

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

DATED THIS THE 24th DAY OF MARCH 2021

PRESENT

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 253/2020

BETWEEN:

Sri Manjunath L Naik
S/o Late Shri. L.V. Naik
Aged about 56 Years
Residing at No. 56, 3rd Main S.B.M layout
Anand Nagar
Bengaluru

APPELLANT

(Rep. by Sri Prashanth T Pandit, Advocate)

AND

1. Karnataka State Government Employees House Building
Co-Operative Society
Represented by its Secretary
Having its office at No.142, Vellalam Nilaya
CHBS Layout, 8th Main, 18th Cross,
Vijayanagar,
Bengaluru-560 040.

2. Karnataka Real Estate Regulatory Authority
1st/14, 2nd floor, Silver Jubilee Block,
Unity Building Backside,
CSI Compound, 3rd Cross, Mission Road,
Bengaluru- 560 027.

RESPONDENTS

(Rep. by Sri V Krishna Murthy, Advocate for R1)

(R2 Served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the order dated 07.03.2020 passed in CMP/171016/0000146 by the Single Member of the RERA Authority.

This appeal, coming up for orders, the same having been heard and reserved for pronouncement of Judgment this day, the Judicial Member delivered the following:

J U D G M E N T

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 r/w Rule 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred in short as '**The Act and the Rules**') against the impugned order dated 07th March 2020 passed by the Single Member of the RERA Authority.

2. Facts of the appellant's case in brief are that:

- a) The appellant is a member in the first Respondent housing co-operative society in existence since 2001 and is mainly carrying on the work of developing the residential layouts for its members. In the year 2007 the appellant had applied for allotment of a residential site measuring 40x60 Feet in Doddaladamar, 2nd Stage of Mysore Road, Bengaluru by paying consideration amount of Rs. 9 Lakh. The

first Respondent has issued a letter dated 10.03.2008 stating that the layout is in the final stage and site would be allotted to its members who would make final payment before 16.04.2008 and accordingly appellant made full payment of the consideration amount. Subsequently when the appellant approached R1 regarding the allotment of site the respondent post pone the allotment on one pretext or the other and finally in the year September, 2016 respondent sent a letter of allotment stating that site bearing no 621, Tavarekere block 2 (without mentioning the Survey number) has been allotted to the appellant. Then the appellant visited the site location and to his utter surprise there was no formation of layout at all. It is contended that the respondent has made a false assurance and cheated the appellant by promising the allotment of site on 20.07.2017. Appellant sent a legal notice and the R1 has replied the said notice belatedly on 16.09.2016 stating that the site No. 621 in Tavarekere has been allotted to appellant. Presently the site is lacking basic amenities like electricity and water and located

in a different location than the one promised by the R1.

It is submitted that appellant filed a complaint bearing No. 2844/2017 before the second additional district consumer forum under the consumer protection Forum seeking direction to R1 to allot and registered the promised site measuring 40x60 feet with all basic amenities like electricity, water, tar road, UGDC and with a proper site formation at the promised location and to pay sum of Rs. 3 lakh as compensation for mental injury. The appellant has also filed a complaint No. CMP/171016/0000146 before the Real Estate Regulatory authority, Karnataka to register the complaint and to initiate necessary legal proceedings as per the Act and Rules against the R1 and the same has been dismissed by the Single Member of the RERA Authority as not maintainable under Section 31 of the Act 2016. The Appellant being aggrieved by the impugned order of the Single Member of the RERA Authority preferred the present appeal on the following grounds:

- It is contended that the remedy under the RERA Act is in addition to other remedies available to consumer under relevant provisions of the consumer protection Act. It is further contended that the jurisdiction of consumer forum and commission constituted under consumer protection Act is not ousted by RERA.
- It is contended that the remedies are independent of each other and the Karnataka-RERA has wrongly interpreted the judgment of the Hon'ble Supreme court on the issue on hand.
- The impugned order passed by the RERA Authority is perverse, not maintainable either in law or on facts and liable to be set aside.
- It is contended that the impugned order is not supported by any valid reason and the procedure followed by the authority is against the principles of law and natural justice.

For the above grounds made out in the appeal the appellant prayed to set aside the impugned order dated 07.03.2020 passed by RERA Authority by allowing the appeal.

After service of notice R1 & R2 appeared through its counsel.

3. Heard arguments of the appellant's Counsel and the respondent's No.1 Counsel. There was no representation for Respondent No.2. After hearing the appellant's Counsel and the respondent's Counsel, perusal of Appeal memo, impugned order and the documents produced, following points arise for our consideration:

Point No.1: Whether the RERA Authority has got jurisdiction to adjudicate the matters involved in complaint No. CMP/171016/0000146 covered under Section 71(1) of the Act?

Point No.2: Whether the impugned order of the single Member of RERA Authority is sustainable under law?

Point No.3: What order?

Our findings on the above points are:

Point Nos.1 & 2: In the Negative

Point No.3: As per the final order

For the following:

REASONS

4. **Point Nos.1 & 2:** Admittedly, the appellant booked a residential site measuring 40x60 Ft situated in 2nd Stage, Dodda Aladamara, Mysore Road, Bangalore by paying total consideration of Rs. 9 Lakhs with the Respondent No.1 house building co-operative society pursuant to the intimation letter dated 10.03.2008 issued by the Society. The Respondent No.1 Society fail to allot the site as agreed in the site location promised by it to the appellant and instead sent a letter in September, 2016 regarding the allotment of site No. 61 in Thavarakere block, 2. The appellant visited the said site and to his utter surprise there was no layout and the site was lacking all basic amenities. In spite of repeated request the R1 fails to allot the site as promised by it within time and accordingly appellant issued a lawyers notice dated 20.07.2017 and the R1 by its letter dated 16.09.2016

informed the appellant that the site bearing No, 621 was allotted to the appellant in Thavarakere. The appellant has filed complaint bearing No. 2844/2017 before the Second additional district consumer forum under the consumer protection Act seeking direction to the R1 to allot and registered the promised site measuring 40x60 Ft and to pay compensation. Subsequently appellant has also filed a complaint bearing No. CMP/171016/0000146 before the R2 Authority for the same relief and the R1 Authority comprising of a single member has dismissed the complaint filed by the appellant. Feeling aggrieved by the impugned order passed by the single member of the authority appellant is before this Tribunal.

4.1 The vexed question involved in this appeal are of two fold i.e., firstly whether the Authority under the Act has got jurisdiction to determine the matters cover under Section 71(1) of the Act? And secondly whether the single member of the Authority is competent to determine the points involved in the appeal?

4.2 For better appreciation of the law involved in the case on hand it is indispensable to reproduce the relevant

provisions of the Act to the extent it is relevant for the case as under:

Section 71(1):

For the purpose of adjudging compensation under Sections 12, 14, 18 and Section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial office as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under Sections 12, 14, 18 and Section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

Section 81:

The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under Section 85, as it may deem necessary.

4.3 Some of the admitted facts in the case on hand are that the complainant/Appellant has filed complaint before the district consumer forum as well as the Karnataka RERA seeking common reliefs under the Act and both complaints were pending adjudication before the respective Authorities on the date of passing the impugned order under challenge. The learned single member of the Authority dismissed the complaint No.CMP/171016/0000146 filed by the Appellant on the ground that the complaint No. 2844/2017 filed before the additional consumer dispute redressal Bangalore referring to proviso to Section 71(1) of the Act. Be that as it may the question for determination before us in the appeal on hand are of two fold i.e., firstly whether the Authority has jurisdiction to decide the issues covered under Section 71(1) of the Act? And secondly whether the single member of the Authority can adjudicate the matter in question under appeal? Admittedly,

subject matter of the complaint covers the matter envisaged under Section 71(1) of the Act. The complainant/Appellant sought the relief of allotment of site and compensation which falls under Section 18 and 19 of Act. A bare reading of Section 71(1) clearly demonstrates that it is the adjudicating officer who is competent to determine the matters covered under Section 12, 14, 18 & 19 of the Act. Strangely the present complaint under appeal has been adjudicated by the Authority under the Act consisting of single Member by usurping the jurisdiction of the Adjudicating officer. When clear provision is made under the Act vesting the jurisdiction on particular provisions to decide the issues by specific Authority in a particular manner under the Act overstepping of once Authority/Jurisdiction over the other unmindful of the statutory obligation is a sheer derogation of powers by the Authority under the Act. Then it is to be seen that the Act requires the Authority to exercise the power under Section 71(1) read with 12, 14, 18 and 19 of the Act in a particular manner. It is a normal rule of construction that when a statute vests certain power in an Authority to be exercised in particular manner then the said Authority has to exercise it only in the manner provided in the statute itself vide ***Judgment of the Hon'ble Supreme Court between Commissioner of Income Tax***

***Mumbai V.s Anujum M.H Ghaswala and Ors. AIR 2001
Supreme Court 3868.***

The Rule Adopted in Taylor Vs. Taylor (1875)/1Ch.D.426 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an Act and has laid down the method in which power has to be exercised, it necessarily prohibits the doing of the Act in any other manner than that which has being prescribed. The principle behind the rule is that this where not so the statutory provision might as well not have been enacted. ***Vide Judgment of the Hon'ble Supreme Court in state of Uttar Pradesh Vs. Singhara Sing and Ors. AIR 1964 SC 358.***

The function of the court is to see that lawful Authority is not abused but not to appropriate to itself the task entrusted to that Authority it is well settled that a public body invested with the statutory powers must take care not to exceed or abuse its power. It must keep with the limits of the Authority committed to it. It must act in good faith and it must act reasonably. In the context of Indian Jurisprudence, the constitution is the Supreme law. All legislative action have to be tested on the anvil of the same. Such action will have to draw their sustenance as also their boundaries under the

same. Any action falling foul of the constitutional guarantees will call for corrective action in judicial review to ensure adherence to the constitutional ethos. ***Vide Judgment of the Hon'ble Supreme Court in state of Uttar Pradesh Vs. Singhara Sing and Ors. AIR 1964 SC 358.***

The order passed without jurisdiction is an order void-abinitio. Secondly it is seen from the impugned order that the single member of the Authority has passed the impugned order. No doubt power is vested with the Authority constituted under Section 81 of the Act under Section 21 to delegate the powers to any member, officer of the Authority or any other person subject to such condition, if any, as may be specified in the order, such of its powers and functions under the Act except exercise of powers under Section 85 of the Act. But no such proceedings of the Authority constituted under Section 21 of the Act delegating the powers to any member of the Authority is forth coming in the record on the date of passing the impugned order. Accordingly, the impugned order passed by the single member of the Authority is also contrary to Section 21 of the Act. Hence, the impugned order under the appeal is bad for want of jurisdiction as well as quorum and is liable to be set aside. If a statutory body has not exercised jurisdiction properly the only action is to remand the matter

for fresh consideration and not to usurp the powers of the Authority.

5. Before parting with the case we state that as per Section 44(5) of the Act, the appeal shall be disposed of within sixty days from the date of receipt of appeal. The appeal was filed before this Tribunal on 09th June, 2020. Thereafter to secure the appearance of the parties sufficient long time was taken. Further there was a lock down due to Covid-19 pandemic and for all forgoing reasons the appeal could not be disposed of within the time prescribed under Section 44(5) of the Act.

In view of our discussion above point Nos. 1 & 2 are answered in the negative and proceed to pass the following orders:

ORDER

- 1) Appeal filed by the Appellant is allowed.
- 2) The impugned order dated 07.03.2020 passed in complaint No. CMP/171016/0000146 is set aside.
- 3) The matter is relegated to the learned Adjudicating officer for fresh disposal in accordance with law in the light of the observation made in para No. 4.3 of the order after affording opportunity for parties at the earliest and not later than two months from the date of appearance of parties. Both parties are directed to appear before the Adjudicating officer

on their own tentatively on 08.04.2021 without waiting for further notice from the Authority.

- 4) The Registrar of the Tribunal is directed to comply with section 44(4) of the Real estate (Regulation and Development) Act, 2016.
- 5) Circulate the Judgment amongst the Hon'ble Members of the Authority.
- 6) The office is directed to return the records.

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

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