Appeal No.3/2026

IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 8th DAY OF SEPTEMBER, 2026

PRESENT

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

AND

HON'BLE SRI SANTHOSH KUMAR SHETTY N.
JUDICIAL MEMBER

APPEAL NO. (K-REAT) 3/2026

BETWEEN:

Mr.V.Suresh Kumar,
S/o. V.Anandam,
Aged about 52 years,
#Flat No.220, D.S.Max Apartments,
Dodda Gubbi,
Dr.Shivarama Karanth Nagar,
Bangalore-560 077. **...APPELLANT**

(Sri K.Rami Reddy and Ashoka E., Advocates)

: AND :

1. BSNL Employee Welfare House
Building Co-op Society Ltd.,
19, (New#32), 1st floor,
10th cross, Beside Riti Jewellers,
Sampige Road, Malleshwaram,
Bangalore -560 003.
Represented by its President.

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2. The Karnataka Real Estate
Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
Karnataka.
Represented by its Secretary . ...**RESPONDENTS**

(Smt.Sujatha H.H., Advocate for R1,
Sri. Rajashekhar K., Advocate for R2-RERA)

This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016, (for short 'the Act') praying to set aside the Impugned Order dated 02.09.2025, passed by the 2nd Respondent-RERA in Complaint No.CMP/01852/2023.

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

JUDGMENT

The captioned appeal arises out of the Judgment and Order dated 02.09.2025, in Complaint No.CMP/01852/2023 passed by the 2nd Respondent-Karnataka Real Estate Regulatory Authority (for short 'the Authority'), whereby the Complaint filed by the Appellant

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(for short 'Complainant') against the Respondent No.1 came to be dismissed.

2. Briefly stated, the averments made in the Complaint are that Complainant was working in BSNL for more than 18 years. Some of the employees of BSNL started Respondent No.1/Co-operative Society i.e., BSNL Employees Welfare House Building Co-operative Society Ltd. The intention of the Respondent No.1/Co-operative Society was to provide the houses or residential plots for the BSNL employees at cheaper rates. Complainant became a member of the Respondent No.1/Co-operative Society. It was represented by the Respondent No.1/Co-operative Society that sites are available in Madhavanagar for its members. Hence, Complainant paid advance of Rs.7,66,800/- during 2013 and 2014 for purchasing site in the BSNL Madhavanagara project Phase-II, off Nelamangala road. However, Respondent No.1/Co-operative Society has not delivered the sites as promised. The Complainant has made lot of follow-ups seeking

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refund. Till date neither the amount is refunded nor sites have been registered and hence, the Complaint.

3. Respondent No.1/Co-operative Society has filed statement of objections to the Complaint stating that the allegations made in the Complaint are false, baseless and the Complaint is filed to harass it. Complainant is not entitled for the relief sought. The Complaint is wholly mis-conceived, lacks merits. The Respondent No.2 –Authority is not having jurisdiction to adjudicate the dispute between the Complainant and the Respondent No.1/Co-operative Society, since the project is not registered with it.

4. When a Complaint is filed, it is for the Authority to examine whether the project is registered with it. If it is registered, the Authority may proceed to adjudicate the dispute. If the Authority finds that the project is not registered with it, then at the first instance it is required to examine whether the project is required to be registered under Section 3(1) of the Act or it is exempted from registration under any of the proviso to Section 3 or any of

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the explanation under Rule 4(1) of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (for short 'Rules'). After the enquiry if the Authority finds that the project is not required to be registered it cannot proceed with the Complaint as it lacks jurisdiction. As held by the Hon'ble Supreme Court in Newtech and also the judgment of the Hon'ble High Court of Bombay in Macrotech, "No registration No application of the Act".

5. In this appeal also the Respondent No.1/Co-operative Society has filed statement of objections, reiterating the objections filed to the Complaint. In addition, it has contended that the Complainant is a member of the Co-operative Society bearing membership No.354. He has paid Rs.3,83,400/- on 19.04.2013 and Rs.3,83,400/- on 26.06.2014. The Respondent No.1/Co-operative Society has issued receipts for the said amount. The receipts in question are not allotment letters. The amount collected is not towards purchase of any particular plot. No agreement of sale is entered into between the

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Complainant and the Respondent No.1/Co-operative Society. The Complainant is seeking refund of Rs.7,66,800/- with interest.

6. Since the Respondent No.1 is a Co-operative Society and does not fall under the definition of Promoter and the Complainant does not come under the definition of Allottee, Complaint is not maintainable. Therefore, the Respondent No.2 is not having jurisdiction to decide the dispute.

7. The Respondent No.1/Co-operative Society would prepare a seniority list of its members and based on the same, allotment of sites would be made in the upcoming Phases. The seniority number of Complainant is 354. The dispute between the Complainant and the Respondent No.1/Co-operative Society is to be decided by the Registrar of Co-operative Society so long as the project is not registered with Respondent No.2-Authority. Examining all these aspects, the Authority has rightly

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dismissed the complaint and pray to dismiss the appeal also.

8. Vide the impugned order dated 02.09.2025, the Authority dismissed the Complaint. Being aggrieved by the same, the Complainant has filed this appeal on the following grounds :

(i) The Impugned Order is contrary to the facts and law. It has failed to appreciate the complaint averments, evidence placed on record, written arguments, rejoinders and written submissions. It has failed to appreciate the provisions of the Act in its right prospective. There is no application of legal mind. Since the project is incomplete the Act is applicable. The Co-operative Society has not taken RERA approval. As per Section 18 of the Act, the complainant is entitled for the relief sought.

9. We have heard elaborate arguments of both learned Counsel for Complainant and Respondent No.1/Co-operative Society and gone through the records.

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10. The points that would arise for our consideration are :

1. Whether the impugned order is arbitrary, perverse and contrary to the evidence placed on record and as such calls for interference by this Tribunal?

2. What order?

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

Point No.1 : In the Negative

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

REASONS

12. **Point No.1 :** At the outset it is relevant to note that though the Complainant claimed that the Respondent No.1/Co-operative Society has received Rs.7,66,800/- from him in respect of allotment of site in Madavaranagara and failed to allot him site, it is not his case that already it has acquired land and developed it into a layout. Of course, at any point of time the Complainant is at liberty to withdraw

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the amount paid to the Respondent No.1/Co-operative Society with interest.

13. Though Respondent No.1 is a House Building Co-operative Society formed for the purpose of providing sites to its members, it has taken a specific contention that when the complainant paid Rs.7,66,800/- and as of now also, it has not secured necessary land for formation of layout i.e., project and consequently it is not registered with the Authority and as such it does not come under the category of Promoter and therefore, the Authority is not having jurisdiction to grant the relief to the complainant. Unless and until a layout is formed and registered with the Authority, Complainant is not entitled for any relief under the Act, although he may be having his remedy elsewhere viz., either before the Registrar of Co-operative Societies or under the Consumer Protection Act.

14. In the light of the specific defense taken by Respondent No.1/Co-operative Society, it is necessary to examine whether the provisions of the Act are attracted to

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resolve the dispute between the Complainant and Respondent No.1/Co-operative Society.

15. While Chapter IV of the Act deals with the rights and duties of the Allottees, Chapter III provides for the functions and duties of the Promoter, for the violation of which would give a right to the Allottee to seek relief under the Act. Section 13 mandate that a Promoter cannot take deposit or advance, more than 10% of the cost of the apartment, plot or building as the case may be, without first entering into an Agreement for Sale. Sub-section (2) of Section 13 specify the details which the Agreement for Sale shall contain.

16. Section 14(1) requires that the Promoter shall adherence to the sanctioned plans and project specifications as approved by the competent authorities. The further Sub-Sections (2) and (3) along with explanations specify the exceptions, explanation etc.

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17. Section 15 deals with obligations of the Promoter in case of transfer of real estate project to a third party. Section 16 obligate the Promoter to insure the real estate project. Section 17 mandate that the Promoter shall execute a registered conveyance deed in favour of the Allottee and the undivided proportionate title in the common areas to the Association of the Allottees or the competent Authority as the case may be.

18. In the event of violation of any of these provisions, Section 18 of the Act provides for reliefs which an Allottee may seek under the provisions of the Act. It reads as under:

> 18. (1) If the Promoter fails to complete or is unable to give possession of an apartment, plot or building,—
>
> (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
>
> (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
>
> he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in

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respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The Promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub section shall not be barred by limitation provided under any law for the time being in force.

(3) If the Promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

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19. From the reading of Section 18, the terms Promoter, Allottee, Real Estate Project and Agreement for Sale assumes importance.

20. Section 3 of the Act mandates prior registration of a Real Estate Project with the Authority, before a Promoter could advertise, market, book, sell or offer for sale or invite persons to purchase any plot, apartment or

building in any real estate project, in any planning area. Infact, proviso to Sub-Section 1 also require that the ongoing projects shall also be registered with the Authority.

21. As defined under Section 2(zn), a 'Real Estate Project' means development of a building or a building consist of apartments or development of land into plots or apartments as the case may be. Section 2(zk) defines the term 'Promoter', which broadly speaking means "a person who constructs or causes to be constructed an independent building or a building consists of apartments or develops a land into plots or apartments……".

22. Similarly Section 2(d) defines the term 'Allottee' in relation to a Real Estate Project means "a person to whom a plot, apartment or building as the case may be, has been allotted, sold or otherwise transferred by the Promoter….".

23. Thus, the minimum requirement to attract the provisions of the Act are that the Promoter- as in the present case the Respondent No.1/Co-operative Society

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has developed a land for formation of layout and offered sites to its members. Undisputedly, the Respondent No.1/Co-operative Society has not acquired any land for development and consequently it does not fall into the definition of Promoter and there is no project in existence let alone Complainant could be called as an Allottee. All that is done is that the Respondent No.1/Co-operative Society has enrolled members and collected from them various sums towards purchase of sites as and when it develop such project/layout. Therefore, rightly the Authority has held that Act has no application to the present case and as such, the complaint is not maintainable before it.

24. As held by the Authority, the Complainant is at liberty to either approach the Registrar of the Co-operative Societies or Consumer Forum for recovery of the amount due to him. Infact the learned Counsel for Respondent No.1/Co-operative Society made a fair offer to the complainant to refund the amount with interest at 6%.

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However, the Complainant was not agreeable. Anyhow, having regard to the fact that no project has come into existence and therefore, Respondent No.1/Co-operative Society is not a promoter and complainant is not an Allottee, the Act has no application and therefore, complainant is not entitled for any relief under the provisions of the Act.

25. Thus, viewed from any angle, we find no justifiable grounds to interfere with the Impugned Order. In the result the appeal fails and accordingly, point No.1 is answered in the Negative.

26. **Point No.2:** In view of findings on Point No.1, we proceed to pass the following:

ORDER

(a) The appeal is dismissed;

(b) The impugned order dated 02.09.2025 passed by the 2nd Respondent -Authority in Complaint No.01852/2023 is hereby confirmed;

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(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.

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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KVS/-

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

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