

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

DATED THIS THE 26TH 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. 73/2020
(OLD RERA APPEAL No.75/2019)

BETWEEN

M/s. Shrivision Towers Private Limited,
A Company incorporated under the
Provisions of Companies Act,
Having its present Office at
No.31, 2nd Main Road,
T. Chowdaiah Road,
Near Bhyasham Circle,
Sadashivnagar,
Bengaluru-560 080.

Represented by its Authorised Signatory
Mr. Naveen Kumar J,
S/o late Janardhan Rao,
Age: 43 years,
Being authorized vide letter of Authority
By its Director in pursuance of its Board
Resolution dated 27.11.2014.

: 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. Suresh Kumar Kadambala,
S/o Mr. Kadambala Kamaraju,
Age: 37 years,
R/at No.12, Sai Arpan,
Gundappa Layout,
Byrasandra, CV Raman Nagar,
Bengaluru-560 093.

: Respondents

(R1 RERA- served, unrepresented)

(By Sri K J Bojanna and Sri Rajkumar, for M/s. Josita Juris,Adv., for R2)

This Appeal 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 20.03.2019 in CMP/181202/0001707 passed by the Adjudicating officer, RERA R1. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 73/2020.

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

JUDGMENT

The appellant, who is Promoter of a Real Estate Project, has preferred this Appeal challenging the order dated 20.03.2019 passed in Complaint No.CMP/181202/0001707 by learned Adjudicating Officer, directing to pay delay compensation.

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

3. On 18.09.2020, the Appeal was admitted by the Interim Tribunal (KAT). Later, on establishment of this Tribunal, the Appeal was transferred to this Tribunal and re-numbered as above.

4. This Tribunal, by order dated 26.02.2021, 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 on 19.03.2021.

5. That on 19.03.2021, based on the submissions made by learned Counsels appearing for the appellant/Company and the allottee, time was granted so as to enable the promoter to execute a registered sale deed in favour of the allottee in respect of the Flat allotted to him, without prejudice to the respective rights and contentions of the promoter and the allottee to claim the amount due to them from the opposite party and the promoter and allottee agreed to adjust the balance sale consideration from the delay compensation payable by the promoter in favour of the allottee and the parties were

given liberty to arrive at an amicable settlement regarding payment of balance of delay compensation and the Office was directed to list the Appeal to today.

6. Today, learned Counsel for the appellant submits that the appellant/promoter is processing the draft sale deed and he seeks time for execution of registered sale deed in favour of the allottee.

7. Whereas, Sri Bojanna and Sri Rajkumar, learned Counsel appearing for the allottee, submit that the appellant/promoter, having delivered possession of the Flat, in favour of the allottee, though has undertaken to execute a registered sale deed in favour of the allottee on or before 24.03.2021, but failed to do so, intentionally. They further submit that the appellant having not deposited the total amount payable to the allottee in spite of the detailed order of this Tribunal, the Appeal is liable to be dismissed on that count alone.

8. 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 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 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 EXPERION DEVELOPERS PVT. LTD. vs. STATE OF HARYANA 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 either 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.

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 as contemplated under proviso to Section 43(5) of the RERA Act.
- 2) The 1st respondent/RERA is hereby directed to release the amount deposited by the appellant with RERA while preferring the Appeal before the Interim Tribunal (KAT) in part compliance of proviso to Section 43(5) of the Act in favour of the allottee, along with interest, if any, accrued thereon, but after the expiry of the Appeal period and within four weeks thereafter, failing which it will carry interest chargeable by any Nationalised Banks on housing loan.

- 3) 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.
- 4) In view of dismissal of the Appeal, all pending I.As., stand rejected, as they do not survive for consideration.
- 5) The Registry is hereby directed to comply with 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

NOT AN OFFICIAL COPY