

**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.372/2020

BETWEEN

M/s. Shrivision Towers Pvt. Limited,
No.31, 2nd Main,
T Chowdaiah Road,
Near Bashyam Circle,
Sadashivanagar,
Bengaluru-560 080.

Represented by its
Authroised Signatory,
Mr. Naveen Kumar J.

: Appellant

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

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
Bengaluru-560 027.
Represented by its Secretary.
2. Amritesh Chandra Mishra,
7th Cross, Flat No.502,S R Enclave,
Kaggadasapura Main Road,

Bengaluru-560 093.

: Respondents

(By Sri K J Bojanna and Sri Rajkumar, for M/s. Josita Juris, Advs., for R-2)

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 04.11.2019 in CMP/190721/0003660 passed by the Adjudicating Officer, RERA Respondent No. 1.

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 04.11.2019 passed in Complaint No.CMP/190721/0003660 by learned Adjudicating Officer, directing to pay delay compensation to the allottee.

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

3. On 11.01.2021, the Appeal was admitted by this Tribunal.

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 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, if any, 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, 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**

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