



2025:KER:81394

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 29TH DAY OF OCTOBER 2025 / 7TH KARTHIKA, 1947

MSA NO. 57 OF 2025

AGAINST THE ORDER DATED 28.05.2025 IN REFA NO.44 OF 2025
OF KERALA REAL ESTATE APPELLATE TRIBUNAL, ERNAKULAM ARISING OUT
OF THE ORDER DATED 23.01.2025 IN COMPLAINT NO.160 OF 2023 OF
KERALA REAL ESTATE REGULATORY AUTHORITY, THIRUVANANTHAPURAM

APPELLANTS/APPELLANTS/RESPONDENTS:

- 1 K. BHARATHAN
AGED 49 YEARS, S/O MULLAPPILY BALAKRISHNAN NAIR,
PROPRIETOR, TOP CONSTRUCTIONS, 31/83,
THRISSUR CORPORATION, POONKUNNAM DESOM,
THRISSUR VILLAGE, THRISSUR TALUK, PIN - 680002.
- 2 TOP CONSTRUCTIONS
SHORNUR ROAD, THRISSUR, REPRESENTED BY PROPRIETOR,
K. BHARATHAN, S/O MULLAPPILY BALAKRISHNAN NAIR,
31/83, THRISSUR CORPORATION, POONKUNNAM DESOM,
THRISSUR VILLAGE, THRISSUR TALUK - 680002.

BY ADVS.

SRI. DINESH MATHEW J. MURICKEN
SRI. VINOD S. PILLAI
SRI. MOHAMMED THAYIB N. M.
SMT. NAYANA VARGHESE
SMT. RIA VARGHESE
SRI. JERRY PETER

RESPONDENTS/RESPONDENTS/COMPLAINANTS:

- 1 TOP CRYSTAL OWNERS ASSOCIATION
8TH FLOOR, ROOM NUMBER 8 C, TOP CRYSTAL APARTMENTS,
NEAR KSEB VAIDYUTHIBHAVAN, KOTTAPURAM ROAD,
CHAKKAMUKKU DESAM, THRISSUR VILLAGE,



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THRISSUR DISTRICT, PIN-680002, REPRESENTED BY ITS
SECRETARY, SURESH G MENON, AMBAT HOUSE, TRIPRASADAM,
PURANATTUKARA P.O, PIN - 680551.

- 2 BINU JOSEPH
PRESIDENT, TOP CRYSTAL OWNERS ASSOCIATION,
S/O K. P JOSEPH, KURUTHUKULANGARA HOUSE,
KONIKKARA P.O, THRISSUR, PIN - 680306
 - 3 SASIDHARAN NAIR R.
TREASURER, TOP CRYSTAL OWNERS ASSOCIATION,
FLAT NO. 8B, TOP ORCHID APARTMENT, PARAKKOTTU LANE,
PATTURAYIKKAL, THIRUVAMBADI P.O,
THRISSUR, PIN - 680022.
 - 4 THE ADJUDICATING AUTHORITY
KERALA REAL ESTATE REGULATORY AUTHORITY, 6TH FLOOR,
TRINITY CENTRE, TC NO. 14/4354,
OPP CHAITHANYA EYE HOSPITAL, KESAVADASAPURAM,
PATTOM P.O, THIRUVANANTHAPURAM DISTRICT,
PIN - 695004.
- BY ADVS.
- SRI. C. AJITH KUMAR - R1 TO R3
 - SMT. VARSHA S. S. - R1 TO R3
 - SRI. NANDAGOPAL S. KURUP - SC
 - SRI. C. M. NAZAR (B/O) - R4

THIS MISC. SECOND APPEAL HAVING BEEN FINALLY HEARD ON
29.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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“C.R”**EASWARAN S., J.****M.S.A. No. 57 of 2025**Dated this the 29th day of October, 2025**JUDGMENT**

Interpretation of Section 3 of the Real Estate (Regulation and Development) Act, 2016 falls for consideration in this appeal. The present appeal arises out of the order passed by the Kerala Real Estate Appellate Tribunal, Ernakulam dated 28.05.2025 in REFA No. 44 of 2025 affirming the interim order passed in Complaint No. 160 of 2023 by the Kerala Real Estate Regulatory Authority, Thiruvananthapuram dated 23.01.2025.

2. The brief facts necessary for the disposal of the appeal are as follows:

2.1. The 1st appellant is the proprietor of the company named ‘Top Constructions’, which constructed the Flat in the name ‘Top Crystal Apartments’ in Thrissur district. The allottees of the said apartments formed an association in the name ‘Top Crystal Owners Association’. They approached the Kerala Real Estate Regulatory Authority, Thiruvananthapuram with a complaint stating that the promoter has not registered the project under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the ‘Act of 2016’ for



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short). The complaint was filed on 31.07.2023. According to the complainants, there are 32 flats in the building situated in a total extent of 9.71 Ares in Sy. No. 1958/1 part and 1958/5 part of Thrissur Village. 27 members are there in the Complainant Association/1st respondent herein, 5 apartments are yet to be sold and retained by the respondents/appellants herein. Even though Sale Deed was executed as early as in 2015, no steps were initiated for the formation of an Owners' Association. They also did not arrange the opportunity for the owners to meet, and the building was also incomplete. Later, in 2018, the association was formed forcibly by the owners and then it was registered. In the complaint, various grievances touching upon the use of the amenities and the common area were raised.

2.2. The respondents/appellants herein entered appearance and contested the claim by raising a preliminary objection that the project was not liable to be registered under Section 3(1) of the Act of 2016. This objection was primarily on the ground that the project of the appellants herein is not an ongoing project which falls for registration under Section 3 of the Act of 2016. According to the appellants, various agreements of sale were executed prior to the cutoff date i.e. 01.05.2017. Therefore, according to them, the provisions of Section 3(1) of the Act of 2016 read with Section 13 of the Act of 2016 would clearly indicate that the registration is intended only to those cases where the promotor offers for



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sale, invite persons or advertise or market, book or sell the apartments after the Act of 2016 came into force.

2.3. This objection was taken up for consideration by the Kerala Real Estate Regulatory Authority, Thiruvananthapuram and vide order dated 23.01.2025, the authority rejected the objection and directed the appellants herein to complete the process of registration under the Act of 2016. Aggrieved, the appellants herein preferred an appeal under Section 43 of the Act of 2016 before the Kerala Real Estate Appellate Tribunal, Ernakulam. The Appellate Tribunal by order impugned in this appeal dated 28.05.2025, concurred with the finding of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram and dismissed the appeal stating that the project is required to be registered. It is aggrieved by the order of the Appellate Tribunal, Ernakulam, that the present appeal is preferred under Section 58 of the Act of 2016.

3. This Court, on 04.08.2025, admitted the appeal on the substantial questions of law raised in the memorandum of appeal which reads as follows:

"i. Whether the appellants' real estate project is liable to be registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 when there is no apartment to be sold in the appellants real estate project, when the Real Estate (Regulation and Development) Act,



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2016 came into force?

ii. Whether 1st proviso to Section 3 of the Real Estate (Regulation and Development) Act, 2016, mandates that when a project is completed and no apartments are available for sale, the said project has to be registered under the provisions of the Real Estate (Regulation and Development) Act, 2016 for the reason that the occupancy certificate has not been issued?

iii. Whether a promoter of an apartment project can be saddled with the financial burden of paying registration fees under Rule 3 of the Rules, when the promoter does not have any apartments for sale at the time of commencement of the Act."

4. Heard Sri. Dinesh Mathew J Murikan, the learned Counsel for the appellants and Sri. C. Ajith Kumar, the learned Counsel for the 1st respondent and also Sri. Nandagopal S. Kurup, the learned Standing Counsel appearing for the Kerala Real Estate Regulatory Authority, Thiruvananthapuram.

5. The learned Counsel appearing for the appellants contended that the Kerala Real Estate Regulatory Authority, Thiruvananthapuram did not address the core issue on the objection raised by the appellants as regards the applicability of Section 3 of the Act of 2016. According to the learned Counsel for the appellants, Section 3 of the Act of 2016 obliges the



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promoter to take out registration only if he advertises, market, book, sell or offer for sale or invite persons for purchase of any manner a plot or apartment or building after 01.05.2017.

5.1. The learned Counsel for the appellants further submits that Section 13 of the Act of 2016 gives an indication that the provisions of Section 3 of the Act of 2016 is intended to apply only for those cases in which the agreement of sale is executed after the coming into force of the Act and its cutoff date. The learned Counsel further reiterated the fact that, since a particular format for entering into agreement of sale is provided under Section 13, is a clear indication that the Act will not govern the agreement of sale which has been executed prior to the date when the said Act came into force and, therefore, the Kerala Real Estate Regulatory Authority, Thiruvananthapuram had failed to address the core issue and hence the matter requires a re-consideration at the hands of the original authority.

6. *Per contra*, Sri. C. Ajith Kumar, the learned Counsel appearing for the 1st respondent allottees countered the submissions of the learned Counsel for the appellants and contended that the Act of 2016 is a beneficial legislation and that the entire scheme of the said Act must be looked into by this Court in order to ascertain as to, *whether the plea of the appellants is sustainable or not?* He would further submit that going



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by the decision of the Hon'ble Supreme Court in ***Newtech Promoters and Developers Private Limited v. State of Uttar Pradesh and Others [(2021) 18 SCC 1]*** and also the decision of the learned Single Bench of this Court in ***Alfa Ventures (P) Ltd. v. State of Kerala [2022 (4) KLT 596]***, the point raised in the appeal is no longer *res integra*. He further submitted that the Kerala Real Estate Regulatory Authority has issued a public notice and going by the said notice, any project over which the completion certificate is issued after 01.05.2017 will be construed as an ongoing project. While referring to the occupancy certificate issued by the local authority in the present case, the learned Counsel contended that the project was completed only on 17.04.2018 and, therefore, the order passed by the Real Estate Regulatory Authority does not call for any interference.

7. I have considered the rival submissions raised across the Bar, perused the orders impugned in the appeal and the records of the case.

8. Section 3 of the Act of 2016 reads as follows:

"3. Prior registration of real estate project with Real Estate Regulatory Authority.—

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any



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real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it



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necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation. – For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

9. The thrust of the argument of the learned Counsel for the appellants is that since Section 13 of the Act of 2016 provides for a Form in which the agreement of sale has to be entered into, it is a clear indication that the legislature wanted to apply the provisions of Section 3 of the Act of 2016 only to those cases wherein the agreement of sale is executed after 01.05.2017. Section 13 of the Act of 2016 reads as under:



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"13. No deposit or advance to be taken by promoter without first entering into agreement for sale. –

(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

10. The fallacy in the argument raised on behalf of the appellants is writ large on the face of the record itself. No doubt, Section 13 of the Act of 2016 speaks about the execution of an agreement of sale in a Form prescribed under Sub-Section (1). But then, the requirement of registration must be judged with the conditions prescribed under the



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charging provision which is Section 3 of the Act of 2016. When we read Section 3 of the Act of 2016 closely, it becomes explicitly clear that 'no promoter shall advertise, market, book, **sell** (emphasis supplied) or offer for sale or invite persons to the project in any manner any plot, apartment or building, as the case may be, in a real estate project or part of it.....' Thus, Section 3 of the Act of 2016 takes in various activities undertaken by a promoter which can include advertising, marketing, booking, selling or offering to sell or such other activities as prescribed under. The question which falls for consideration is, *whether the offer to sale made by the promoter prior to the coming into force of the Act would be governed by Section 3 of the Act of 2016 or not?* It is true that in the case of allottees, the majority of the agreements of sale were executed prior to the cutoff date i.e. 01.05.2017. The agreements of sale had fructified into the execution of registered sale deeds either prior to 01.05.2017 or in certain cases, after 01.05.2017. Therefore, in such a situation, whether in respect of certain allottees, when the promoter has executed the registered sale deeds after 01.05.2017, or in the case of majority of the allottees, the registered sale deeds were executed before 01.05.2017, by itself is sufficient to take out the promoter from the purview of Section 3 of the Act of 2016 is a larger question which this Court may have to answer.



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11. When Section 3 of the Act of 2016 is read carefully, it becomes clear that it takes in multifaceted activities of a promoter which includes the activity of sale also. The word ‘sell’ will have to be interpreted by this Court in the context of the charging provision. Pertinently, the Real Estate (Regulation and Development) Act 2016 does not define the word “sell”. Therefore, the word sell will have to be understood in the context of law governing the property rights. Normally, the word ‘sale’ is understood to mean any activity in furtherance of conveying the property rights to a buyer by the seller.

12. Read in the context of the purpose of the enactment, it is beyond doubt that the activity of the appellants which resulted in the execution of a registered sale deed after coming into the force of the Act namely 01.05.2017 by itself is sufficient to attract the charging provision of Section 3 of the Act of 2016. Therefore, notwithstanding the fact that Section 13 of the Act of 2016 has provided for a separate form under which an agreement of sale has to be executed, will not enable the promoter to contend that he is taken out of the purview of the Act.

13. Accepting the arguments of the appellants would result in an incongruous situation wherein allottees under the appellant will not get the benefit of the enactment because the agreement of sale was executed prior to the coming into force of the Act, ie: 01.05.2017 although the sale



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deeds were registered after the cut off date. It is beyond cavil that the statute in question is a beneficial legislature and therefore must receive a liberal interpretation so as to achieve the desired results which the legislature intended.

14. Viewed in that perspective, this Court finds that the interim order passed by the Kerala Real Estate Regulatory Authority, Thiruvananthapuram in Complaint No. 160 of 2023 dated 23.01.2025 as affirmed by the Kerala Real Estate Appellate Tribunal, Ernakulam by Order dated 28.05.2025 in REFA No. 44 of 2025 is perfectly sustainable and thus, does not call for any interference in exercise of the powers of this Court under Section 100 of the Code of Civil Procedure, 1908.

Resultantly, the substantial questions of law raised in the memorandum of appeal are answered as follows.

- a) The real estate project of the appellants are liable to be registered under the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016 since the actual execution of sale deeds were after 1.5.2017.
- b) Merely because there were no apartments available for sale and that the agreements for sale were executed prior to when the Act came into force, by itself will not be sufficient to hold that the project is taken out of the purview of the Act, if the



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actual execution of the sale deeds are after when the Act of 2016 came into force.

In view of the above discussion, it is concluded that the appeal lacks merit and the same is dismissed. Cost made easy.

**Sd/-
EASWARAN S.
JUDGE**

Svn



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APPENDIX OF MSA 57/2025

RESPONDENT EXHIBITS

**EXHIBIT-R1 (A) TRUE COPY OF OCCUPANCY CERTIFICATE DATED
29/04/2019 ISSUED BY THRISSUR MUNICIPAL
CORPORATION**

**EXHIBIT-R1 (B) TRUE COPY OF THE PUBLIC NOTICE DATED 19/04/2022
ISSUED BY THE KERALA REAL ESTATE REGULATORY
AUTHORITY, THIRUVANANTHAPURAM**