

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

**DATED THIS THE 07<sup>th</sup> DAY OF APRIL, 2021**

**PRESENT**

**HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

**HON'BLE SRI K P DINESH, JUDICIAL MEMBER**

**APPEAL (K-REAT) NO.55/2020**

**(RERA Appeal Old No.57/2019)**

**BETWEEN:**

M/s Mantri Castles Private Limited,  
A Company incorporated under the Companies Act, 1956  
And having its Registered office at:  
#41, Mantri House, Vittal Mallya Road,  
Bengaluru - 560 005  
Represented by its Authorized Signatory  
Mr. Ravishankar B S  
Email id: [serenity5@mantri.in](mailto:serenity5@mantri.in)  
Phone Number: 9845107374

**:APPELLANT**

(By Sri Sunil P Prasad for M/s Tapasya Law Chambers, Advocate)

**AND**

1. The Karnataka Real Estate Regulatory Authority,  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross Road, Mission Road,  
Bengaluru-560 027  
Represented by its Secretary
2. Mr. Akhilesh Karanth B  
Aged about 31 years,  
S/o Krishna Karanth B  
#5-76, "Akshaya" Kidiyoor Ambalapady,  
Udupi - 576 103, Karnataka

**:RESPONDENTS**

(R1- RERA, served, unrepresented)

(Sri M Mohan Kumar for M/s Lawman & Associates, Adv for R2)

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 27<sup>th</sup> December, 2018 in CMP/181002/0001340 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.55/2020.

This appeal coming on for argument 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 27.12.2018, passed in Complaint No.CMP/181002/0001340 by learned Adjudicating Officer, directing to return 2X amount to the complainant etc,.

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. This Tribunal, by order dated 16.02.2021, admitted the appeal and granted time to the appellant, finally, upto 15.03.2021 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.

4. That on 19.03.2021, appellant has granted time, finally upto 31.03.2021 either to settle the matter with the allottee or else to deposit the total amount payable to the allottee on or before 31.03.2021, by deducting the amount already deposited and address arguments. That in the event of appellant depositing the total amount payable to the allottee the office was directed to list the Appeal for argument or else for dismissal, on 07.04.2021.

5. Today, Sri Sunil Prasad, learned Counsel appearing for the appellant, fairly submits that the appellant is not in a position to deposit the total amount payable to the allottee as per the impugned order. His submission is placed on record.

6. 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, which were passed by relying upon the judgment of the Hon'ble Supreme Court in the case of M/S TECHNIMONT PVT LTD VS STATE OF PUNJAB reported in AIR 2019 SC 4489 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 with or without interest 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 Appeals cannot be heard.

7. For the reasons stated above, the following

**ORDER**

- 1) Appeal is dismissed for non-depositing of 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 1<sup>st</sup> 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, along with interest, if any, accrued thereon, but after the expiry of the Appeal period and within four weeks thereafter, in favour of the allottee 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**

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