & 3 approached the Authority seeking various reliefs, contending that the Appellant has developed the Villa project consisting of layout forming sites and sold them to

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those persons who agreed to get the villa constructed through him as per the specifications offered by him. Accordingly he has entered into Agreement for sale and Construction Agreement dated 21.4.2016 with the Respondents No.2 & 3. However the construction was not completed within the specified time and completion certificate is also not secured. They have specifically contended that as on the date of coming into force of the RERA Act and Rules the project was not completed and as such it was an ongoing project and therefore requires compulsory registration.

12.1. Respondents No.2 & 3 have sought monetary compensation on the ground that the construction put up by the Appellant was faulty, as a result of which there was leakage in the ceiling and they have to carryout extensive repairs including replacement of floor tiles. Appellant has also collected Rs.10 Lakhs towards amenities and club membership but the said facilities are not provided to them.

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13. On the Contrary Appellant claimed that the project was completed long before the coming into force of the Act and Rules and as such it requires no registration and therefore, Respondents No.2 & 3 are not entitled for any of the reliefs under the Act. Appellant claim that the project in question is not a villa project. It consists of only formation of layout consisting of sites and since he happen to be into construction field, only at the instance of those site owners who avail his services as a civil contractor, he has entered into construction agreement and put up construction. According to him there was no compulsion for the site purchasers to avail his services. As on the date of coming into force of the Act and Rules, since the project was not an ongoing project, the Authority had no jurisdiction to grant the relief.

14. Undisputed facts are that vide order date 11.4.2005, the Appellant secured approval from BMRDA for formation of layout in an extent measuring 15 acres 23

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guntas. It is pertinent to note that this order does not specify the number of sites to be formed. It goes without saying that the layout is required to be formed as per the layout plan annexed with the said order. According to this plan, in all 74 sites were sought to be formed.

14.1. As per this order, the layout was required to be formed in accordance with the approved plan including roads, drains, drinking water and electricity supply and sewerage treatment plan within 18 months and intimate the authority ie., BMRDA for final approval. As per condition No.5, before executing the project, the Appellant is required to take permission under the provisions of Karnataka Village Panchayat Act. As per condition No.9, the roads, paths and other sites reserved for civic amenities are required to be handed over to the BMRDA through registered relinquishment deed free of cost. Condition No.10 states that if any of the conditions are violated, the approval would stand cancelled.

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15. It is pertinent to note that on 10.10.2006, the Appellant has addressed a letter to the BMRDA, stating that majority of the work of the project is completed except giving connection. The tender for sewerage treatment plant work is called and it would be completed in near future. It also state that the Appellant has got approved the layout plan from the panchayat. Accordingly through this letter the Appellant has requested BMRDA to conduct inspection and issue final approval.

16. Appellant had also relied upon the certificate dated 23.1.2007 issued by the Jigini Grama Panchayat stating that as per the letter dated 17.12.2006 of the Appellant, the Secretary has conducted spot inspection and given report that the work is executed as per the approved plan and that Appellant is required to take separate katha in respect of 85 sites and pay the tax and till Panchayat takes the management of the layout, Appellant shall continue to manage the same.

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17. As noted earlier, as per the approved plan annexed to letter dated 11.4.2005 issued by BMRDA, in all 74 sites were permitted to be formed in 15 acres 23 guntas. It appears the Appellant has secured a revised layout plan as per order dated 7.1.2008 of BMRDA at Annexure A, according to which he is permitted to form 84 sites out of 15 acres 23 guntas. However the letter dated 23.1.2007 at annexure R19 refers to 85 sites. In other words even before the Appellant has secured revised plan, he has managed to get a letter from the panchayat with regard to 85 sites. Moreover, as per the order dated 11.4.2005, issued by the BMRDA, the final approval in the form of completion certificate is required to be taken from BMRDA itself and the panchayat is not competent to certify that the work is completed and executed as per the approved plan.

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18. In fact, Sec.2(q) of the Act defines the term Completion Certificate as under :

> (q) "completion certificate" means the completion certificate, or such other certificate, by whatever

name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws.

19. Sec.2(p) of the Act defines the term Competent Authority as under:

(p) "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

20. Thus, as per Sec.2(p) of the Act, the Competent authority is the one which exercises Authority over the land under its jurisdiction and has power to give permission for development of such immovable property. Therefore, as per Sec.2(q) the Completion Certificate is also required to be given by the Competent Authority who exercise authority over the land under its jurisdiction and who has given permission for development of such immovable property.

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Thus only BMRDA is competent to issue Completion Certificate. Admittedly, BMRDA has not issued completion certificate. In fact, even the panchayat has also not issued the completion certificate. It has only stated that the Secretary of the Panchayat has visited the layout and found that work is executed as per the approved plan. Of course, neither the panchayat nor its secretary are having power and authority to make an observation that the work is executed as per the approved plan.

21. In fact, at Para 19 of his statement of objections filed before the Authority, the Appellant has pleaded that since the work is completed, the fact that the completion certificate is not issued by the Competent authority would not make the project an ongoing project as it is excluded from the definition of ongoing project as per explanation (iv) of Rule 4(1) of Karnataka Rules. This clearly indicates that completion certificate is not secured by the Appellant and it appears to mislead the prospective buyers he has managed

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to get the certificate dated 23.1.2007 from the Grama Panchayat.

22. Before proceeding further, it would be useful to ascertain whether Appellant come under the definition of Promoter as per Sec.2(zk) of the Act. Sub Clause (ii) of Sec.2(zk) makes it clear that a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structure thereon is also comes under the definition of Promoter.

23. Sec.2(zj) defines the term 'project' means the real estate project as defined in clause (zn).

24. Sec.2(zn) state that "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of

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selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

25. Thus a plain reading of Sections 2(zk), 2(zj) & 2(zn) makes it amply clear that even formation of a layout consisting of sites for the purpose of selling the same amount to a real estate project and the one who is responsible for the same is a Promoter.

26. It appears to demonstrate that as on the date of coming in to force of the Act & Rules, no work was pending and as such the project cannot be categorized as an ongoing project, the Appellant has taken up a contention that he has only developed the layout and it was not a villa project requiring the purchasers of the sites to entrust construction to him. However, the copies of the sale agreement and agreement for construction placed on record clearly indicate that the sale of the sites are made

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to enable the purchaser to get the villas constructed through the vendor. The said documents indicate that the purchasers shall not have any option to get the construction through any other person and the termination of either of the agreements would result in termination of both agreements without having to independently and separately terminate both agreements. One of the condition prohibiting the purchaser from putting up additional construction and alter the elevation and / or external colour scheme goes to show that it is a villa project. Condition that any changes or modification to the structure or appearance of the exteriors of the unit including garden beds require prior permission from the seller / HOA also support the fact that it is a villa project. In fact the advertisement brochures including the photographs of the advertisement hording also supports the contention of the Respondents No.2 & 3 that it is a villa project and the Appellant is also involved in the construction of the same.

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27. Admittedly the Agreement to Sell and Construction Agreement executed in favour of the Respondents No.2 & 3 is dated 21.4.2016. In fact the additional documents produced by Respondents No.2 & 3 ie., sale deed dated 18.8.2017 executed by the Appellant in favour of Dr.Ravi Prasanna Kumar and Sathyavathi Muthu clearly indicate that the sale transactions in respect of the project in question have taken place even after the coming in to force of the Act and Rules. Sections 2, 20 to 39, 41 to 58, 71 to 78 and 81 to 92 of the Act came into force with effect from 1.5.2016 and Sections 3 to 19, 40, 59 to 70 and 79 to 80 have come into force with effect from 1.5.2017. Admittedly, the Appellant has not secured completion certificate. As held by the Hon'ble Supreme Court in ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Others***[1] (New Tech for short) unless and until the completion certificate is secured from the competent authority, the project is to be treated as an ongoing project

[1] (***2021) 18 SCC-1.***

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attracting the provisions of Act and Rules. Therefore the Appellant cannot claim exemption u/s.3(2)(b) of the Act.

28. The Appellant is also claiming exemption under explanation to Rule 4, which excludes the project which fulfill any of the following criteria.

> ***Rule 4. Additional disclosure by promoters of ongoing projects.***- *(1) Upon the notification for commencement of sub-section (1) of section 3, promoters of all ongoing projects which have not received completion certificate shall, within the time specified in the said sub-section, make an application to the Regulatory Authority in the form and manner as specified in rule 3.*
>
> ***Explanation:*** *For the purpose of this rule "Ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules, namely:-*
>
> *(i) in respect of layouts where the streets and civic amenities sites and other services have been handed over to the Local Authority and Planning Authority for maintenance;*
>
> *(ii) in respect of apartments where common areas and facilities have been handed over to the*

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registered Association consisting of majority of allottees;

(iii) where all development works have been completed as per the Act and certified by the competent agency and sale lease deeds of sixty percent of the apartments/houses/plots have been registered and executed;

(iv) where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate /occupation certificate; and

(v) where Partial occupancy certificate is obtained to the extent of the portion for which the partial Occupancy Certificate is obtained.

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

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

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

(i) implementation of the proposed plan has already been disclosed to the allottees under the agreement prior to registration, or

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(ii) modification is required to be made in compliance of any order or direction issued by competent authority or statutory authority. under the agreement for sale, the promoter is not required to obtain the consent of allottee in case of any alteration or addition to the apartment required by Government authorities or due to change in any law.

(b) the total amount of money collected from the allottees and the total amount of money used for development of the project including the total amount of balance money lying with the promoter; and

(c) status of the project (extent of development carried out till date and the extent of development pending) including the original time period disclosed to the allottee for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant in practice.

(3) The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

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

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

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

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27.1. However, the Appellant has failed to demonstrate that his project fall under any of these attracting the exemption. Therefore, he cannot take the benefit of Rule 4 also.

28. In statement of objections, the Appellant has claimed that the construction of villa was completed during

2017 itself. However, the Respondents No.2 & 3 kept it unoccupied under lock and key for more than 4 years and that may be a reason for the leakage and other damages. Ofcourse, it is for the adjudicating officer to examine these aspects and to decide whether the quality of construction was not as agreed between the parties and lead to the leakage and other damage or otherwise.

29. The Authority after considering the entire materials placed on record, has rightly held that the project 'Arbors by the Lake' is an ongoing project requiring registration u/s.3 of the Act r/w Rule 4 of the Karnataka Rules and directed Appellant to register the same.

30. So far as the prayer of the Respondents No.2 & 3 for compensation, reimbursement of cost for repairs, damages etc., the Authority has rightly directed them to file separate complaint before the Adjudicating Officer.

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31. We find no justifiable grounds to interfere with the impugned order passed by the authority. In the result , the appeal fails and accordingly we answer point in the negative.

32. In view of the findings on point No.1, we proceed to pass the following:

ORDER

(a) The Appeal is hereby dismissed;

(b) The Impugned Order dated 01.09.2025, passed by the Authority in Complaint No.00416/2024 is hereby confirmed.

(c) In view of disposal of the main appeal, pending I.As., if any, shall stand disposed of, as they do not survive for consideration;

(d) Registry is directed to comply with the provisions of Section 44(4) of the Act and to return the records to RERA, if any received.

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There is no order as to costs.

Sd/-
(JUSTICE Ms. J.M. KHAZI)
HON'BLE CHAIRPERSON

Sd/-
(SRI SANTHOSH KUMAR SHETTY N.)
HON'BLE JUDICIAL MEMBER

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ORDER ON IA.2 filed u/s.151 CPC and I.A.3 FILED U/S.44(1) R/W Sec.53 of RERA Act, 2016.

Applicants by name M.S.Anitha and her husband J.Senthil Kumar have filed these applications to advance the case and to implead them as respondents 4 & 5 and permit them to participate in the proceedings, contending that they have purchased villa No.53 L from the Appellant vide Agreement of sale dated 4.10.2021 for total sum of Rs.2,79,31,735/-. On account of the impugned order, Appellant is unable to execute the sale deed and therefore they want to come on record.

2.Appellant is no other than the developer of the project. The Authority after considering the materials placed on record has held that it is an ongoing project and as such, he is required to register the same and gave direction, and till the directions of the authority are complied with, prohibited him from executing further sale deeds etc.

3. Consequently, this appeal is having limited scope to examine correctness or otherwise of the impugned order. Applicants cannot be permitted to come on record and agitate their grievance in this appeal. They

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are at liberty to approach the authority or civil court as the case may be. Consequently both the applications are liable to be rejected and accordingly we proceed to pass the following :

ORDER

The I.A. No.2 u/s.151 CPC and I.A.No.3 u/s.44(1) r/w Sec.53 of RERA Act, 2016 filed by the applicants are hereby rejected.

Sd/-
(JUSTICE Ms. J.M. KHAZI)
HON'BLE CHAIRPERSON

Sd/-
(SRI SANTHOSH KUMAR SHETTY N.)
HON'BLE JUDICIAL MEMBER

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