

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

DATED THIS THE 19th DAY OF FEBRUARY 2020

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. 77 /2020

(OLD RERA. APL No.79 of 2019)

BETWEEN:

Jade Invent,
A Registered Partnership
Firm, Having its office No. 48,
Richmond Road, Bengaluru - 560 025,
Represented herein by its partner Mr. Devendranath
Son of Late R Balaji
Aged about 56

:APPELLANT

(By Giridhar & Co., Adv)

AND

1. Real Estate Regulatory Authority
2nd floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027
Represented by its Secretary.

:RESPONDENT

(Sri M V Prashanth Advocate for Respondent)

The following judgment of the Bench is delivered by Judicial Member.

J U D G M E N T

This appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 read with Rule, 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (herein after referred in short as "**The Act and The Rules**") against the impugned order dated 16.04.2019 passed by the Karnataka Real Estate Regulatory Authority (herein after referred in short as "**Authority**") by levying penalty at the rate of 1% of the estimated cost of the project amounting to Rs. 12,43,665/- lakhs under Section 3 read with Section 59(1) of the Act.

This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No. (K-REAT) 77/2020.

2. The facts of the Appellant's case in brief is that:

The Appellant is a registered partnership firm having its office at #48, Richmond Road, Bengaluru represented by its Partner Devendranath engaged *inter-alia* in Development and Sale of Real Estate in the name and style "**Fangzi**".

The Appellant for the purpose of developing the property has obtained sanctioned plan as per Annexure 'D' on 14.06.2016 from the local bodies. As per the joint development agreement the Appellant and the owner of the land are entitled for 40% and 60% each of super built up area along with proportionate car parking, Terrace rights and Private garden area if any, in the said construction to be put by the Appellant/Developer.

The Appellant sought for registration of the proposed project by filing an application under Section 4 of the Act on 08.12.2018 with the Respondent/Authority. It is contended that Section 3 of the Act came into force on 19.04.2017 and restrictions therein were not applicable to the project of the Appellant as it was an existing project and promoter was not prevented from advertising the project. It is contended that the partner of the appellant has personnel account in face book and has provided information about his activities by way of general information about the project.

Though the partner of the appellant was present on 05.04.2019 the Respondent/Authority has not intimated him regarding passing of impugned order and on 25.04.2019 he received an email enclosing the impugned order as per Annexure 'K'.

Feeling aggrieved by the impugned order dated 16.04.2019 of the Respondent/Authority, Appellant preferred the present appeal on the following.

GROUND S

- The impugned order dated 16.04.2019 passed by the respondent is in gross violation of the principles of natural justice and the same is liable to be set aside.
- It is contended that the appellant was not provided with any information of the alleged breach and was not even aware that the respondent would rely upon information as sought to be reflected in the order impugned. The respondent has not specifically issued

notice regarding the alleged breach and has called for a meeting wherein the authority has passed the impugned order. The appellant did not have any opportunity to know the nature of the breach alleged to have been committed so as to meet the same. Accordingly, the impugned order is violative of the principles of natural justice and is not sustainable under law.

- The face book account of the other partner where information of the project given is not a business account and does not amount to advertisement or offer for sale of a unit in the project.
 - The penalty imposed is excessive, arbitrary, without taking into consideration the overall evidence of the case and liable to be set aside. Hence prayed to set aside the order of the Authority by allowing the appeal.
2. Heard the argument of the learned Counsel for the Appellant and the Respondent.
 3. After hearing the argument of the learned Counsel for appellant and the respondent and perusal of the appeal Memo, impugned order and documents produced, the following points arise for our consideration:

Point No. 1: Whether, the impugned order dated 16.04.2019 passed by the Respondent is opposed to the principles of natural justice and interference of this Tribunal is warranted?

Point No. 2: Whether, procedure followed by RERA in conducting the case is in accordance with the law.

Point No. 3: What order?

4. Our answers to the above are as under

Point No. 1: In the affirmative.

Point No. 2: In the negative.

Point No.3: As per the final order for the following

REASONS

5. **Point No. (1) and (2):-** The issue involved in the appeal on hand falls within a narrow compass. The main contention of the appellant is that the Respondent/Authority while passing the impugned order has not provided sufficient opportunity to meet the point based on which it has passed the impugned order and thereby the order impugned is arbitrary and opposed to the principles of natural justice. The other contention is regarding impositions of penalty is on the higher side.

The Appellant in one breath contends that at the time of launching it's project the restrictions contained under Section 3(1) of the Act were not in existence and the appellant was entitled to promote and advertise the project and on the other breath it is contended that the above section was not applicable as the project was an existing project and promoter was not prevented from advertising the project. It is further contented that the partner of the Appellant has provided information about his activities including the project by way

of general information in his personnel face book account. The Appellant is not denying the advertisement uploaded in the year 2016 itself and sought for registration of his project on 08.12.2018. The Appellant has admitted that Section 3 to 19 of the Act came into force w.e.f 01.05.2017. In the above facts and circumstances, of the case and in view of the first proviso to Section 3(1) of the Act the contention of the Appellant that Section 3(1) of the Act was not applicable to the project of the appellant may not be correct. Be that as it may, the record and proceedings of the Authorities would show that the Appellant has not been issued with a notice specifically stating the nature of violation committed by the appellant and as mentioned under Section 3(1) of the Act except mentioning the statutory provision in the proceedings of the case and the impugned order. It may be noted that Section 3(1) contemplates different activities and the Appellant has not been communicated with any notice specifically stating the nature of activities amounting to violation of section 3(1) of the Act. Even Annexure 'T' and 'J' emails sent by the Authority to the Appellant would not disclose about the specific violation under the provisions of the Act. The material placed on record do not disclose about issuance of notice specifically mentioning about the Appellant uploading the particulars of the project in the website. The contention of the Appellant is that since, the nature of breach committed by the Appellant has not been communicated to it by the RERA Authority, the Appellant could not meet the said point during the proceedings of the Authority. Hence, the

contention of the Appellant is that it was taken by surprise when it received the impugned order regarding uploading of particulars in the website about the project appears to be true. Had the Authority communicated in the notice the nature of violation committed by the Appellant, certainly Appellant would have put forth its defence on the point from which it is deprived off due to the aforesaid Act of the Authority.

Apart from that, the proceedings of the Authority available in the record would show that the future date of postings of case has not been shown except the date mentioned below the signature of the person who conducted the proceedings. On 05.04.2019 the case was heard and posted for orders without showing the further date. The date of the impugned order i.e. 16.04.2019, has not been forth coming in the order sheet. The order sheet discloses that the order was signed by the Chairman on 23.04.2019, one of the Members signed the order on 16.04.2019. The other signature found in the order sheet is of the Under Secretary dated 06.05.2019. It is evident from the said portion of the order sheet that date of signatures found in the order sheet and the date of impugned order are not in consonance with each other. Further, the signature of one of the members which finds place in the impugned order does not find place in the order sheet. So again the order sheet and the impugned order are not in conformity with each other. When Authority comprising Chairman and two Members have signed the impugned order their signatures ought to have been reflected

in the order sheet bearing common dates which is lacking in the proceedings of the Authority. Even on the date of posting the case for orders we find only the signature of the Chairman and signatures of the Members are absent. This speaks volumes and whether the case has been heard by the Authority comprising of Chairman and two Members or by Chairman alone is a big question mark. It is also observed that the order sheet maintained by the authority which passed the impugned order is overlapping with the Administrative proceedings of the Authority. It is pertinent to note that in some places of the order sheet Under Secretary and in some other place AEE have signed the proceedings. The above discrepancies in the proceedings of the Authority vitiate the proceedings and renders the impugned order erroneous and unsustainable under law. It is to be impressed upon the Authority to desist from following this type of irregular proceedings here after. Further the Administrative and quasi Judicial proceedings of the Authority as far as possible shall be segregated from each other as enshrined under the principles of separation of powers under the Constitution. For instance when the Authority under RERA commences its proceedings either on an application filed by a developer of a Real Estate project for registration of the project or by a real estate agent for registering him as agent with the RERA established under the Act or for any other thing the steps taken by ministerial staff pursuant to the orders of the Authority issued on the hearing dates should be recorded on the left side of the order sheet and any orders

made or decision taken by the Authority on hearing dates should find place on the right side of the order sheet. In view of the above irregularities and flaws in the proceedings of the authority the points formulated above are answered accordingly and the matter needs reconsideration by the Authority below..

6. Point No. (3):- For the reasons recorded above, we proceed to pass the following:

ORDERS

- i) The appeal filed by the Appellant is allowed.**
- ii) The impugned order passed by the Authority dated 16.04.2019 is set aside.**
- iii) The matter is remitted to the authority with a direction to reconsider the matter afresh in the light of the observation made herein above after affording sufficient opportunity to the appellant by adhering to due provisions of law, within 6 weeks from the date of appearance of the Appellant. The appellant is directed to appear before the Authority without waiting for further notice.**
- iv) The Registrar of the Tribunal is directed to comply with section 44(4) of the Real Estate (Regulation and Development) Act, 2016.**

v) The office is directed to return the records.

**Sd/-
HON'BLE CHAIRMAN**

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

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

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