

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

DATED THIS THE 11TH DAY OF DECEMBER 2020

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

FR (K-REAT) NO. 148/2020

BETWEEN:

NHDPL South Private Limited,
No.110, Level -1,
Andrews Building, MG Road,
Bengaluru, Karnataka – 560 001
Represented by its Authorised Representative
Mr. Gopinath K S

Previously known as:

Nitesh Housing Developers Private Limited,
No.110, Level-1, Andrews Building,
MG Road, Bengaluru, Karnataka – 560 001. **:APPELLANT**

(By M/s Shetty and Hegde Associates, Advocate)

AND

- 1. Smt Dr. Bindu M Kutty,**
Aged about 60 years,
W/o Dr. A.V. MoideenKutty,
#11, Type-5, Block-1, Nihmans Quarters,
BRC Campus, Hosur Road,
Bengaluru – 560 029.
- 2. Smt Dr. A.V. MoideenKutty,**
Aged about 61 years,
S/o Late A AVeeran,
#11, Type-5, Block-1, Nihmans Quarters,
BRC Campus, Hosur Road,
Bengaluru – 560 029.

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

:RESPONDENTS

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the order dated 23rd December, 2019 in CMP/190801/0003731 passed by the Adjudicating Officer, RERA Respondent.

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

JUDGMENT

As per proviso to sub-section (5) of Section 43 of the RERA Act where promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty percent 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 maybe, before the said appeal is heard.

Admittedly, this is an appeal by a developer challenging the impugned order passed by learned Adjudicating Officer wherein the appellant was directed to pay delay compensation with

interest to the contesting Respondent who is an allottee of a flat, without depositing any amount much less the amount as contemplated under proviso to Section 43(5) of the RERA Act while preferring the appeal.

Though appellant has preferred the above appeal as long back as 01.10.2020 till date, has not deposited any amount towards delay compensation much less the amount as contemplated under proviso to Section 43(5) of the RERA Act inspite of granting sufficient time.

Hence, the prayer made by the appellant to grant some more time to make deposit is rejected.

Consequently, the appeal is dismissed for non-compliance of proviso to Section 43(5) of the RERA Act.

**Sd/-
HON'BLE CHAIRMAN**

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