

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

DATED THIS THE 27th DAY OF FEBRUARY, 2020

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO.84/2020

(OLD RERA. APL No. 88 of 2019)

BETWEEN:

- 1) Sri R Narayanaswamy,
S/o Late Sri. Ramaiah
Aged about 68 years
- 2) Sri R Basavaraju
S/o Late Sri Ramaiah
Aged about 63 years
- 3) Sri R Adinarayana,
S/o Late Sri Ramaiah
Aged about 58 years
- 4) Sri R Nagaraj
S/o Late Sri Ramaiah
Aged about 56 years

All resident at No. 117,
Basavashwar Nilaya, Muneshware Temple Road,
Jakkur Village, yelahanka Hobli,
Bangalore North, Bengaluru – 560 064

:APPELLANTS

(By M/s Dhananjay Joshi Associates, Advocate, absent)

AND

1. Mr Nikhil Narayanan,
Son of Sri V P Balagangadharan,
Aged about 31 years,
Residing at Flat No. 402, "Gangotri Residency"
1st Main Road, GM Palya,
New Thippasandra Post,
Bengaluru
2. The Karnataka Real
Estate Regulatory Authority
2nd floor, sliver Jubilee Block ,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027
Represented by Secretary Palakshappa.

:RESPONDENTS

(Sri M V Prashanth Advocate for Respondent-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 29th March 2019 in CMP/181222/0001787 passed by the Adjudicating Officer, RERA Respondent-2. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 84/2020.

This appeal coming on for orders this day, the Chairman, made the following:

JUDGMENT

1. The above appeal is preferred by the developer against the order dated 23rd April, 2019 in CMP/181218/0001787 passed by

the Adjudicating Officer, Respondent 2, granting delayed compensation to the 1st Respondent.

2. Along with the appeal, the appellant had filed I.A.I under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, the 'Act') praying the Tribunal to waive deposit of 30% of the delayed compensation awarded by the learned Adjudicating Officer infavour of Respondent No. 1.

3. While scrutinizing the appeal papers, the office had raised several objections including non-deposit of 30% of the delay compensation ordered by the Adjudicating Officer, which is a condition precedent for preferring an appeal before the Tribunal. The appellant complied with all the office objections, except the mandatory requirement of deposit of 30% of the delay compensation.

4. On 19.2.2020, Sri Uma Shankar, for M/s Dhanajay Joshi Associates, learned counsel for the appellant sought a week's time to find out from his client whether he can deposit 30% of the delay compensation amount in order of maintain the appeal. At the request of the learned counsel for the appellant, the matter was adjourned to 27.2.2020.

5. Today, Ms Chitra for Dhananjay Joshi Associates, learned counsel for the appellant, fairly submits that the appellant has expressed his financial constraint to deposit 30% of the delay compensation awarded by the learned Adjudicating Officer.

6. Her submission is placed on record.

7. It is to be observed that whenever developer wants to challenge the order passed by RERA/learned Adjudicating Officer, he has to deposit atleast 30% of the amount awarded by RERA/Adjudicating Officer as contemplated under Section 43 (5) of the Act, without which, developer cannot maintain the appeal.

8. In the backdrop of the above facts, we deem it necessary to extract relevant portion of Section 43(5) of the Act:

“Section 43(5) - Any person aggrieved by any direction or decision or order made by the Authority or by an Adjudicating Officer under this Act, may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty percent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

9. The above statutory provision of the Act clearly mandates that when an appeal is filed by the promoter/developer, the Appellate Tribunal cannot entertain the appeal without the appellant first depositing before the Appellate Tribunal at least 30% of the compensation or penalty, as the case may be.

10. Further, in the present case, the appellant has expressed his financial constraint to deposit 30% of the delay compensation awarded by the learned Adjudicating Officer.

11. For the foregoing reasons, I.A.I filed by the appellant to waive the statutory deposit of 30% of the delay compensation amount is rejected. In view of rejection of I.A.I, the appeal does not survive for consideration and is, accordingly, dismissed.

12. There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER