

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

**DATED THIS THE 07<sup>TH</sup> DAY OF DECEMBER 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. 224/2020**

**(OLD RERA. APL No.295 of 2019)**

**BETWEEN:**

M/s Arattukulam Promoters LLP,  
A Limited Liability Partnership,  
Having its registered office at;  
No. 106/A, 1<sup>st</sup> Main Road,  
Koramangala Industrial Layout,  
5<sup>th</sup> Block, Koramangala,  
Bengaluru – 560 034.  
Represented by its Authorized Signatory  
Mr. Tony Vincent

**:APPELLANT**

(By Sri E. Suhail Ahmed , M/s Trial Base, Advocates)

**AND**

1. Mr. Israni Dilip Bhagwandas  
S/o Mr Israni Bhagwandas,  
Aged about 25 years  
Residing at:  
No 45, 1<sup>st</sup> Floor, Avani Sringeri Nagar,  
DLF Road, Hulimavu,  
Bengaluru-560 076

2. 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

**:RESPONDENTS**

(Respondent No. 1 party-in-person)

(Sri S.A.Sudhindhra for Sri S.N.Ashwathnarayana,  
Advocate for R2)

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 10<sup>th</sup> October 2019 in CMP/190529/0003197 passed by the Adjudicating Officer, RERA Respondent-2. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 224/2020.

This appeal having been heard and reserved, coming on for Pronouncement of Judgment this day, the Chairman, pronounced the following:

### **JUDGMENT**

This appeal is by a Promoter of a Real Estate project challenging the impugned order passed by the learned Adjudicating Officer of RERA.

2. We have heard Sri E.Suhail Ahmed, for M/s Trial Base, Advocates, learned counsel for the appellant. Sri Israni Dilip Bhagwandas. Respondent-1, Party-in-person and Sri S.A.Sudhindra, for Sri S.N.Ashwathnarayan, learned counsel for the Respondent No.2-RERA.

3. The brief facts leading to this appeal are stated as follows:

The appellant is a registered Limited Liability Partnership Firm and is engaged in the business of promoting Real Estate projects.

4. That on coming to know of the real estate project undertaken by the appellant through publications in the name and style "ARATT MILANO", Respondent No.1 along with one Mr Krishnani Pradeep Rameshlal and his wife Mrs. Krishnani Jiya Pradeep, had approached the appellant to purchase a flat in the said "ARATT MILANO". Consequently, an Agreement of Sale dated 5.12.2016 was entered into between them whereunder the appellant agreed to sell Flat No.908, in Block No.'C' located in 9<sup>th</sup> floor of "ARATT MILANO", morefully described in Schedule 'B' to the agreement alongwith the corresponding undivided share, right, title and interest of the land comprised in Schedule-'A' and also common facilities, full amenities and common area, morefully described in Schedule-'C' to the agreement, for a sale consideration of Rs,49,94,341/- (Rupees Fortynine lakhs ninetyfour thousand, three hundred and fortyone only).

5. When things stood thus, respondent No.1 filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short, the RERA Act) before the Real Estate Regulatory Authority (RERA) seeking return of his amount with compensation on the following grounds –

- (i) delay in project delivery;
- (ii) no occupancy certificate available;
- (iii) no amenities functional;

(iv) promoter not at all available to address the issues at Apartment or Builder Office; and

(v) avoiding the customers.

6. The appellant-Promoter filed statement of objections on 12.06.2019 and additional statement of objections on 7.08.2019 resisting the complaint by contending that due to demonetization of currency in circulation by the Government of India in the month of November, 2016 there was large scale disturbance in the cash flow and they could not make payment to the labourers engaged in the construction work and due to introduction of policy by the State Government in the second half of the year 2017 there was a rift between the State Government and sand suppliers and there was severe shortage of sand for almost six months and thus there was delay in the development work of the project and delivering possession of the flat in favour of the allottee. With the above and other grounds they prayed for dismissal of the complaint.

7. The learned Adjudicating Officer, after considering the complaint filed by the allottee and statement of objections filed by the Promoter and hearing the arguments of the complainant, who appeared as party-in-person and learned counsel appearing for the Promoter, by impugned order allowed the complaint and directed the Promoter to pay delay compensation by way of interest on the sale consideration amount mentioned in the sale deed by adding 2% extra on the rate of interest leviable by SBI on housing loan, with effect from 1.05.2019 ( from the

next day of registration of sale deed) till 24.06.2019 ( date of obtaining occupancy certificate) i.e., for a period of 54 days amounting to Rs.79,430/- and further directed the Promoter to provide all the amenities as promised by the Promoter while addressing arguments within 60 days from the date of the order, failing which to pay Rs.20,000/- per month till the date of providing all the amenities and awarded Rs.5,000/- towards cost of litigation.

8. The appellant-Promoter, aggrieved by the said order of the learned Adjudicating Officer, has preferred this appeal seeking to set aside the order on the following grounds:

(i) Sri Suhail Ahmed, learned counsel appearing for the appellant apart from reiterating the grounds urged in the appeal memo, submits that the allottee having obtained registered sale deed from the Promoter in respect of the flat allotted to him, ceased to be an allottee and is not entitled to claim delay compensation from the Promoter.

(ii) The learned counsel contends that no evidence was adduced by the allottee establishing his contention that he was forced to have the sale deed registered in respect of the flat allotted to him even before the Promoter obtaining 'Occupancy Certificate'.

(iii) The learned counsel contends that the Promoter having executed the registered sale deed on 25.04.2019 and delivered

possession of the flat on the same day, there was only a marginal delay of seven months and the learned Adjudicating Officer was not justified in awarding delay compensation by way of interest.

(iv) The learned counsel submits that as per the agreement of sale dated 5.12.2016 the Promoter shall deliver possession of the flat to the allottee within 24 months time from the date of the commencement certificate issued from BDA, however he is entitled to a further grace period of six months for delivering possession of the flat to the allottee subject to there being no delay caused on account of strikes, hartals. Shortage of supply of raw materials like cement, steel, sand etc., or any other unforeseen circumstances of *force majeure*, act of god, strikes, public unrest etc., and contends that on account of demonetization of currency in circulation and shortage of sand due to rift between the State Government and sand suppliers, the Promoter could not complete the construction of the project and deliver possession of the flat to the allottee within the schedule date.

(v) He further contends that the learned Adjudicating Officer failed to have due regard to the factors mentioned in clauses (a) to (d) of Section 72 of the RERA Act while adjudicating the complaint under Section 71 of the Act.

(vi) The learned counsel by relying upon the observations made by the Hon'ble supreme court of India in the case of SECRETARY,

BHUBANESHWAR DEVELOPMENT AUTHORITY Vs. SUSANTA KUMAR MISHRA- reported in (2009)4 SCC 684 and the Judgment of the Bombay High court at paragraphs 137 and 138 of the Judgment in the case of NEELKAMAL REALTORS SUBURBAN PVT. LTD. & ANR, Vs. UNION OF INDIA AND OTHERS- reported in 2017 SCC Online Bom 9302, contends that the grievance of the parties are to be considered based on the terms and conditions enumerated in the agreement entered into between the parties.

9. The learned counsel for the appellant for the above and other grounds urged in the appeal memo, prays for allowing the appeal and setting aside the impugned order.

10. Whereas, the allottee who appears as party-in-person, filed written submissions inter alia contending that *force majeure* i.e., lack of funds due to demonetization and non-availability of sand etc, were faced only for a period of 3 – 5 months and the RERA taking the same into consideration, has held that this period was included in the grace period of six months.

11. The allottee denied the contention of the Promoter that though Promoter had applied for Occupancy certificate on 31.4.2019, it was granted on 24.6.2019 as the concerned authority could not carry out inspection and contends that apartment structure itself was not

completed along with the service lift and necessary fire-fighting equipments were not installed as the project being high-rise apartment.

12. The allottee contends that the amenities such as squash court, badminton court, club house containing fully functional multipurpose Hall with Indoor games such as chess, carom, snooker and table tennis,, passenger lifts in all the 4 Blocks, fully functional rainwater harvesting system, second generator to run the apartment without any issues and with safety are not still completed and he submits that the appellant may be directed to produce the invoices of all these amenities to understand the level of serious efforts made by the appellant in providing amenities.

13. The allottee submits that the appellant-Promoter sent a mail in December 2018 produced as Annexure-I along with the application filed for extension of RERA registration before RERA on 15.9.2018, calling upon him to clear the final dues which are required to be paid at the time of registration of sale deed subject to Occupancy certificate to be obtained by the Promoter, as per Annexure-A, but the Promoter did not possess the occupancy certificate in December 2018 to claim final payment and he was forced to take sale deed, pending obtaining of occupancy certificate by the appellant. The allottee further submits that he being a law-abiding citizen did not chose to occupy and stay in the flat allotted to him before the Promoter obtaining occupancy certificate.



14. The allottee submits that the Promoter by mail dated 29.2.2020 informed the allottee that the advance amount paid by him and other allottees towards maintenance of the project would cease by March 2020 which is nine months after obtaining occupancy certificate as against the maintenance amount collected for one year.

15. Finally, the allottee submits that as per the impugned order the appellant is liable to pay a sum of Rs. 3,52,535/- to him towards delay compensation and prays for dismissal of the appeal.

16. As there is no dispute to the facts that the appellant is a promoter, the project viz., ARATT MILANO undertaken by the appellant is a real estate project and it is located in a planning area as defined under Sections 2(zk), 2 (zn) and 3 of the Act respectively, the points that arise for our consideration in the appeal are :

(I) Whether Respondent No.1 ceased to be an allottee for having obtained a registered sale deed in his favour in respect of the flat allotted to him?

(II) Whether the learned Adjudicating Officer was justified in awarding delay compensation by way of interest on the sale consideration amount mentioned in the sale deed by adding 2% extra to the rate of interest leviable by SBI on housing loan, with effect from 1.05.2019 ( from the next day of registration of sale deed) till 24.06.2019 (date of obtaining occupancy certificate) i.e., for a period of 54 days?

(III) Whether the learned Adjudicating Officer was justified in directing the appellant to provide all the amenities to the allottee within 60 days from the date of the order, failing which to pay Rs.20,000/- per month till the date of providing all amenities?

(IV) What order?

**Reg. Point No.(I):**

17. The learned counsel for the appellant in the course of argument contends that Respondent No.1 having obtained a registered sale deed from the promoter in respect of the flat allotted to him ceases to be an allottee and consequently, is not entitled to claim any relief under the Act.

Firstly, this contention is not sustainable in law as it was not raised as one of the grounds either in the statement of objections or additional statement of objection filed to the complaint before the Authority or in the memorandum of appeal.

Secondly, there is no merit in the said contention in the background of the definition of the word 'allottee' as defined under Section 2(d) of the Act which reads:

2. **Definitions:-** In this Act, unless the context otherwise requires,-

Xx xx xx

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. A plain reading of the above definition would amply make it clear that the word "allottee" in relation to a real estate project includes the person who subsequently acquires the said allotment through sale, transfer or otherwise. Thus, allottee does not cease to be an allottee by virtue of execution of registered sale deed by a Promoter in favour of an allottee in respect of a flat allotted to him. Therefore, obtaining of a registered sale deed by first respondent-allottee from the appellant-Promoter in respect of the flat allotted to him, would not disentitle the allottee to claim benefits available to him under the provisions of the Act.

19. As per proviso to sub-section (1) of Section 17 of the Act, in the absence of any local law, the promoter shall carry out conveyance deed in favour of the allottee or the association of the allottees or the competent authority as the case may be within three months from the date of occupancy certificate. Thus, the promoter could not have carried out conveyance deed in favour of the allottee before obtaining occupancy certificate from the competent authority. Further, as per sub-section(10)

of Section 19 of the Act, the allottee shall take physical possession of the apartment within a period of two months of the occupancy certificate issued for the said apartment. Thus, the facts and circumstances of the case would make us to believe the contention of the allottee that he was forced by the promoter to take sale deed even before the promoter obtaining occupancy certificate, however he being a law abiding citizen, did not chose to occupy the flat allotted to him as it would be contrary to law, till the date of promoter obtaining occupancy certificate i.e, 24.6.2019. Therefore, it cannot be said that the Respondent No.1 ceased to be an allottee for having obtained a registered sale deed in his favour in respect of the flat allotted to him.

Thus, Point No.(I) is answered accordingly and in the negative.

**Reg. Point No.(II) :**

20. The parties to the agreement of sale anticipating that there may be certain unforeseen circumstances in delivering possession of the flat provided for a grace period of six months in clause (7) of the agreement of sale and this six months grace period granted to the promoter to deliver possession of the flat cannot be understood that it is subject to there being no delay caused on account of strike etc., stated in clause (7) of the agreement of sale. As per the agreement of sale entered into between the parties on 5.12.2016, the promoter ought to have delivered

possession of the flat to the allottee within 24 months from the date of commencement certificate i.e., 30.3.2016 issued by BDA with the grace period of six months. This 24 months time provided would expire on 30.3.2018 and 30 months time including the grace period of six months would expire on 30.9.2018. So, in any case, the promoter ought to have delivered possession of the flat to the allottee on or before 30.9.2018. Whereas, he had applied for the occupancy certificate on 30.4.2019 and obtained the same on 24.6.2019. Hence, both execution of the sale deed on 25.4.2019 and registration of the said deed on 30.4.2019 are much prior to the date of obtaining of occupancy certificate i.e., 24.6.2019 from BDA.

21. The Promoter in para (1) of the Statement of objections filed before the learned Adjudicating officer on 12.6.2019 has stated as under:

"...The complainant is well known the fact of the development status of the project which is under completing stage with minor finishing works for which we are not able to obtain the Occupancy Certificate (OC) from the concerned department authority"

Further, in the prayer column of the said objections statement, it is stated that:

"...Further we assure that common amenities is in under finishing stage and accordingly we will obtain the Occupancy

Certificate (OC) in accordance with statutory norms and the said common amenities will be handing over in operational condition to the complainant"

These statements would go to show that as on 30.4.2019, the date on which the Promoter had applied for Occupancy certificate, the construction of the project was not complete.

22. It is not the case of the appellant that there was delay on the part of the allottee in making payment of sale consideration. When the allottee having paid the sale consideration in time, the promoter ought to have delivered possession of the flat allotted to him within the time mentioned in the agreement of sale, as contemplated under Section 18 of the Act. In view of failure on the part of the promoter in delivering possession of the flat within the time specified in the agreement, the allottee is entitled to seek either refund of the amount paid or compensation for the delay in delivering possession.

23. In view of the aforesaid admissions by the appellant themselves, we do not find any merit in the contention of the appellant that he had developed and completed the project and was ready to deliver possession of the flat to the allottee within the time specified under the agreement of sale.

24. The learned Adjudicating Officer, keeping in mind the observation made by the Hon'ble supreme Court in the case referred to

by the learned counsel for the Promoter, taking into consideration the terms of agreement of sale entered into between the promoter and the allottee and the factors enumerated under Section 72, was justified in awarding delay compensation that too only for a period of 54 days i.e., from 1.5.2019 (the next day of registration of sale deed) till 24.6.2019 (the date of obtaining occupancy certificate). Therefore, we do not find any reason to interfere with the impugned order

Point No.(II) is answered accordingly.

**Reg. Point No.(III):**

25. The Promoter in Annexure-A.I and A.II produced along with the application filed by him before RERA on 15.9.2018 for extension of registration of the project has mentioned that the works regarding sanitary fittings, electric wiring, fitting of electric items, lift installation in A and D blocks, parking and drive-ways marking, external building paint, obtaining operational NOC from fire department, obtaining of electric connections are under progress. In Annexure-08, produced along with the appeal- Request for meeting dates- the Promoter himself has admitted that all pending works will be completed as soon as possible before the monsoon starts i.e, by the end of June, 2019. A careful perusal of Annexure-08 "the discussion" made in the meeting held between the Promoter and allottees would clearly show that the

Promoter has undertaken to complete all the pending works by August, 2019.

26. The learned counsel for the appellant, by referring to the averments made in the additional statement of objections filed before RERA on 7.8.2019 reiterated his contention that as per Clause (7) of the agreement of sale, the promoter was having 24 months and a grace period of six months from the date of commencement certificate i.e., 30.3.2016 and contended that the promoter was having time upto 30.9.2018, subject to there being no delay on account of strikes, hartals, etc.,

27. In order to appreciate the contention of the appellant that as on the date of applying for occupancy certificate, he had developed and completed the construction of the project "ARATT MILANO", with all the amenities, no material was produced by the promoter either before the RERA or before this Tribunal. On the other hand, during the hearing of the appeal, the learned counsel for the appellant has fairly admitted that the project is not complete with all the amenities and in due course the promoter will provide all the amenities as agreed by them under the agreement of sale.

28. It is not the case of the appellant that he had provided the amenities within sixty days from the date of the impugned order. On the contrary when the appeal was taken up for final arguments some time



during March, 2020 the learned counsel for the appellant fairly submitted that the work relating to some of the amenities are under progress and will be completed soon.

29. From the materials produced by the appellant themselves at Annexures A.I, A.II produced along with the application filed by the appellant before RERA on 15.9.2018 for extension of registration of the project and Annexure-08 produced along with the appeal, would show that the appellant had taken time till 30<sup>th</sup> August, 2019 for providing all the amenities.

30. Therefore, the learned Adjudicating officer was justified in directing the appellant to pay Rs. 20,000/- per month to the allottee till the date of providing all the amenities.

Point No.(III) is answered accordingly.

31. Before concluding, we need to mention that as per section 44(5) of the Act, the appeal ought to have been disposed of as expeditiously as possible and within a period of sixty days from the date of receipt of appeal. In this regard, it may be stated that the appeal was filed before the Interim Tribunal (KAT) on 6.12.2019 and on establishment of this Tribunal, the appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 224/2020. The appeal was first listed for orders on 9.1.2020, and notice was issued to

Respondents. After service of notice, at the request of the parties, time was granted to explore possibility of amicable settlement. Since the dispute could not be settled between the parties amicably, appeal was heard and reserved for pronouncement of Judgment on 31.3.2020. However, due to Covid -19 pandemic, the judgment could not be prepared and pronounced as the tribunal was not functional till June, 2020. On 4.6.2020, the appeal was listed for further arguments as certain clarifications and documents were sought from the appellant regarding extension of registration of the project by RERA. Further, for presence of either the appellant or contesting respondent No.1, the matter was adjourned from time to time and finally the appeal was listed for pronouncement of Judgment on 7.12.2020 and disposed of. Due to aforesaid unforeseen reasons, appeal could not be disposed of in time.

32. In view of the above aspect of the matter and for the reasons stated hereinabove, we pass the following:

O R D E R

- (i) The appeal is dismissed;
- (ii) The impugned order dated 10<sup>th</sup> October 2019 passed by the learned Adjudicating Officer, RERA Respondent-2 in CMP/190529/0003197 is hereby confirmed.
- (iii) Consequently, the RERA is hereby directed to release the amount deposited by the appellant

while preferring the appeal before the Interim Tribunal (KAT) in compliance of proviso to Section 43(5) of the Act in favour of Respondent No.1-complainant immediately after the expiry of the appeal period and the appellant is directed to pay the balance amount to Respondent No.1-complainant as per the impugned order;

- (iv) There is no order as to costs.
- (v) Registry is directed to comply with the provisions of Section 44(4) of the Act and return the LCR to RERA.

**Sd/-  
HON'BLE CHAIRMAN**

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

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