

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

DATED THIS THE 10TH DAY OF FEBRUARY, 2021

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. 369/2020

BETWEEN:

M Ramu,
S/o Late N Muniswamy, Aged 53 years,
Roshan Gardenia Apartment,
No. 1373, 95-2/95-3,
Uttarahalli Village & Hobli,
Bangalore – 560 061

:APPELLANT

(By Sri G S Venkat Subbarao, Advocate)

AND

1. The Adjudicating Officer,
Real Estate Regulatory Authority
No.1/14, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027
2. Ramesh Nayak B
S/o B K Nayak,
Aged about 48 years,
No.G-3, Anjanadri Royal Nest,
3rd Main, 4th Cross, KSRTC Layout,
Uttarahalli, Bengaluru – 560 061

:RESPONDENTS

(Sri Ramesh Nayak B, R2-Caveator-Party-in-person)

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 31st January, 2020 in CMP/181007/0001381 passed by the Adjudicating Officer, RERA Respondent No. 1.

This appeal coming on for hearing this day, the Chairman, passed the following:

JUDGMENT

The appellant/promoter has preferred this Appeal challenging the impugned order passed by respondent No.1/RERA, which reads as under:

- a. The Complaint filed by the complainant bearing No.CMP/181007/0001381 is hereby allowed.
- b. The developer is hereby directed to return amount of Rs.7,81,561/- together with interest @ 9% p.a. on the respective amount paid on the respective date till 30/04/2017 and @ 2% above the MCLR of SBI commencing from 01.05.2017 till realization of the entire amount.
- c. The developer is hereby directed to refund Rs.5,45,239/- which was paid towards tax to the complainant and recover the same from the department or from the new buyer.
- d. The developer is hereby directed to discharge the bank loan along with its interest, EMI if due, EMI if paid by the complainant and any other statutory charges.
- e. The complainant is hereby directed to execute cancellation agreement of sale after realization of the entire amount.

f. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.

2. Respondent No.2, who appeared as party-in-person, has filed an Application (I.A-II) under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act') praying the Tribunal to direct the appellant to deposit 100% of amount including interest and compensation as per the order passed by the Real Estate Regulatory Authority.

3. Sri Ramu, proprietor of the appellant/Company, filed objections opposing I.A-II and praying to dismiss the same as not maintainable. He submitted that he is not in a position to deposit the total amount payable to respondent No.2/allottee as per the impugned order.

4. This Tribunal, by detailed order dated 27.01.2021, allowed the application (I.A-II) holding that appellant is required to deposit the total amount payable to the allottee as per the impugned order before the Appeal is taken up for hearing and the appellant was granted time upto 08.02.2021 to deposit the total amount payable to the allottee including interest as per the impugned order by deducting the amount already deposited and in the event of appellant depositing the amount, Office was directed to list the appeal for final argument on 10.02.2021 or else, to list the Appeal for dismissal.

5. Since the Appellant failed to deposit the total amount payable to the allottee as per the impugned order and as ordered by this Tribunal on 27.01.2021 while allowing I.A-II, Appeal was listed for dismissal on 10.02.2021. That, on 10.2.2021, the appellant neither appeared nor made an attempt to deposit the total amount payable to the allottee as per the impugned order and as ordered by this Tribunal on 27.01.2021 while allowing I.A-II.

6. For the reasons stated above, the following order is passed:

- 1) Appeal is dismissed for non-depositing of the total amount payable to the allottee as per the impugned order in compliance of the proviso to Section 43(5) of the RERA Act.
- 2) The Registry is hereby directed to refund the amount deposited by the appellant with this Tribunal in part compliance of proviso to Section 43(5) of the Act by issuing either cheque or DD in the name of the Proprietor of the appellant/Company viz., Ramu M., but by deducting TDS, within two weeks from the date of appellant furnishing necessary documents.

3) The Registry is hereby directed to comply with the provisions of Section 44(4) of the Act and to return the records of RERA, if received, forthwith.

**Sd/-
HON'BLE CHAIRMAN**

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

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

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