

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

DATED THIS THE 19TH DAY OF MARCH 2021

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

APPEAL (K-REAT) NO. 74/2020

(OLD RERA APPEAL No.76/2019)

BETWEEN

M/s. Shrivision Homes Private Limited,
A Company Incorporated under the provisions of
the Companies Act, having its present Office
at No.31, 2nd Main Road, T Chowdaiah Road,
Near Bhashyam Circle, Sadashivnagar,
Bengaluru-560 080.

Represented by its Authorised Signatory,
Mr. Naveen Kumr J.,
S/o late Janardhan Rao,
Age: 43 years,
Being Authorised vide
Letter of Authority issued by its
Director in pursuance of its Board
resolution dated 05.12.2020.

:Appellant

(By M/s. JSM Law Partners, Adv., for appellant)

AND:

1. The Adjudicating Officer,
The Karnataka Real Estate
Regulatory Authority,
Second Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.

2. Mr. Soumitra Kumar Saha,
S/o Profulla Kumar Saha,
Age: 51 years,
R/at No.B-214, Euphoria Apartment,
Iblur, Off Outer Ring Road and
Sarjapur Road Crossing,
Bengaluru-560 102.

:Respondents

(R-1 served, un-represented)

(By Sri Rajendra Babu, Advocate for R-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) to set aside the order dated 21.03.2019 passed in Complaint No.CMP/190116/0001882 by respondent No.1-Adjudicating Officer and later transferred to this Tribunal on 02.01.2020 and re-numbered as Appeal (K-REAT) No.74/2020.

This Appeal, coming on for hearing on for orders, this day, the Hon'ble Chairman, delivered the following:

JUDGMENT

The appellant, Promoter of a Real Estate Project, has preferred this Appeal on 27.5.2019 before the Interim Tribunal (KAT) challenging the order dated 21.03.2019 passed in Complaint No.CMP/190116/0001882 by learned Adjudicating Officer, directing to return the amount of the allottee.

2. On establishment of this Tribunal, the Appeal came to be transferred to this Tribunal.

3. After transferring of the Appeal from the Interim Tribunal to this Tribunal, the appellant has deposited 30% of the amount as per the impugned order.

4. On 25.09.2020, the Appeal was admitted.

5. This Tribunal, while passing orders 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 that in an Appeal by a promoter challenging the order of the learned Adjudicating Officer directing the promoter to return the amount of the allottee or to pay compensation for the delay in delivering possession of an apartment, without the promoter depositing the total amount payable to the allottee, as per the impugned order, such Appeal cannot be heard.

6. In view of the same, this Tribunal, by order dated 18.02.2021, granted time to the appellant, finally, upto 16.03.2021 to deposit the total amount payable to the allottee, as per the impugned order, by deducting the amount already deposited and in the event of depositing the total amount, as stated above, Office was directed to list the Appeal for arguments, or else for dismissal.

7. Today, learned Counsel appearing for the appellant/promoter seeks some more time to deposit the balance amount.

8. Whereas, learned Counsel appearing for the allottee opposes for granting time on the ground that even to this date, the promoter has not made any efforts either to settle the claim of the allottee or to pay the balance amount.

9. For the reasons stated above, the request made by the appellant to grant some more time to deposit the balance amount is rejected and the following order is passed:

ORDER

- 1) Appeal is dismissed for non-depositing the total amount payable to the allottee as per the impugned order.
- 2) The Registry of this Tribunal is hereby directed to release the amount deposited by the appellant while preferring the above Appeal with this Tribunal in part compliance of proviso to Section 43(5) of the RERA Act, along with interest, if any,

accrued thereon, by deducting TDS, in favour of the allottee, but that shall be done only after the expiry of the Appeal period, but within next two weeks.

- 3) In view of dismissal of the Appeal, all pending I.As., stand rejected, as they do not survive for consideration.
- 4) In view of dismissal of the Appeal, it is open for the allottee to recover the balance amount by initiating appropriate proceedings against the promoter.
- 5) The Registry is hereby directed to comply Section 44(4) of the RERA Act and return the records of the RERA, if received.

**Sd/-
HON'BLE CHAIRMAN**

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

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