

**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. 61/2020

(OLD RERA. APL No.63 of 2019)

BETWEEN:

M/s Mantri Developers Private Limited,
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. Mr G S Anil Kumar
Aged about 43 years
S/o G N Srinivasa
Flat No.304, Seshabanu Residency,
Block 2, 4th Main, 6th Cross,
N S Palya, BTM II Stage,
Bengaluru- 560 078.

: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 04th April, 2019 in CMP/181023/0001484 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) 61/2020.

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 04.04.2019 passed in complaint No CMP/181023/0001484 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. 17,23,559/- to the complainant with interest @10.75% P.A. from today.
- 2) The developer is hereby directed to return the 2X amount to the complainant.
- 3) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.
- 4) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- 5) The developer shall pay Rs.5,000/- as cost of 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 (complainant).

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

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