

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

DATED THIS THE 24TH 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. 30/2020
(OLD RERA APPEAL No.19/2019)

BETWEEN

M/s. Mantri Developers Private Limited,
#41, Mantri House, Vittal Mallya Road,
Bengaluru Urban-560 005.
Represented by its
Authorized Signatory-Ravi Shankar B S

:Appellant

(By M/s. Anup S Shah Law Firm, Adv., for appellant)

AND

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

2. Mrs. Neha,
No.104, Sumadhura Vasantham,
Graphite India Road,
Seetharampalya, Hoodi,
Bengaluru-560 048,

And also at

No.105, Krishna Vihar,
8th Main, Doddanakundi New Extn.,
Bangalore.

:Respondents

(R-1/RERA is served, but unrepresented)

(By M/s. ATV Legal, Adv., for R-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) to allow the Appeal set aside the order dated 26.10.2018 passed in Complaint No.CMP/180711/0001029 by respondent No.1 - Adjudicating Officer and later transferred to this Tribunal on 02.01.2020 and re-numbered as Appeal (K-REAT) No.30/2020.

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 on 01.02.2019 before the Interim Tribunal (KAT) challenging the order dated 26.10.2018 passed in Complaint No.CMP/180711/0001029 by learned Adjudicating Officer, directing the promoter to return the amount of the allottee.

2. On establishment of this Tribunal, the RERA Appeal No.19/2019 came to be transferred to this Tribunal and re-numbered as Appeal No.(K-REAT) 30/2020.

3. 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, while preferring the Appeal.

5. 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 1) 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 2) 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 3) EXPERION DEVELOPERS PVT. LTD. vs. STATE OF HARAYANA 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.

6. In view of the same, this Tribunal, on 25.02.2021, has passed the following order:

- 1) If the appellant/promoter intends to settle the matter with the allottee amicably, he can do so, but that shall be done on or before 17.03.2021.
- 2) The parties shall file Compromise Petition/Joint Memo on the next date of hearing.
- 3) In the event of appellant failing to settle the matter with the allottee amicably before 17.03.2021, he shall deposit the total amount payable to the allottee, by deducting the amount already deposited, on or before 19.03.2021.
- 4) In the event of appellant depositing the total amount, as stated above, Office to list the Appeal for final hearing on 24.03.2021.
- 5) In the event of appellant failing to deposit the total amount, as stated above, or failing to settle the matter, Office to list the Appeal for dismissal on 24.03.2021.

7. Today, Sri Budhihal, for M/s. Anup S Shah Law Firm, learned Counsel appearing for the appellant, submits that according to his instructions, the promoter has expressed inability to deposit the total amount payable to the allottee as per the impugned order and his submission is placed on record.

8. Whereas, learned Counsel appearing for respondent No.2/allottee submits that in spite of conditional order of this Court dated 25.02.2021, the appellant has not deposited the total amount payable to the allottee, as per the impugned order and he prays for dismissal of the Appeal.

9. In view of the above, the following

ORDER

- 1) Appeal is dismissed for non-depositing the total amount payable to the allottees 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, after expiry of the Appeal period and within next 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, all pending I.As., stand rejected, as they do not survive for consideration.
- 4) In view of dismissal of the Appeal, it is open for the allottees to recover the balance amount by initiating appropriate proceedings against the promoter.
- 5) The Registry is hereby directed to comply 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**