

IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL, BENGALURU

DATED THIS THE 23rd DAY OF MARCH, 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. 390/2020

BETWEEN:

1. Relationship properties Pvt. Ltd.,
A Company incorporated
Under the companies Act, 2013
And having its Registered office at
No.70, Nagindas Master Road,
Fort, Mumbai – 400 023.

And Operational corporate office at
No. 1/1, Binnypet,
Hosakere Road,
Bangalore – 560 023.

Represented by its Authorized Signatory
Mr. Anand Rao C.B
Email id: anand.rao@shapoorji.com
Phone number: -9986644697

:APPELLANT

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

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru – 560027
Represented by its Secretary

2. Mr Rajesh Kumar,
Aged about 63 years,
Residing at #10, 2nd Block,
3rd Stage, 2nd Main, Basweshwar Nagar,
Bangalore – 560 079, Karnataka.

:RESPONDENTS

(R1- RERA, served-unrepresented)

(Smt Malavika S for M/s Ram Bhat & Sreepada Associates, Adv., for R2)

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 22nd July, 2019 in CMP/190311/0002417 passed by the Adjudicating Officer, RERA Respondent No. 1.

This appeal coming on for argument this day, the Chairman, delivered the following:

JUDGMENT

The appellant/Promoter of a Real Estate Project, has preferred this Appeal on 30.01.2020 before this Tribunal, challenging the order dated 22.07.2019 passed in Complaint No.CMP/190311/0002417 by learned Adjudicating Officer, directing the promoter to return the amount of the allottee.

2. In part compliance of proviso to Section 43(5) of the RERA Act, the appellant has deposited 30% out of the amount payable to the allottee, as per the impugned order, with this Tribunal, while preferring the Appeal.

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 another judgment of 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 a judgment of the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of 3) EXPERION DEVELOPERS PVT. 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 either 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 21.01.2021, granted time to the appellant, finally, upto 08.02.2021 to deposit the total amount payable to the allottee, as per the impugned order 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, on 12.02.2021. Even on 12.02.2021, the promoter was again granted time finally upto 05.03.2021 to deposit the total amount payable to the allottee, as per the impugned order

and Office was directed to list the Appeal for final arguments on 09.03.2021, or else for dismissal on 09.03.2021. Once again, on 09.03.2021, time was granted to the promoter to deposit the amount, as stated above, on or before 16.03.2021, subject to payment of costs of Rs.2,500/-, imposed while allowing delay application, to the allottee and the Office was directed to list the Appeal for further orders today.

7. Today, learned Counsel appearing for the appellant submits that according to his instructions, the promoter have expressed their inability to deposit the total amount payable to the allottee as per the impugned order.

8. Whereas, Smt. Malavika S, learned Counsel appearing for the allottee, reiterated her submission, contending that this is an appeal by the promoter of a Real Estate Project and without the promoter depositing the total amount payable to the allottee, as per the impugned order, Appeal cannot be heard.

9. In view of the submission made by the learned Counsel for the appellant that the promoter have expressed their inability to deposit the total amount payable to the allottee, as per the impugned order, the following

ORDER

- 1) Appeal is dismissed for non-depositing the total amount payable to the allottee as per the impugned

order and as contemplated under proviso to Section 43(5) of the RERA Act.

- 2) The Registry is hereby directed to release the amount deposited by the appellant while preferring the Appeal before this Tribunal in part compliance of proviso to Section 43(5) of the Act, along with interest, if any, accrued thereon, but by deducting TDS, by issuing either a cheque or DD in the name of the allottee, within two weeks from the date of allottee furnishing necessary documents.
- 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, the allottee is at liberty to initiate appropriate proceedings for recovery of the balance amount and for enforcement of remaining part of the impugned order of RERA 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**

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