

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

**DATED THIS THE 11<sup>TH</sup> 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. 152/2020**

**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. Mr T S Rajaram,  
Aged about 50 years,  
S/o R V Swaminathan,  
No: 36/201, Mantri Residency,  
Bannerghatta Road, (Loyola Bus Stop),  
Bengaluru – 560 076.
2. Mrs R Srimathy,  
Aged about 47 years,  
S/o T S Rajaram,  
No: 36/201, Mantri Residency,  
Bannerghatta Road, (Loyola Bus Stop),  
Bengaluru – 560 076.

- 3.** Real Estate Regulatory Authority,  
Ground Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> 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 13<sup>th</sup> November, 2019 in CMP/190713/0003394 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**