

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

DATED THIS THE 29TH 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.SPOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO.102/2020
(RERA Appeal Old No.107/2019)

BETWEEN:

M/s Lily Realty Pvt. Ltd.,
A company Incorporated under the
Companies Act, 2013, Having its
Registered office at 2nd floor,
Doddamane Building, 19/1, Vittal Mallya Road,
Bangalore 560 001
Represented by its Authorised Signatory
Mr Haresh Kumar, s/o Ram Narain
Aged about 57 years

:APPELLANT

(By Sri E.Suhail Ahmed, for M/s Trial Base, Advocates)

AND

1. Mr. Ajay Jain,
Residing at Flar No.B 605,
Vajram Essenza Apartments,
Chokkanahalli, Thanisandra Main Road,
Bengaluru 560 077
2. Real Estate Regulatory Authority
Represented by Secretary
Second floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560 027

3. Mrs. Renu Jain,
w/o Mr Ajay Jain,
Residing at Flar No.B 605,
Vajram Essenza Apartments,
Chokkanahalli,Thanisandra Main Road,
Bengaluru 560 077

:RESPONDENTS

(M/s Raj Prabhu & Associates, Advocates for R.1 and 3)
(Respondent No.2- served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) to set aside the order dated 14th February, 2019 in CMP/181013/0001453 passed by the Adjudicating Officer, RERA Respondent No.2. On establishment of this Tribunal with effect from 2.1.2020, the appeal was transferred to this Tribunal and renumbered as APPEAL (K-REAT) No.107/2020.

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

JUDGMENT

The appellant/promoter has preferred this Appeal challenging the impugned order passed by the learned Adjudicating Officer, RERA respondent No.2, directing the appellant to pay delay compensation by way of interest @ 9% p.a. on the amounts paid by the 1st respondent between the period January 2016 to April 2017 and further interest @ 10.75% p.a from May 2017 upto the date of obtaining occupancy certificate and handing over possession of the apartment to respondents 1 and 3.

2. Sri E.Suhail Ahmed, for M/s Trial Base, Advocates, learned counsel appeared for the appellant. M/s Raj Prabhu Associates, Advocates appeared for R.1 and 3. Respondent No.2-RERA, though served, remained unrepresented.

3. The brief facts leading to this appeal are stated as follows:

The appellant is a company incorporated under the Companies Act, 2013 and is engaged in the business of promoting Real Estate projects. One such project developed by the appellant is "PASHMINA WATERFRONT" being a residential apartment project, in the land situated at Bettadahalli village, Bidarahalli hobli, Bangalore East Taluk.

4. That on coming to know of the real estate project undertaken by the appellant in the name and style "PASHMINA WATERFRONT", Respondent Nos.1 & 3 had approached the appellant to purchase a flat in the said project. Consequently, an Agreement of Sale was entered into between them whereunder the appellant agreed to sell Flat No.T04-19D in the said project in favour of Respondent Nos.1 & 3-allottees.

5. When the appellant failed to deliver possession of the flat within the stipulated period, allottees filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short, the RERA Act) before the Real Estate Regulatory Authority (RERA) seeking compensation and delay penalty on the ground that

there is inordinate delay in delivering the possession of the flat and thus the promoter has breached the terms of sale agreement etc.,

6. The learned Adjudicating Officer, after considering the complaint filed by the allottees, statement of objections filed by the Promoter and hearing the parties, by the impugned order allowed the complaint and directed the Promoter to pay delay compensation by way of interest as stated supra and further directed the Promoter to adjust the dues, if any, payable by the allottees from the delay compensation amount and to pay Rs.5,000/- towards cost of litigation to the allottees.

7. The appellant-Promoter, aggrieved by the said order of the learned Adjudicating Officer, has preferred this appeal before the Interim Tribunal (KAT) seeking to set aside the order. While preferring the appeal, the appellant has also deposited 30% of the amount as ordered by the learned Adjudicating Officer to be paid to the allottees, as pre-deposit with the RERA in part compliance of proviso to Section 43(5) of the Act.

8. On establishment of this Tribunal from 2nd January 2020, the appeal was transferred from the Interim Tribunal (KAT) and renumbered. After notice to the parties, the matter was listed for arguments on several dates. On 30.9.2020, based on the submission

made by the learned counsel for the appellant and contesting Respondents 1 to 3, the following order was made:

“ xx xx

..Anyway, it is open for both the appellant and R.1 and R.3 to negotiate about their terms by mutually fixing up the time, date and place of negotiation.....”

9. On 20.10.2020, the learned counsel for the appellant submitted that there is no possibility of an amicable settlement between the parties and he sought to argue the appeal on merits. However, after failure of one more round of negotiation for amicable settlement, the matter was finally heard and reserved for judgment on 29.1.2021, without adverting to the fact that in order to take up the appeal for hearing on merits, the appellant was required to comply with the proviso to Section 43(5) of the Act i.e, requirement of deposit of total amount payable to the contesting Respondents as per the impugned order, in view of the decision of this Tribunal on Interlocutory applications in Appeal (KREAT) Nos.113, 117 and 363/2020. In the present case, the appellant had deposited only 30% of the amount payable to the allottees as per the impugned order while preferring the appeal before the Interim Tribunal (KAT).

10. This Tribunal, while passing an order on 15.12.2020 on I.A.III filed by the appellant in Appeal (KREAT) Nos.113 and 117/2020 and on 27.1.2021 on I.A.II in Appeal (KREAT) No.363/2020 relying upon the

Judgments of the High Court of Allahabad in RADICON INFRASTRUCTURE AND HOUSING PRIVATE LIMITED vs. KARAN DHYANI (2019 SCC OnLine All 4454) by the Principal Bench and in the case of AIR FORCE NAVAL HOUSING BOARD, AIR FORCE STATION RACE COURSE vs. UNION OF INDIA MINISTRY OF HOUSING & URBAN POVERTY AND OTHERS (Second Appeal No.122/2019 DD 15.11.2019) by the Lucknow Bench and 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 preferred by a developer challenging the order passed by the learned Adjudicating Officer, directing either to return the amount of allottee with compensation and interest or directing to pay delay compensation with interest for the delay in delivering possession of a Flat, such developer is required to deposit the total amount payable to the allottee as per the order impugned in the said Appeal before the Appeal is taken up for hearing".

11. This is an Appeal by a developer challenging the order passed by the learned Adjudicating Officer, directing the appellant to pay delay compensation by way of interest to the contesting Respondents- Allottees, for the delay in delivering possession of a flat. Therefore, the appellant is required to deposit the total amount payable to the allottees before the appeal is heard.

12. In view of the above, the office was directed to list the appeal for clarification on 26.02.2021. Since there was no representation for the appellant-promoter on 26.2.2021, time was granted to the appellant finally upto 19.3.2021 to deposit the total amount payable to the allottees, as per the impugned order, by deducting the amount, if any, already deposited and directed to list the appeal for arguments in the event appellant deposits the total amount, or, failing which to list the appeal for dismissal on 26.3.2021.

13. On 26.3.2021, the learned counsel appearing for the appellant, while arguing on the point of deposit of total amount before the appeal is taken up for hearing contended that since he has concluded the arguments and the matter is reserved for Judgment, the appellant cannot be directed to deposit the total amount payable to the allottees as per the impugned order. He further submitted that the decision taken by the Tribunal on Interlocutory Applications filed in Appeal Nos. 113, 117 and 363/2020 cannot be applied retrospectively to the present case, in which argument has been concluded. He also further submitted that presently appellant is not in a position to deposit the total amount payable to the allottees as per the impugned order and the Tribunal may proceed to pass orders on merits of the appeal. Hence, the office was directed to list the appeal for Judgment on 29.3.2021.

14. We do not find any merit in the contention of the appellant that the decision taken by the Tribunal on Interlocutory Applications filed in Appeal Nos. 113 & 117/2020 cannot be applied retrospectively to the present case in which argument has been concluded, for the simple reason that argument was not concluded in the present case as on the date of passing of order on I.A.III in Appeal Nos. 113 & 117/2020. Be that as it may, the very proviso to Section 43(5) of the RERA Act mandates that the appeal preferred by the promoter challenging the order passed by the learned Adjudicating Officer directing the promoter either to return the amount of the allottee or pay compensation by way of interest for the delay in delivering possession of an apartment, such appeal cannot be heard without the promoter depositing total amount payable to the allottees.

15. Even today, when the matter is listed for Judgment, the Appellant-promoter has expressed his inability to deposit the total amount payable to the allottees as per the impugned order in compliance of proviso to section 43(5) of the Act.

16. Since the appellant failed to deposit the total amount payable to the allottees as per the impugned order in compliance of proviso to section 43(5) of the Act and in view of the order of this Tribunal on Interlocutory applications in Appeal (KREAT) Nos. 113,117 and 363/2020, we pass the following:

ORDER

1) Appeal is dismissed for non-deposit of the total amount payable to the allottees as per the impugned order in compliance of proviso to Section 43(5) of the RERA Act.

2) The 2nd 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 to the contesting respondent Nos.1 & 3 -allottees after expiry of appeal period but 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, respondent Nos.1 & 3 -allottees are at liberty to initiate appropriate proceedings for recovery of the balance amount and for enforcement of the remaining part of the impugned order of RERA against the promoter;

4) All pending I.As , if any, are rejected as they do not survive for consideration.

5) The Registry is hereby directed to comply with the provisions of Section 44(4) of the Act and to return the records of RERA, if received, forthwith.

**Sd/-
HON'BLE CHAIRMAN**

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

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