



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF MAY, 2025**

**BEFORE**

**THE HON'BLE MRS JUSTICE K.S. HEMALEKHA**

**WRIT PETITION NO.27821 OF 2024 (CS-RES)**

**BETWEEN:**

1. MR. REKHA KANNAN  
D/O. LATE K.S. NARAYANA SWAMY,  
AGED ABOUT 48 YEARS,  
RESIDING AT FLAT NO.A-001,  
RAMKY ONE NORTH,  
DODDABALAPURA ROAD,  
AVALAHALLI, YELAHANKA TALUK,  
BENGALURU-560064.
2. MS. VAISHALI PANKAJ SHARMA  
D/O. MR. LALSHANKAR M. PUROHIT  
AGED ABOUT 47 YEARS,  
RESIDING AT FLAT NO.A-1202,  
RAMKY ONE NORTH,  
DODDABALAPURA ROAD,  
AVALAHALLI, YELAHANKA TALUK,  
BENGALURU-560064.
3. MS. CHITRA RAMANUJAN,  
D/O. MR. V.T. NARAYANAN,  
AGED ABOUT 62 YEARS,  
RESIDING AT FLAT NO.A-502,  
RAMKY ONE NORTH,  
DODDABALAPURA ROAD,  
AVALAHALLI, YELAHANKA TALUK,  
BENGALURU-560064.
4. MS. GARIMA PAUL  
D/O. COL. SHIV GOVIND,  
AGED ABOUT 42 YEARS,  
RESIDING AT FLAT NO.A-504,  
RAMKY ONE NORTH,  
DODDABALAPURA ROAD,  
AVALAHALLI, YELAHANKA TALUK,  
BENGALURU-560064.





5. MS. SREELAXMI JEERIGANUR  
D/O. MR. BASAVARAJAPPA,  
AGED ABOUT 44 YEARS,  
RESIDING AT FLAT NO.A-1103,  
RAMKY ONE NORTH,  
DODDABALAPURA ROAD,  
AVALAHALLI, YELAHANKA TALUK,  
BENGALURU-560064.

... PETITIONERS

(BY SMT. BEENA P.K., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REP. BY ITS SECRETARY,  
DEPARTMENT OF CO-OPERATIVE SOCIETIES,  
VIKASA SOUDHA, AMBEDKAR VEEDHI,  
BENGALURU-560 001.
2. THE DEPUTY REGISTRAR OF  
CO-OPERATIVE SOCIETIES &  
APPELLATE AUTHORITY,  
III ZONE, BANGALORE URBAN DISTRICT,  
"SAHAKARA SOUDHA", 1<sup>ST</sup> FLOOR,  
3<sup>RD</sup> MAIN, 8<sup>TH</sup> CROSS,  
MARGOSA ROAD, MALLESHWARAM,  
BENGALURU-560003.
3. ASSISTANT REGISTRAR OF  
CO-OPERATIVE SOCIETIES,  
OFFICE OF THE ASSISTANT REGISTRAR,  
CO-OPERATIVE SOCIETIES,  
2<sup>ND</sup> FLOOR, MARGOSA ROAD,  
8<sup>TH</sup> CROSS ROAD, 3<sup>RD</sup> ZONE,  
MALLESHWARAM, BENGALURU-560003.
4. RAMKY ONE NORTH APARTMENT  
OWNERS CO-OPERATIVE SOCIETY,  
CO-OPERATIVE SOCIETY REGISTERED  
UNDER THE KARNATAKA  
CO-OPERATIVE SOCIETIES ACT, 1959  
HAVING OFFICE AT  
RAMKY ONE NORTH,  
DODDABALAPURA ROAD,



AVALAHALLI VILLAGE, YELAHANKA HOBLI,  
BENGALURU-560064.  
REPRESENTED BY ITS  
CHIEF PROMOTER.

5. RAMKY ESTATE & FARMS LIMITED  
COMPANY REGISTERED UNDER  
THE COMPANIES ACT, 1956  
REPRESENTED BY ITS CHAIRMAN,  
HAVING ITS OFFICE AT  
9<sup>TH</sup> FLOOR, RAMKY GRANDIOSE,  
RAMKY TOWERS COMPLEX,  
GACHIBOWLI, HYDERABAD,  
TELANGANA-500032.

ALSO AT NO.25-30, RAMKY HOUSE  
2<sup>ND</sup> CROSS, RAGHAVENDRA NAGAR,  
KALYAN NAGAR,  
BENGALURU-560043.

... RESPONDENTS

(BY SRI B.S. GURUSWAMY, AGA FOR R-1 TO R-3;  
DR. SUJATHA V. DURGEKAR, ADVOCATE FOR R-4;  
SRI PRAMOD NAIR, SENIOR COUNSEL APPEARING FOR  
SRI MUDIT MUNDKAR, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227  
OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTING THE  
RESPONDENT NO.2 DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETY  
TO CONSIDER THE REPRESENTATION LETTER DATED 06.09.2024  
ANNEXURE-A; QUASH THE IMPUGNED ORDER OF REGISTRATION OF  
THE RESPONDENT NO.4 BEARING REGISTRATION CERTIFICATE  
NO.ARB-44/REGN/21/54506/2023-24 DATED 19.10.2023 ISSUED BY  
THE RESPONDENT NO.2 ASSISTANT REGISTRAR OF CO-OPERATIVE  
SOCIETY ANNEXURE-D AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED  
FOR ORDERS ON 14/03/2025, COMING ON FOR PRONOUNCEMENT  
THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA



**CAV O R D E R**

Petitioners are seeking a writ of mandamus directing respondent No.2-Deputy Registrar of Co-Operative Societies (DRCS) to consider the representation dated 06.09.2024 at Annexure-A, to quash the impugned order of Registration of respondent No.4-Ramky One North Apartment Owners Co-Operative Society (hereinafter referred to as 'the society' for short) and for further reliefs.

2. Facts given rise to filing of this petition briefly stated are that:

Petitioners are owners of the apartment units in "Ramky One North" a residential complex situated at Avalahalli Village, Yelahanka Taluk, Bengaluru North having purchased from respondent No.5-Builder. Respondent No.4-Society formed by few of the Apartment owners of the Apartment complex of "Ramky North", without the consent of all the Apartment owners,



respondent No.4-Society has been registered on 19.10.2023.

3. Learned counsel for the petitioners submits that Formation and Registration of Society is contrary to law. She contends that under the Real Estate (Regulation and Development) Act, 2016 ('RERA Act' for short) it was the statutory obligation of the developer to facilitate the Formation of the owners Association in accordance with the Karnataka Apartment Ownership Act, 1972 (hereinafter referred to as 'KAO Act' for short). In the case of residential Apartments, such Association must be formed and registered as envisaged under the KAO Act. Reliance is placed on the decision of the Division Bench of this Court in the case of ***Proposed Starnest Apartment Owners Co-operative Society Ltd. Vs. State of Karnataka and others***<sup>1</sup> (*Starnest Apartment*), wherein it was held that in residential Apartment projects, Formation of an Association under the KAO Act is mandatory.

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<sup>1</sup> W.A. NO.564/2024 D.D. 18.06.2024



Accordingly, it is submitted that the Registration of the Society by respondent No.2 under the provisions of Karnataka Co-Operative Societies Act, 1959 ('KCS Act' for short) is one without jurisdiction and unsustainable in law.

4. Learned counsel appearing for the Society, supports the averments in their statement of objections and submits that the Registration and functioning of the Society has been upheld by this Court in the case of **Mr. M.S. Ramanujan and others Vs. State of Karnataka and others<sup>2</sup>**, which was confirmed in the case of **Mr. M.S. Ramanujan and others Vs. State of Karnataka and others<sup>3</sup>**. It is contended that the said decision is binding on both the petitioners and respondent No.5, as they were parties to the earlier proceedings. It is further submitted that petitioner Nos.3, 4 and 5 are the wives of the petitioners in WP No.25997/2023, suppressing, concealing and misrepresenting the earlier proceedings, the present

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<sup>2</sup> W.P. No.25997/2023 D.D. 22.01.2024

<sup>3</sup> W.A. No.190/2024 D.D. 23.09.2024



petitioners have preferred this frivolous writ petition. It is contended that except petitioner No.5, the other petitioners are not apartment owners and thus, the present writ petition is not maintainable.

5. Learned counsel for respondent No.5 submits that the Registration of the Society under the KCS Act 'to manage the affairs of the residential Apartment complex and further conveying rights and interest over the lands in favour of the cooperative Society from its lawful owners', contradicts the purpose and provisions of KAO Act. Learned counsel submits that the law is well settled that for the management of Apartment complex, the Registration of the Association has to be made under the KAO Act.

6. Having heard the learned counsel for the parties, the point that arises for consideration is:

*"When a special enactment as KAO Act provides a particular mode for management or regulation,*



*whether can be substituted by forming a Society under the KCS Act?"*

7. The petitioners are owners of their respective apartment units in the project known as "Ramky One North" which consists of residential units only and the project was registered under the provisions of RERA. Prior to the execution of the sale deeds, all the apartment owners had executed a Deed of Declaration-cum-undertaking in favour of the Builder-respondent No.5, wherein they undertook to sign the Deed of Declaration for the Formation of Apartment Owners Association. One such Declaration-cum-undertaking executed finds place at Annexure-L. The undisputed fact is that the project "Ramky One North" consists of residential units only. Section 2 of KAO Act reads as under:

**"2. Application of the Act.-***This Act applies only to property the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration as hereinafter provided:*



*Provided that, no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used for residential purposes.*"

*(Emphasis supplied)*

8. Section 3(d) defines 'Association of Apartment Owners' which reads as under:

**"3. Definitions.-***In this Act, unless the context otherwise requires.-*

*(d) **"Association of Apartment Owners"** means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration.*

9. Section 3(i) defines 'Competent Authority' which reads as under:

*(i) **"Competent authority"** means in relation to building constructed or to be constructed by the Housing Board, the Secretary of the Housing Board and in any other case, the Registrar of Co-operative Societies as defined in the Karnataka Co-operative Societies Act, 1959;*

*(emphasis supplied)*



10. Section 5 of the KAO Act deals with Ownership of Apartments, which reads as under:

***"5. Ownership of apartments.-(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.***

*(2) Each apartment owner shall execute a Declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose."*

11. Section 5 emphasizes that each of the apartment owner shall be entitled for exclusive ownership and possession of his apartment. Sub-clause (2) of Section 5 states that each apartment owner shall execute a Declaration that he submits his Apartment to the provisions of this Act and a Deed of Apartment in relation to his Apartment in the manner prescribed for the purpose.

12. The KAO Act makes it clear that if the property is used or proposed to be used for residential purposes,



KAO Act is applicable. As could be seen from the records that the sale deeds indicate that the entire project is for residential and no part of project is used or intended to be used towards commercial. The Deed of Declaration is executed by the Apartment owners for Formation of the Apartment owners Association.

13. The law is well settled and no more a *res integra* that the Association of the owners of flats situated in an Apartment, consisting of residential units only, there is a specific enactment under the KAO Act, and the Registration of the Association has to be made under the KAO Act and not under the provisions of the KCS Act. The Division Bench in the case of **VDB Celadon Apartment Owners Association vs. Mr. Praveen Prakash and others**<sup>4</sup> (VDB Celadon) at paragraph Nos.6 to 11 has held as under:

"6. Section 3 of the said Act of 1960 reads thus:

3. Societies to which the Act applies.-

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<sup>4</sup> W.A. No.974/2019 D.D. 06.11.2019



*The following societies may be registered under this Act,—*

*Societies established for,—*

- (a) the promotion of charity;*
- (b) the promotion of education, science, literature, or the fine arts;*
- (c) the promotion of sports;*
- (d) the instruction and the diffusion of knowledge relating to commerce or industry or of any other useful knowledge;*
- (e) the diffusion of political education;*
- (f) the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or of public museums and galleries of painting and other works of art;*
- [(ff) the promotion of conservation and proper use of natural resources and scarce Infrastructural facilities like land, power, water, forest and such other resources and infrastructural facilities, as may be notified by the State Government from time to time.*



*(g) the collection of natural history,  
mechanical and philosophical inventions  
Or designs and  
Which intend to apply their profits, if  
any, or other income in promoting their  
objects and prohibit the payment of any  
dividend or distribution of any income  
or profits among their members.”*

*Even according to the case of the appellant, the  
dominant object for the formation of the appellant  
Association is to administer, maintain and run the  
building and apartments. Clauses 5.1 and 5.2 are,  
even according to the learned counsel for the  
appellant, the dominant objects of the Association,  
and they read thus:*

*5.1 To administer, maintain and run the  
building and apartments known as VDB  
Celadon No.23/3, 23/4, 26/1, Shivanahalli  
Hobli, Jakkur Road, Yelahanka, Bangalore  
– 560064.*

*5.2 To Carry on the Day-to-day work  
relating to all aspects of the building,  
apartments, common areas, common  
facilities and common services therein;*



7. *On a plain reading of Section 3 of the said Act of 1960, it is clear that the object of administering, maintaining and running the buildings and apartments and to carry on the day-to-day work relating to all the aspects of the buildings/apartments, common areas and common facilities will not be covered by any of the clauses (a) to (g) of Section 3 of the said Act of 1960. Even according to the case of the appellant, Clauses 5.1 and 5.2 are its dominant objects. In fact, on the earlier date, we had granted time to the appellant to take instructions whether it proposes to apply for deletion of certain objects which are a part of the bye-laws of the appellant Association.*

8. *Today, the learned counsel appearing for the appellant, on instructions, states that if the said two objects are deleted, the registration of the appellant under the said Act of 1960 cannot be maintained.*

9. *Thus, the main object of the appellant was to do something wherein could have been done by an Association formed in accordance with the provisions of the said Act of 1972. In fact, the documents of sale executed by the developer in respect of the flat/apartment contain a stipulation that the purchasers of the flats shall form an Association/Society/Condominium in accordance with the provisions of the said Act of 1972. That is*



*how the learned Single Judge by modifying the impugned order dated 15<sup>th</sup> February, 2019, has clarified that steps can be taken to register the appellant Association under the provisions of the said Act of 1972.*

*10. Thus, after having perused the dominant objects of the appellant Association, we find that the said objects are not covered by Section 3 of the said Act of 1960, and therefore, the appellant could not have been registered under the said Act. We find no error in the view taken by the learned Single Judge when he had proceeded to cancel registration of the appellant.*

*11. As observed by the learned Single Judge, the impugned order as well as this order will not prevent the persons who are members of the appellant Association from taking steps for formation and registration of an Association/Condominium under the provisions of the said Act of 1972 inasmuch as the sale deeds executed in favour of the apartment owners contemplate formation of such Association."*

14. The Co-ordinate Bench of this Court in the case of **Shantharam Prabhu and others Vs. K. Dayanand**



***Rai and others***<sup>5</sup> (Shantharam Prabhu), has held at paragraph No.23 as under:

"23. To Summarise:

*23.1. KAOA would only apply to an apartment where it is used for residential purposes. A flat or an apartment which is used for an office or showroom or shop or godown (and includes garage) cannot be subjected to KAOA and would always continue to be governed by KOFA.*

*23.2. When an apartment is proposed to be constructed or under construction and agreements are entered into, KOFA would apply insofar as the relationship and/or dispute between the purchaser and the Promoter.*

*23.3. KOFA would continue to apply if the Apartment is not subjected to KAOA as afore detailed.*

*23.4. Once an apartment is subjected to KAOA, KOFA would cease to apply and it is only the KAOA, Declaration, Deed of Apartment and bye-laws which would be applicable.*

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<sup>5</sup> CRP No.96/2021 D.D. 08.09.2021



*23.5. In the event of an apartment being removed from the provisions of KAOA in terms of Section 14 of KAOA, KOFA would come into operation.*

*23.6. Essentially KAOA, Declaration, Deed of Apartment and bye-laws would be the provisions under which the relationship between an apartment owner and Association of the Apartment, building, property, which would be governed.*

*23.7. KOFA would apply insofar as the relationship and/or dispute between the purchaser of an apartment and Promoter and any defaults on part of the Promoter. The other enactments like RERA would also be applicable.*

*23.8. Even when an Apartment is not subjected to KAOA and KOFA applies, the dispute and the relationship between the apartment owner and the Association would be governed in terms of the rules and regulations under the Co-operative Society under which the said Association is registered or the terms of articles and memorandum of Association of company under which the said Association is registered.*

*23.9. If the Association is formed under KOFA, registration of the Association would be required under the Karnataka Co-operative Societies*



*Registration Act and/or the Companies Act depending on whether it is a Co-operative Society or a Company which is to be registered.*

*23.10. In the event of a declaration, Deed Apartment and byelaws being executed and the Apartment, building, property is subjected to KAOA, the said documents would have to be registered before the jurisdictional Sub-Registrar and the same be informed to the Registrar of the Co-operative Societies.*

*23.11. There would be no requirement for registration of the Declaration, Deed of Apartment and/or bye-laws with the Registrar of the Co-operative Societies.*

*23.12. If the property is subjected to KAOA, the proceedings if any would have to be filed before the Civil Court of competent jurisdiction.*

*23.13. If a Co-operative Society or a Company is formed to manage the property, and the provision of KOFA being applicable the proceedings would have to be filed in terms of Section 13(5) before a Small Causes Court where a Small Causes Court is established, in the absence thereof, before a Civil Court of competent jurisdiction.*



*23.14. All the apartment owners are not required to sign and execute the Declaration, Deed of Apartment and bye-laws. The Promoter before registration of a sale deed can execute and register the Declaration, Deed of Apartment and bye-laws with the jurisdictional Sub-Registrar being the owner of the Apartment, building and property. If there is a joint development agreement, the owner of the property would also have to join the execution of the registration of the above documents. Suffice it to say, it is only the persons or entities who have registered title in respect of the property who are required to execute and register the above documents.*

*23.15. On the purchase of the property and registration of the sale deed, the purchaser or apartment taker would have to execute necessary Declaration under Form B of KAOR agreeing to be bound by the said Declaration, Deed of Apartment and bye-laws. The Association when formed could always amend the same in terms of the provisions applicable thereto.”*

15. The Division Bench of this Court in the case of

***Proposed Starnest Apartment Owners Co-Operative***



***Society Ltd., Vs. State of Karnataka<sup>6</sup>*** (Proposed  
Starnest) has held at paragraph Nos.16 to 18 as under:

*"16. The narrow dispute in the present appeal is, whether association is to be formed under the Act of 1972 or Co-operative Society, is to be formed under the KOF Act, 1972.*

*17. It is seen from the record that the sale deeds would indicate the entire project is for residential and no part of the project is used or intended to be used towards commercial purpose. That apart, the parties in the sale deed have agreed to abide by the provisions of the Karnataka Apartment Ownership Act, 1972, and to form an Association.*

*18. The contention of learned counsel for the appellant that in view of the project being registered under the provisions of RERA in compliance of Section 11(4)(e), (f), (g) of RERA, a Co-operative Society is to be formed, is not acceptable. The said provisions of RERA would mandate the builder to enable formation of Association or Society or Co-operative Society, as the case may be, of the allottees. As the project under consideration consists only residential units,*

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<sup>6</sup> W.A. No.564/2024 D.D. 18.06.2024



*the said provisions only mandate formation of association of the allottees under the applicable laws. The law applicable in the present case is the Karnataka Apartment Ownership Act, 1972.”*

16. Thus, in light of the law declared by the Co-Ordinate Bench of this Court and upheld by the Division Bench referred *supra*, cannot hold the Court for long to arrive at a conclusion that the petitioners are members of respondent No.4-Society are entitled to have Registration of an Apartment Owners Association under the KAO Act and there cannot be any Association registered under the KCS Act.

17. Another contention of counsel appearing for the Society is that 'Society Formation' has been upheld in WA No.190/2024 and thus, the same is binding on the petitioners. The challenge in W.P. No.25997/2023 by the husband of the petitioners was against the public notice issued by the Returning Officer under Rule 14 (3) of Karnataka Co-Operative Societies Rules, 1960, the Co-



Ordinate Bench of this Court dismissed the writ petition with the following observations:

- "14. Accordingly, the Writ petition is dismissed.*
- 15. Respondent No.5 shall issue fresh calendar of events to hold elections to the Board of 6<sup>th</sup> respondent-Society.*
- 16. Notwithstanding the dismissal of the Writ Petition, in case the petitioners are able to establish that their applications have been rejected or not accepted by the authority, the petitioners are at liberty to avail such statutory remedy before the Appellate Authority. If such an appeal is filed, the same shall be decided in accordance with law without being influenced by the observations made in this Writ Petition.*
- 17. This Court has not expressed anything on the merits of the claim made by the petitioners to be the members of the 6<sup>th</sup> respondent Society. This Court has only examined whether the notification dated 07.11.2023 is to be quashed at this stage or not."*



18. W.A. No.190/2024 preferred by the petitioners therein came to be confirmed holding that the Board of the Co-Operative Society-respondent No.4 has become functional. It is pertinent to note that the challenge in WP No.25997/2023 was only to the calendar of events for conducting the elections and in the said petition, there was no challenge to the validity of the Formation of a Co-operative Society-respondent No.4 for the purpose to manage and maintain the Apartment Complex. This being so, the contention raised by respondent No.4 that the present writ petition needs to be dismissed on the ground that the earlier findings in writ petition confirmed in writ appeal are binding on the petitioners is unsustainable.

19. For the foregoing reasons, the point framed for consideration is answered holding that the Association has to be formed by the Builder under the KAO Act and the Society formed under the KCS Act is not sustainable and this Court pass the following:



**ORDER**

- I. Writ petition is ***allowed***.
- II. The impugned order registering the Society under the KCS Act dated 19.10.2023 issued by respondent No.2-ARCS is hereby ***set aside***.
- III. Respondent No.5-Builder is directed to comply with all the requirements under the law and form an Association of Apartment Owners under the KAO Act and the members of respondent No.4-Society to cooperate in forming an Association for the project known as "Ramky North".

**Sd/-**

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**JUSTICE K.S. HEMALEKHA**