

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

DATED THIS THE 31ST 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.81/2020

(RERA Appeal Old No.84/2019)

BETWEEN:

Nikoo Homes I (Tower 1-6 and 10)

Bhartiya Urban Private limited
Formerly known as Bhartiya City developers Private Limited,
A Company incorporated under the companies Act, 1956,
And having its registered office at:

No. 56/7, Nallambakkam village (Via Vandalur),
Chennai, Tamil nadu – 600 048, Bengaluru – 560 001

And administrative office at:-

1/5, Palace Road,
Next to Atria Radisson Blue,
Bengaluru – 560 001

Represented by its Authorized Signatory

Mr. Shama Sunder R J

S/o R M Iaradian,

Aged about 56 years,

Email Id: rerabhartiycity@bhartiya.com

Phone Number: 080- 22534555

:APPELLANT

(By M/s Anup S Shah law firm, Advocate)

AND

1. The Karnataka Real Estate Regulatory Authority,

2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross Road, Mission Road,
Bengaluru-560 027
Represented by its Secretary

2. Mr. Nimesh Sultania
Aged about 34 years,
S/o Mr Narain Das Sultania
128/1255, Y-Block, Kidwai nagar,
Kanpur Nagar,
Uttar Pradesh – 208 011

3. Amended V.C.O dated 18.12.20
Respondent No. 03
Mrs Priyanka Goyal,
Aged about 34 years,
W/o Mr Nimesh Sultania,
R/o 128/1255, Y-Block, Kidwai nagar,
Kanpur Nagar,
Uttar Pradesh – 208 011

:RESPONDENTS

(R1- RERA, served, unrepresented)

(R2 & R3 - served)

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 30th March, 2019 in CMP/181011/0001448 passed by the Adjudicating Officer, RERA Respondent No.1. 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.81/2020.

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

JUDGMENT

The appellant, who is Promoter of a Real Estate Project, has preferred this Appeal challenging the order dated 30.03.2019 passed in Complaint No.CMP/181011/0001448 by learned Adjudicating Officer, directing to pay difference of 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 25.10.2019, 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 16.02.2021, granted time to the appellant, finally, upto 26.02.2021 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 05.03.2021.

5. That on 05.03.2021, based on the memo filed by the learned Counsel appearing for the appellant/Company that the appellant would settle the matter with the allottee amicably, time was granted to the appellant to do so on or before 26.03.2021 and in the event of appellant is not able to settle the dispute with the allottee amicably on or before 26.03.2021, they shall deposit the total amount, as stated above, on or before 29.03.2021 and in the event of appellant depositing the total amount, the Office was directed to list the Appeal for hearing or else for dismissal, on 31.03.2021 ie., today.

6. Today, learned Counsel for the appellant submits that the appellant/promoter is not in a position to deposit the amount.

7. 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 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.

8. For the reasons stated above, the following

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, in spite of granting sufficient opportunities.
- 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 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**