

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

**DATED THIS THE 13<sup>TH</sup> 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. 59/2020**

**(OLD RERA. APL No.61 of 2019)**

**BETWEEN:**

M/s Mantri Castles Private Limited,  
Mantri Serenity 4

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,  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.  
Represented by its Secretary

2. Mr Radhakrishnan P  
Flat No. 1106, ELM Block,  
Prestige Sunnyside,  
Kadubeesanahalli,  
Bengaluru – 560 103  
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 02<sup>nd</sup> April, 2019 in CMP/181215/0001761 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) 59/2020.

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 02.04.2019 passed in complaint No CMP/181215/0001761 by the learned Adjudicating Officer, RERA, directing the appellant – developer as follows :

“1) The developer is hereby directed to return the own contribution amount Rs. 23,00,000/- to the complainant with interest @9% PA on the respect to payment made on the respective date prior to 01/05/2017 and also directed to pay the interest @ 10.75% PA from 01/05/2017 till the full amount is repaid.

2) The developer is hereby directed to pay Rs.8,98,254/- which is the amount paid by the complainant towards EMI from November 2017 to December 2018 with interest @10.75% P.A.

3) The developer is hereby directed to pay Rs.1,32,891/- which is the amount paid by the complainant towards principal loan amount in the month of 2017 with interest @10.75% P.A.

4) The developer is hereby directed to discharge the bank loan amount with its outstanding EMI with interest if any.

5) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.

6) The developer is directed to pay Rs.5,000/- as cost towards this petition.”

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 refunded to the contesting respondent.

Later, the appeal came to be transferred to this Tribunal on 02.1.2020 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 refunded 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 refunded, till date, the appellant has not chosen to do the needful.

The appellant instead complying the mandatory provisions of Section 43(5) of the Act by depositing 30% of the amount ordered to be refunded to the contesting respondent (complainant), has filed an application IA II under Proviso to Section 43(5) of the Act praying the Tribunal to waive the condition of pre-deposit.

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 merit in IA II and it is liable to be rejected as not maintainable.

Hence, the request made by the learned counsel for the appellant to grant time to deposit 30% of the amount ordered to be refunded to the contesting respondent (complainant) is rejected, accordingly IA II filed by the appellant seeking to waive the condition of pre-deposit is rejected as not maintainable

Consequently, 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**