

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

DATED THIS THE 23RD 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

FR (K-REAT) NO. 176/2020

BETWEEN:

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

Currently known as:

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

2. Nitesh Estates Limited,
No. 8, 7th Floor, Nitesh Timesquare,
M.G Road,
Bengaluru, Karnataka – 560 001.

Currently known as:

NEL Holdings South Limited,
No. 8, 7th Floor,
Nitesh Timesquare, M.G Road,
Bengaluru, Karnataka – 560 001.
Represented by its Authorised Representative
Mr. Gopinath K S

:APPELLANT

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

AND

1. Sudheer Pakala,
1136, A Block, Sahakaranagar,
Bengaluru – 560 092.
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 06th September, 2018 in CMP/180322/0000607 passed by the Adjudicating Officer, RERA Respondent.

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

JUDGMENT

The appellant has preferred this appeal challenging the impugned order passed by the learned Adjudicating Officer wherein he was directed to pay a sum of Rs. 2,652/- per month from August, 2014 to April, 2017 and further to pay Rs. 10,000/- per month from May, 2017 till the date of notice of possession of the flat to the allottee, towards delay compensation.

2. 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.

3. 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.

4. Though appellant has preferred the above appeal as long back as 20.11.2020, till date, the appellant has not deposited any amount much less the amount as contemplated under proviso to Section 43(5) of the RERA Act, inspite of granting sufficient time.

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

6. 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 JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

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