

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

DATED THIS THE 13TH DAY OF JULY 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. 57/2020

(OLD RERA. APL No.59 of 2019)

BETWEEN:

Mantri Developers Pvt. Ltd.,

Mantri Webcity,

A Company incorporated under the Companies Act, 1956

And Having its Registered Office at:-

#41, Mantri House, Vittal Mallya Road,

Bengaluru – 560 005

Represented by its Authorized Signatory

Mr. Ravishankar B S

:APPELLANT

(By Sri Sanjay Nair, Advocate)

AND

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

2. Dr. Gopinath Betarayappa
Aged about 43 years
S/o Sri N N Betarayappa
#51, 2nd Cross, Bhakta Markandeya Layout
Mysore Road,
Bengaluru – 560 026
KARNATAKA
3. Mrs. Anubhuti B Gopinath
Aged about 39 years
W/o Sri Gopinath Betarayappa
#51, 2nd Cross, Bhakta Markandeya Layout
Mysore Road,
Bengaluru – 560 026
KARNATAKA

:RESPONDENTS

(Sri Basavaraj V Sabarad, Adv., for R1)

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 30th November, 2018 in CMP/180522/0000850 passed by the Adjudicating Officer, RERA Respondent No.1. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 57/2020.

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

JUDGMENT

Memo of appearance filed by Sri Basavaraj V Sabarad to appear on behalf of RERA – R1 is taken on record. Registry to show his name as learned counsel appearing for RERA – R1 wherever it is necessary.

Developer has preferred this appeal on 21.05.2019 before the Interim Tribunal (Karnataka Appellate Tribunal) challenging the order dated 30.11.2018 passed in complaint No CMP/180522/0000850 by the learned Adjudicating Officer, RERA, directing the appellant – developer as follows :

“ಡೆವಲಪರ್ ಇವರು ಫಿರ್ಯಾದುದಾರರಿಗೆ ದಿನಾಂಕ: 28/03/2016 ರಿಂದ O/C ಪಡೆದುಕೊಳ್ಳುವ ದಿನಾಂಕದವರೆಗೆ ಮಾಸಿಕವಾಗಿ ರೂ.10,000/- ರೂಗಳನ್ನು ಪರಿಹಾರ ರೂಪದಲ್ಲಿ ಕೊಡತಕ್ಕದ್ದು.”

The Interim Tribunal itself had issued defect notice to the appellant long back asking the appellant to rectify the defects in filing the appeal. One of the main defects is non-deposit of 30% of the amount ordered to be paid as delay compensation to the contesting respondent (complainant) in the impugned order.

Later, the appeal came to be transferred to this Tribunal on 02.01.2020 and adjourned from time to time by granting time to the appellant to comply office objections mainly to deposit 30% of the amount ordered to be paid as delay compensation to the contesting respondent (complainant). Though appellant was granted sufficient time to comply office objections mainly to deposit 30% of the amount ordered to be paid to the contesting respondent towards

compensation, till date, the appellant has not chosen to do the needful.

The appellant instead of complying the mandatory provisions of Section 43(5) of the Act by depositing 30% of the amount ordered to be paid to the contesting respondent (complainant) towards delay compensation, has filed an application IA IV under Section 148 C.P.C. R/W. Proviso to Section 43(5) of the RERA Act praying the Tribunal to enlarge the time to make the statutory pre-deposit of 30%. On 28.02.2020 application was heard and for the reasons assigned in the affidavit, further time of 20 days was granted finally for complying office objections on the ground that the appellant shall not seek further time. However, till today the appellant has not complied with the mandatory provisions of Section 43(5) of the Act.

It is needless to say that in case of appeal by a developer unless the appellant first having deposited with the Appellate Tribunal atleast 30% 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, such appeal shall not be entertained as per Section 43(5) of the Real Estate (Regulations and Development) Act, 2016.

As such, there is no valid ground/reason to grant any more time to the appellant to deposit 30% of the amount ordered to be paid to the contesting respondent (complainant) towards delay compensation.

Hence, the IA IV filed under Section 148 of C.P.C R/w provision to Section 43(5) of the RERA Act to enlarge the time to make the statutory pre-deposit of 30% of the amount ordered to be paid to the contesting respondent (complainant) towards delay compensation is rejected.

Consequently the, appeal is **dismissed** for non-compliance of office objections particularly for non-compliance of mandatory provisions of Section 43 (5) of the Real Estate (Regulations and Development), Act 2016.

No order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER