

**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. 71/2020

(OLD RERA. APL No.73 of 2019)

BETWEEN:

Mantri Manyata Lithos,
M/s Mantri Technology Constellations 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 Sunil Kumar S
Aged about 53 years
C/o Asha Sunil,
#618, 8th Main,
7th Cross, HBR Layout, 3rd Block,
Bengaluru- 560 043.
KARNATAKA

:RESPONDENTS

(Sri S N Ashwathnarayan, 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 02nd April, 2019 in CMP/181201/0001700 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) 71/2020.

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

JUDGMENT

Memo of appearance filed by Sri S N Ashwathnarayan 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/181201/0001700 by the learned Adjudicating Officer, RERA, directing the appellant – developer as follows :

“1) The complaint is allowed and the developer to pay delay compensation at the rate of 10.75% on the total amount paid by each complainant with respect to their respective complaint commencing from July 2018 till the possession is delivered.

2) Further the developer is directed to pay Rs.5,000/- as cost to each complainant.

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 III 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 III 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