

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

DATED THIS THE 08TH DAY OF MARCH, 2021

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

K-REAT FR NO. 19/2021

BETWEEN:

M/s. Maxworth Realty India Limited,
"KMP House", #12/2,
Yamuna Bai Road,
Madhavnagar,
Bangalore-560 001.

Represented by its Proprietor:

Mr. Kesava K,
Age: 45 years.

: Appellant

(By Sri Prabhu Pujar, Adv., for appellant)

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd floor, Silver Jubli Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.

Represented by its Secretary.

2. Mr. Aravid Ved,
C-601, Corona Optus Apartment,
Sector-37c,
Haryana-12205.

: Respondents

This case 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 06.10.2020 passed by the Adjudicating Officer, RERA, in Complaint No.CMP/180918/0001283.

This case coming on for hearing this day, the Chairman delivered the following:

JUDGMENT

This Appeal is by promoter of a Real Estate Project, challenging the order dated 06.10.2020 passed by learned Adjudicating Officer, directing the appellant to return the amount of Rs.2,00,000/- of the allottee along with simple interest at 9% p.a. from the date of payment till 30.04.2017 and at the rate of 2% above the MCLR of SBI from May 2017 till realization.

2. This Tribunal, on Interlocutory Applications 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, has held as under:

“Where a promoter files an Appeal with the Appellate Tribunal challenging the order passed by RERA, imposing penalty for violation of the provisions of the RERA Act, without the promoter first having deposited with the Appellate Tribunal atleast 30% of the penalty or such higher percentage, as may be determined by the Appellate Tribunal, such Appeal shall not be entertained.

Where a promoter files an Appeal challenging the order passed by learned Adjudicating Officer of RERA, directing him to return the amount of the allottee or pay delay compensation for the delay in delivering possession of an Apartment with or without interest, in such Appeal, promoter shall initially deposit atleast 30% of the amount and shall deposit balance 70% of the amount payable to the allottee, as per the impugned order, before the Appeal is heard.

3. This appeal was filed on 09.02.2021. Since the appellant has not deposited even 30% of the amount payable to the allottee as per the impugned order, the Appeal was listed before the Court on 17.02.2021 with an Office objection that appellant has not complied with the proviso to Section 43(5) of the Act. Although there was no representation for the appellant on 17.02.2021, in order to give an opportunity, the appellant was granted time finally, upto 05.03.2021 to comply with the proviso to Section 43(5) of the Act, with a condition that, failing to make pre-deposit on or before 05.03.2021, the Appeal will be listed before the Court for Orders today as to why the Appeal should not be dismissed for non-compliance of proviso to Section 43(5) of the Act.

4. Even today, learned Counsel for the appellant seeks time.

5. In such and similar matters, several High courts have already held that the appellant, without making pre-deposit, cannot protract the proceedings, thereby defeat the provisions of the Act.

6. Hence, the request made by the learned Counsel for the appellant to grant some more time to make pre-deposit, as contemplated under proviso to Section 43(5) of the RERA Act, is rejected.

7. Consequently, Appeal is dismissed for non-compliance of proviso to Section 43(5) of the Act.

**Sd/-
HON'BLE CHAIRMAN**

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

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