

Appeal No.32/2025

**IN THE KARNATAKA REAL ESTATE APPELLATE
TRIBUNAL, BENGALURU**

DATED THIS THE 02nd DAY OF JULY, 2026

PRESENT

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

AND

**HON'BLE SRI SANTHOSH KUMAR SHETTY N.
JUDICIAL MEMBER**

APPEAL NO. (K-REAT) 32/2025

BETWEEN:

Sri. S.Venkatesh Babu,
Sri Residency (2),
Jigala Road,
Indlabele Village,
Attibele Hobli,
Anekal Taluk,
Bengaluru – 560 025.

Presently :

Sri. S.Venkatesh Babu,
S/o. Late Ramabhadra Setty,
Aged about 65 years,
S V Towers, No.138, 3rd Floor,
28th Main, West of Chord Road,
5th Block, Rajajinagar,
Bengaluru – 560 010.

...APPELLANT

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(By Sri K.S.Narayanaswamy, Advocate)

: AND :

1. Sri.Chidanandappa,
S/o. B. Durgappa,
Aged about 73 years,
Door No.45, Ward No.20,
4th Cross, Nehru Colony,
Bellary -583 103.
2. The Karnataka Real Estate
Regulatory Authority,
Reptd. by its Secretary,
No.1/14, Ground Floor,
Silver Jubilee Block,
Unit Building,
CSI Compound, 3rd Cross,
Mission Road, Bengaluru -27.

...RESPONDENTS

(By Sri. J.P. Darshan for Trust Law Advocates & Solocitors,
Advocate for R1. Sri. I.S.Devaiiah, Advocate for R.2 - RERA)

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 25.02.2020, passed by the 2nd Respondent-RERA in Complaint No.CMP/UR/190627/0003232 and Order dated 17.03.2021 passed in Execution Order in CMP.No.3232.

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

JUDGMENT

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The captioned appeal arises out of the Judgment and Order dated 25.02.2020, in Complaint No.CMP/UR/190627/0003232 and Order dated 17.03.2021 passed in Execution Order in CMP.No.3232 by the 2nd Respondent - Karnataka Real Estate Regulatory Authority ('the Authority' for short) whereby the Authority allowed the Complaint filed by the Respondent No.1/ Allottee against the Appellant/Promoter.

2. Briefly stated, the averments made in the complaint are that the Appellant, a Promoter carrying on real estate business under the name and style of "Terracon Projects" developed and formed a residential layout known as "Sai Residency-III" in land bearing Sy.Nos.13, 14, 172, 202, 203, 204, 205, 206, 211 & 212 situated in Indlabele Village, Attibele Hobli, Anekal Taluk, Bangalore Rural District. The allottee intended to purchase a site in the said project. Accordingly, on 09.10.2013, an Agreement of Sale came to be executed between them, whereby the Promoter agreed to sell a residential site bearing No.410, measuring

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1200 sq. feet, in the said layout for a total sale consideration of Rs.10,00,000/-. Pursuant thereto, the Promoter received a sum of Rs.5,00,000/- as advance through Demand Draft dated 08.10.2013 drawn in Indian Bank, Bellari Branch. The Allottee agreed to pay balance amount of Rs.5,00,000/- at the time of registration. As per the terms of the Agreement of Sale, the BMRDA approval was under process. The Promoter agreed to complete the project within one year from the date of Agreement of Sale. Since there was no progress in completion of the project, the Allottee lodged a complaint before the Authority on 27.06.2019 for refund of advance amount with interest thereon at the rate of 30% from the date of payment till realisation.

3. Before the Authority, the Promoter remained absent and was placed exparte. After hearing the arguments advanced on behalf of the Allottee, the learned Adjudicating Officer allowed the complaint vide order dated 25.02.2020, directing the promoter to refund a sum of

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Rs.5,00,000/- to the Allottee together with simple interest @ 9% per annum from 11.10.2013 to 30.04.2017 and thereafter interest at 2% per annum above the SBI MCLR from 01.05.2017 till realization of the entire amount, along with litigation costs of Rs.5000/-. Since the Promoter failed to pay the award amount, the Allottee was constrained to file an Execution Petition before the Authority. In turn, the Authority, acting u/s.40 of the RERA Act, forwarded the recovery certificate to the Deputy Commissioner for to recovery of the award amount, along with costs, as arrears of land revenue.

4. Being aggrieved by the impugned orders, the Promoter has preferred this appeal, interalia, contending that the Agreement between the parties was executed prior to the commencement of the RERA Act and therefore, the Allottee ought to have approached the competent civil court seeking the relief of specific performance. Hence, the RERA Authority had no jurisdiction to entertain the complaint. It is further contended that, after paying the advance sale

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consideration, the Allottee failed to come forward to pay the balance sale consideration and thereby failed to perform his part of contract. It is further contended that, in terms of Clause 6 of the Registration of Application, the Promoter is not liable to refund, the advance amount paid by the Allottee. The Promoter further contends that the Authority proceeded with the matter without effecting proper service of notice upon him, as he was not residing at the address mentioned in the complaint. Hence, on these and other grounds, the Promoter has prayed to setting aside the impugned judgment dated 25.02.2020 passed in the complaint, as well as the Order dated 17.03.2021 passed in the Execution Petition.

5. In response to the notice, the Respondents entered appearance through their counsel. The Respondent No.1 / Allottee filed a statement of objections contending that the project remained incomplete when the RERA Act came in to force and being an ongoing project, squarely falls within the ambit of the Act. It was further

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contended that the complaint was fully maintainable before the Authority. In his reply notice, the Promoter unequivocally admitted that, in terms of the Agreement of Sale, the Allottee had paid a sum of Rs.5,00,000/- as advance sale consideration and that the balance sale consideration was payable at the time of registration of the sale deed. The Promoter also acknowledged in his reply notice that he was in the process of obtaining approvals from the concerned authorities and that, despite having incurred substantial expenditure, such approvals were still pending. This clearly shows that the Promoter was unable to complete the project within the agreed timeline and consequently, failed to handover possession of the site to the Allottee as promised. Among these and other grounds, the Allottee prays for dismissal of the appeal.

6. Arguments of the learned counsel for the Promoter and the Respondents were heard. The written synopsis submitted on behalf of the Promoter has also been taken into consideration.

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7. Now the points that would arise for our consideration are :

1. Whether the Promoter proves that since the Agreement of Sale came to be entered on 11.10.2013 much prior to the coming into force of RERA Act, 2016, Authority has no jurisdiction to entertain the complaint?
2. Whether the Promoter further proves that no notice was duly served upon it, by the Authority before entertaining the complaint and the proceedings initiated by the Authority are perverse and the impugned judgment deserves to be set aside?

3. What order?

8. Our findings on the above points are as under:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : As per final order, for the following:

REASONS

9. Points No.1 & 2: Since the issue involved in both these points are interconnected and arise out of same set of facts, they are taken up together for common discussion. Before advertng to the controversy involved it the present

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case, it is necessary to recapitulate certain undisputed facts. The records disclose that the Promoter is engaged in the business of real estate development under the name and style of “Terracon Projects” and has formed a residential layout by name “Sai Residency-III” in land bearing Sy.Nos.13, 14, 172, 202, 203, 204, 205, 206, 211 & 212 of Indlabele Village, Attibele Hobli, Anekal Taluk, Bangalore Rural District. On 09.10.2013, an Agreement of Sale came to be executed between them, whereby the Promoter agreed to sell a residential site bearing No.410 admeasuring 1200 sq. feet, situated in the said layout, for a total sale consideration of Rs.10,00,000/-. Pursuant thereto, the Promoter received a sum of Rs.5,00,000/- as advance sale consideration by way of Demand Draft dated 08.10.2013 drawn on Indian Bank, Bellari Branch. The allottee agreed to pay the balance amount of Rs.7,00,000/- at the time of registration of the sale deed. As per the terms and conditions of the Agreement of Sale, the approval from BMRDA was under process. Since there was no progress in completion of the project, the Allottee lodged a complaint

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before the Authority on 27.06.2019 seeking refund of the advance amount with interest thereon at the rate of 30% p.a., from the date of payment till realisation. The complaint was thereafter heard and decided by the learned Adjudicating Officer. A perusal of the impugned judgment dated 25.02.2020 reveal that the Authority has specifically recorded that, despite due service of notice, the Promoter failed to appear before it. Therefore, the Authority, upon consideration of the averments made in the complaint and the admissions said to have been made by the Promoter in the legal notice issued by him, proceeded to allow the complaint, directing the Promoter to refund aforesaid sum of Rs.5,00,000/- to the Allottee together with simple interest at the rate of 9% per annum from 11.10.2013 till 30.04.2017 and thereafter @ 2% above the MCLR of the SBI from 01.05.2017 till realization. The Authority also awarded litigation costs of Rs.5,000/-.

10. Since the Promoter failed to comply with the award and did not come forward to pay the award amount,

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directed there under, the Allottee was constrained to initiate execution proceedings before the Authority. There upon, the Authority in exercise of its powers under Section 40 of the RERA Act, forwarded the recovery certificate and connected records to the Deputy Commissioner for recovery of the award amount together with the accrued interest and costs as arrears of land revenue. It is only thereafter that the Promoter preferred the present appeal on 17.01.2025 along with an application seeking condonation of the delay in filing the appeal. In the interest of justice and equity, this Tribunal condoned the delay in filing the appeal and proceeded to consider the matter on merits.

11. The principal contention advanced by the Promoter is that the Agreement of Sale in question was executed on 11.10.2013, much prior to the coming into force of the RERA Act and therefore the provisions of the said Act are not attracted to the transaction. The RERA Act, 2016 is prospective in operation and does not have retrospective effect. Since the Agreement of Sale was

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executed prior to the commencement of the Act, the complaint filed by the Allottee is stated to be not maintainable. On that premise, it is urged that the Authority lacked jurisdiction to entertain the complaint. The other contention urged by the Promoter is that, in view of Clause-6 of the Application for Registration executed by the Allottee, the Promoter is under no obligation to refund the advance amount received from the Allottee. It is further contended that, after paying advance sale consideration, the Allottee failed to come forward to complete the transaction by getting the Sale Deed executed and registered in his favour. According to the Promoter, the Allottee remained inactive for nearly six years and thereafter approached the Authority seeking redressal of this alleged grievance. Another contention urged by the Promoter is that he was not residing at the address reflected in the impugned order and that he was not using the email ID 'terraconproject.pvt@gmail.com.' On that basis, it is contended that no notice of the proceedings was ever served upon him. Nevertheless, according to the

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Promoter, the Authority proceeded ex parte against him and passed the impugned judgment without affording him an opportunity of being heard.

12. Reiterating the contentions set out in the Statement of Objections, the learned counsel for the Allottee vehemently argued that, prior to filing the complaint, the Allottee had caused a legal notice to be issued to the Promoter. In the reply thereto, the Promoter had unequivocally admitted the terms of the Agreement of Sale and had further acknowledged that he was in the process of obtaining approval from the competent Authorities. The Promoter had also admitted that, substantial expenditure had already been incurred towards the project and that the approval was still awaited. Relying upon these admissions, the learned counsel supported the findings recorded by the Authority and sought dismissal of the appeal.

13. Since the principal defence raised by the Promoter pertains to the jurisdiction of the Authority to

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entertain the complaint, we feel it appropriate to examine the relevant provisions of RERA Act, 2016.

14. Under the Real Estate (Regulation and Development) Act, 2016, though the term “ongoing” is not expressly defined, Section 3 makes it clear that it refers to a real estate project which had commenced prior to the coming into force of the Act but for which completion certificate or Occupancy Certificate had not been issued as on the date of the commencement of the Act, thereby requiring registration before the RERA Authority; further, under the Karnataka Real Estate (Regulation and Development) Rules, 2017, Rule 2(1)(f) defines an “ongoing project” as a project where development is in progress and completion certificate or Occupancy Certificate has not been issued, while excluding certain categories of projects which had secured approvals prior to 1st May 2017 and had substantially completed sales and development activities and the Hon’ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd., Vs. State of Uttar

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Pradesh¹ has also recognised that the provisions of the Act are applicable to such ongoing projects where Completion Certificate had not been obtained prior to the commencement of the Act.

15. As per the provisions of in the RERA Act and the covenants contained in the Agreement of Sale, it is the bounden duty of the Promoter to complete the project within a reasonable time and thereafter call upon the Allottee to pay balance sale consideration and execute the sale deed in favour of the Allottee by conveying title to the schedule property. However, the conduct of the Promoter throughout the transaction clearly demonstrates that he failed to complete the project for an inordinate period of more than six years. Despite having received substantial consideration from the Allottee, the Promoter neither completed the project nor took any effective steps towards execution of the sale deed. Consequently, being left with no efficacious alternative, the Allottee was constrained to approach the Authority seeking refund of the advance

¹(2021) 18 SCC 1

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amount paid under the Agreement of Sale together with applicable interest thereon.

16. In the Impugned Order, the Authority has categorically recorded that despite due service of notice, the Promoter neither entered appearance nor filed any objections. The contentions now urged by the Promoter is that he is no longer making use of the email address referred to in the Memorandum of Appeal. However, it is not his case that, said email ID does not belong to him or that it was incorrectly furnished by him. Even assuming that the Promoter was not actively using the email address furnished by him, he cannot evade his responsibility by contending that no notice was served upon him. Once the notice were dispatched to the email address admittedly belonging to him, the consequences arising from his failure to monitor or update the said email address must necessarily fall upon him. Added to that, as rightly observed by the Authority, the Promoter in his reply to the legal notice, unequivocally admitted having received an

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advance sale consideration of Rs.5,00,000/- and further acknowledged that the balance sale consideration was agreed to be paid at the time of execution of the sale deed in favour of the Allottee. The Promoter further admitted in his reply that he had failed to procure the requisite documents from the concerned authority. Such an admission clearly indicates that the project had neither been completed nor obtained the necessary approvals. Therefore, in view of the Explanation appended to Sec.3 of the RERA Act, the Project in question squarely falls within the ambit of an “ongoing project”. Consequently, we find no infirmity or illegality in the Authority entertaining the complaint and exercising jurisdiction thereon.

17. Another important aspect that merits consideration is that, once the Agreement of Sale had already been executed on 09.10.2013, there was no necessity for the Promoter to obtain an application for allotment from the Allottee on 11.10.2013 i.e., subsequent to the execution of the Agreement of Sale. The very fact that the Agreement of Sale preceded the alleged application

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for allotment substantially diminishes the evidentiary value of such application and renders the Promoter's contention in that regard difficult to accept. Even otherwise, Clause-6 of the said application, does not contain any stipulation authorising the Promoter to forfeit or retain the advance amount paid by the Allottee. In the absence of any specific forfeiture clause, the Promoter cannot claim a right to withhold the amount. It is pertinent to note that the advance amount received by the Promoter constitutes nearly 50% of the total sale consideration. Since the Promoter himself failed to complete the project within the reasonable time, no occasion arose for the Allottee to tender the balance sale consideration. Therefore, the Promoter cannot attribute any default to the Allottee for non-payment of the remaining consideration. Added to that, the Agreement of Sale itself contains a clear recital that the Promoter would be entitled to receive the balance sale consideration only at the time of execution of the sale deed. Therefore, unless and until the Promoter was in a position to execute the sale deed by completing the project

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and fulfilling his contractual obligations, he could not have demanded payment of the balance sale consideration from the Allottee.

18. Thus, viewed from any angle, the contentions advanced by the Promoter are devoid of merit. Even assuming that the promoter had appeared before the Authority and put forth the very same defences now urged before this Tribunal, the material on record would not have warranted dismissal of the complaint. The admitted facts and documentary evidence overwhelmingly support the case of the Allottee. In the aforesaid circumstances, we are of the considered opinion that the Authority has rightly allowed the complaint by assigning cogent and convincing reasons. We find no perversity, illegality or jurisdictional error in the impugned order warranting interference in exercise of appellate jurisdiction. Consequently, the appeal being devoid of merits and liable to be dismissed. In the result, the appeal fails and accordingly we answer points No.1 & 2 in the negative. Hence, we proceed to pass the following :

ORDER

- (a) The Appeal is hereby dismissed;
- (b) The Impugned Order dated 25.02.2020, passed by the Authority in Complaint No.CMP/UR/190627/0003232 is hereby confirmed.
- (c) The Registry is directed to release the amount in favour of the Allottee, including interest accrued thereon by issuing the bankers cheque/DD after the expiry of the appeal period and by following the due procedure;
- (d) In view of disposal of the main appeal, pending I.As., if any, shall stand disposed of, as they do not survive for consideration;
- (e) 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.

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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