

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

DATED THIS THE 24TH DAY OF FEBRUARY, 2021

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

**APPEAL (K-REAT) NO.79/2020
(OLD RERA. APL No. 81 of 2019)**

BETWEEN:

Zuari Infracore India Limited,
Adventz Centre, 1st Floor, 28,
Union Street, Cubbon Park,
Bengaluru – 560 001
Represented by its Authorised signatory
Mrs Anshul Amit Basal,
Son of J P Basal,
Aged about 39 years.

:APPELLANT

(By Sri Rajiv Khaitan & Smt Rashmi Deshpande Advocate)

AND

1. Mr Narasimha Manja
2. Mrs Veena Manja
Both are residing at
No. 201, Pariwar Shanbag,
Satyabhama Nagar,
Vijaya bank Layout,
Bannerghatta Road,
Bengaluru – 560 076
3. Real Estate Regulatory Authority,
Silver Jubilee Block, 3rd Cross road,
Sampangi Ramanagar,
Bengaluru – 560 002

:RESPONDENTS

(Sri Narasimha Manja for R1- Party-in-person)

(Smt Veena Manja for R2 – Party-in-person)

(R3 served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 02nd April, 2019 in CMP/181129/0001690 Adjudicating Officer, RERA Respondent No. 3. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 79/2020.

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

JUDGMENT

The Promoter has preferred this Appeal challenging the order passed by learned Adjudicating Officer, directing the promoter to return the amount of the allottee with interest.

2. Appellant, while preferring this Appeal before the Interim Tribunal (KAT) had deposited 30% of the principal amount payable to the allottee as per the impugned order with the RERA in part compliance of proviso to Section 43(5) of the RERA Act. After transfer of the above Appeal by the Interim Tribunal (KAT) to this Tribunal, the appellant tried to negotiate with the allottee for amicable settlement and paid the balance of principal amount to the allottee directly, but failed to finalise the settlement. The Tribunal, after hearing arguments on main Appeal for some time, noticed that this is an appeal by promoter challenging the order passed by learned A.O., directing the promoter to return the amount of the allottee with interest and without depositing the total amount payable to the allottee, as per the impugned order, cannot take up such Appeal for hearing as has been

held by this Tribunal while passing order on I.As. filed in Appeal Nos.113/2020 and connected Appeal No.117/2020 and in Appeal No.363/2020, relying upon a judgment of Allahabad High Court in 1) RADICON INFRASTRUCTURE AND HOUSING PRIVATE LIMITED vs. KARAN DHYANI (2019 SCC All 4454) and the same High Court of Lucknow Bench in 2) AIR FORCE NAVAL HOUSING BOARD, AIR FORCE STATION RACE COURSE vs. UNION OF INDIA, MINISTRY OF HOUSING & URBAN POVERTY AND ORS (Second Appeal No.122/2019 DD 15.11.2019) and the Hon'ble High Court of Punjab and Harayana at Chandigarh in the case of 3) EXPERION DEVELOPERS OVT. LTD. vs. STATE OF HARAYANA AND OTHERS (CWP No.38144/2018) and connected cases.

4. The appellant, inspite of granting sufficient opportunity, failed to deposit the total amount payable to the allottee as per the impugned order.

5. In view of the above, following

ORDER

- 1) Appeal is dismissed for non-depositing of the total amount payable to the allottee as per the impugned order in part compliance of proviso to Section 43(5) of the RERA Act.
- 2) The impugned order passed by learned Adjudicating Officer remains undisturbed.

- 3) The Secretary, RERA, is hereby directed to release the amount deposited by the appellant with RERA while preferring the above Appeal before the Interim Tribunal (KAT) in favour of the respondents 1 and 2 /allottees after expiry of the appeal period but within next four weeks.
- 4) Respondent Nos.1 and 2 are at liberty to recover the balance amount, if any, from the promoter, as per the impugned order.
- 5) In view of disposal of the Appeal, pending I.As., if any, stand disposed of, as they do not survive for consideration.
- 6) The Registry is directed to comply provision of Section 44(4) of the RERA Act and to return the records of RERA, if received.

**Sd/-
HON'BLE CHAIRMAN**

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