

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

**DATED THIS THE 09<sup>th</sup> DAY OF MARCH, 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**

**FR NO.07/2020**

**BETWEEN:**

M/s Commune Properties India Pvt. Ltd.,  
A company incorporated under the  
Provisions of the companies Act, 1956  
Having its registered office at No. 36,  
No. 218, 19<sup>th</sup> main Koramangala, 6<sup>th</sup> Block,  
Bangalore – 560 095  
Represented by its Director,  
Mr. Ratish Kumar

**:APPELLANT**

(By M/s Dhananjay Joshi Associates, Advocate)

**AND**

Ms. Sumathi M  
#24, 2<sup>nd</sup> Main Road,  
A K Colony, Tavarekere Main Road,  
BTM 1<sup>st</sup> Stage, Opp St. Johns Wood Apartment,  
Bengaluru – 560 029.

**:RESPONDENT**

(Respondent Party- in- Person)

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 27<sup>th</sup> November 2018 in CMP/180901/0001208 passed by the Adjudicating Officer, RERA.

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 27<sup>th</sup> November 2018 in CMP/180901/0001208 passed by the Adjudicating Officer, granting delayed compensation to the Respondent.

2. Along with the appeal, the appellant had filed I.A.II under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) praying the Tribunal to waive the deposit of 30% of the refund amount awarded by the learned Adjudicating Officer in favour of the Respondent.

3. The Learned Adjudicating Officer, by the impugned order, as directed the appellant as follows:

“೧) ಫಿರ್ಯಾದುದಾರರಿಂದ ಡಿವಲಪರ್ ಇವರು ಪಡೆದುಕೊಂಡಿರುವ ಪೂರ್ತಿ ಹಣವನ್ನು ಹಿಂದಿರುಗಿಸತಕ್ಕದ್ದು.

೨) ಅದರ ಮೇಲೆ ದಿನಾಂಕ 01/05/20217 ರಿಂದ ಅನ್ವಯವಾಗುವಂತೆ 10.25% ರಂತೆ ವಾರ್ಷಿಕ ಬಡ್ಡಿಯನ್ನು ಸೇರಿಸಿ ಕೊಡತಕ್ಕದ್ದು.

೩) ದಿನಾಂಕ 01/05/2017 ಕ್ಕಿಂತ ಹಿಂದೆ ಫಿರ್ಯಾದುದಾರರಿಂದ ಯಾವ ಯಾವ ದಿನಾಂಕದಿಂದ ಎಷ್ಟೆಷ್ಟು ಹಣವನ್ನು ಪಡೆದುಕೊಳ್ಳಲಾಗಿದೆಯೋ ಆಯಾಯ

ದಿನಾಂಕದಿಂದ ಅನ್ವಯವಾಗುವಂತೆ Karnataka Apartment Ownership Act,  
1972 ಪ್ರಕಾರ ವಾರ್ಷಿಕವಾಗಿ 9% ರಂತೆ ವಡ್ಡಿಯನ್ನು ಕೊಡತಕ್ಕದ್ದು

xx xx ”.

4. While scrutinizing the appeal papers, the office had raised several objections including non-deposit of 30% of the amount 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 refund amount as ordered by the learned Adjudicating Officer.

5. On 26.2.2020, Smt Chitra J for M/s Dhanajay Joshi Associates, learned counsel for the appellant sought a week's time to find out from his client whether they can deposit 30% of the amount in order to maintain the appeal. At the request of the learned counsel for the appellant, the matter was adjourned to 09.3.2020.

6. Today, Ms Pavithra R for Dhananjay Joshi Associates, learned counsel for the appellant, fairly submits that the appellant has expressed their financial constraint to deposit even 30% of the amount awarded by the learned Adjudicating Officer, let alone the entire amount ordered by the learned Adjudicating Officer.

7. Her submission is placed on record.

8. In view of the submission of the learned counsel for the appellant that due to financial constraint the appellant is unable to deposit even 30% of the amount awarded by the learned Adjudicating Officer, it is unnecessary to examine in this case whether the appellant was required to deposit 30% or entire amount as ordered in the impugned order.

9. For the foregoing reasons, I.A.II filed by the appellant to waive the statutory deposit of 30% of the amount awarded by the learned Adjudicating Officer, is rejected. In view of rejection of I.A.II, the appeal does not survive for consideration and is, accordingly, dismissed.

10. There is no order as to costs.

**Sd/-**  
**HON'BLE CHAIRMAN**

**Sd/-**  
**HON'BLE JUDICIAL MEMBER**

**Sd/-**  
**HON'BLE ADMINISTRATIVE MEMBER**