

**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. 356/2020

BETWEEN

M/s. Lily Realty Pvt. Ltd.,
Company incorporated under the
Companies Act, 1956,
Having its Registered Office at:
3rd Floor, Bengal Chemicals Building,
No.502, Veer Savarkar Marg,
Prabhadevi,
Mumbai-40025
And its Regional Office at
No.19/1, 2nd Floor,
Doddamane Building,
Vittal Mallya Road,
Bengaluru-560 001.
Represented by its Authorised Signatory,
Mr. Haresh Kumar.

:Appellant

(By Sri Sanjay Nair, for M/s. Anup S Shah Law Firm, Adv.)

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
Represented by its Secretary.

2. Jayanta Chakrabarti,
93A, K.N. Sen Lane,
Kasba-700042, Kolkata District,
West Bengal-700042.

:Respondents

(R-1-served, un-represented)

(R-2: Sri Jayanta Chakrabarti, party-in-person, present)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the order dated 03.01.2020 passed in Complaint No.CMP/190712/0003559 by respondent No.1.

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

JUDGMENT

The appellant, who is a promoter of a Real Estate Project, has preferred this Appeal challenging the order dated 03.01.2020 passed by learned Adjudicating Officer in Complaint No.CMP/190712/0003559, who directed the appellant to return the amount of the allottee with interest.

2. This Appeal was filed on 29.09.2020 and on 16.02.2021, we allowed I.A-I filed under Section 5 of the Limitation Act and condoned the delay in preferring the Appeal, subject to payment of costs of Rs.2,000/- to the allottee and further, we admitted the Appeal and granted time to the appellant, finally, upto 15.03.2021 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 appellant depositing the total amount, as ordered above, Office was directed to

list the Appeal today for arguments, failing to do so, the Office was directed to list the Appeal for dismissal.

3. Today, learned Counsel appearing for the appellant/promoter seeks further time to deposit the amount.

4. Whereas, the allottee, who appears as party-in-person submits that even costs of Rs.2,000/- imposed while allowing I.A-I has not been paid to him. Further, he submits that he has to come all along from Calcutta and he has become old and fed up with the non-cooperative act of the appellant and neither he got the house nor got back the money paid to the promoter. He submits that the promoter is not forthcoming for any kind of settlement.

5. This Tribunal, while passing orders on Interlocutory Applications 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 delay compensation, without the promoter depositing the total amount payable to the allottee, Appeal cannot be heard.

6. In view of the same, following

ORDER

- (1) Appeal is dismissed, for non-deposit of the total amount payable to the allottee, as per the impugned order, with costs of Rs.10,000/- payable from the promoter to the allottee.
- (2) Further, for non-payment of costs while allowing I.A-I, order passed on I.A-I is recalled.
- (3) The Registry is hereby directed to release 30% of the amount deposited by the appellant, in favour of the allottee, along with interest, if any, accrued therein, but by deducting TDS, but that shall be done after the expiry of the Appeal period and within two weeks thereafter.
- (4) The Registry is hereby directed to comply Section 44(4) of the RERA Act and return the records of the RERA, if received.

- (5) In view of dismissal of the Appeal, pending I.As., if any, stand rejected, as they do not survive for consideration.
- (6) It is open for the allottee to initiate appropriate proceedings to recover balance amount and costs after expiry of the Appeal period.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

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