

**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. 151/2020

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. Mrs Usha Subbanna
Aged about 68 years,
W/o Mr Subbanna,
R/at No.25, 8th Cross,
Kumara Park West,
Bengaluru – 560 020.
2. 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 28th February, 2020 in CMP/UR/190917/0004217 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 may be, 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 return the amount of the allottee with interest, 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 05.10.2020, till date, has not deposited any amount much less the amount as contemplated under proviso to Section 43(5) of the RERA Act while preferring the appeal, 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