

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

**DATED THIS THE 12<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**

**AND**

**HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL (K-REAT) NO.325/2020**

**BETWEEN:**

M/s Shriram Properties Limited  
A company incorporated under the  
Companies Act, 1956, having its corporate,  
Office at No. 40/43, 4<sup>th</sup> Cross,  
8<sup>th</sup> Main Road, RMV Extension, Sadashivnagar,  
Bengaluru - 560 080  
Represented by its Authorised Signatory  
S/o Naveen Kumar J  
Aged about 43 years

**:APPELLANT**

(M/s JSM Law Partners, Advocate for Appellant)

**AND**

1. The Adjudicating Officer,  
The Karnataka Real Estate Regulatory Authority,  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
Bengaluru - 560 027
2. Ashish Saxena  
Age about 34 years,  
R/o. 103, Indu Pride, 6<sup>th</sup> cross,  
Balaji Layout, Kaggadaspura,  
Bengaluru - 560 093

**:RESPONDENTS**

(R1- RERA served, unrepresented)

(Sri R Muralidharan, Advocate for R2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the order dated 19<sup>th</sup> August, 2019 in CMP/190414/0002594 passed by the Adjudicating Officer, RERA Respondent.

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

### **J U D G M E N T**

The appellant, who is Promoter of a Real Estate Project, has preferred this Appeal challenging the order dated 19.08.2019, passed in Complaint No.CMP/190414/0002594 by learned Adjudicating Officer, directing the appellant to pay delay compensation to the allottee by way of interest at 10.75% p.a. on the consideration amount towards purchase of a flat from July, 2017 till obtaining occupancy certificate and providing all amenities.

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 this Tribunal.

3. This Tribunal, by order dated 23.02.2021, admitted the appeal and granted time to the appellant, finally, upto 17.03.2021 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 hearing on 22.03.2021.

4. That on 22.03.2021, appellant was granted time, finally upto 08.04.2021 to deposit the total amount payable to the allottee on or before 08.04.2021. In the event of appellant depositing the amount, as stated above, the Office was directed to list the Appeal for arguments on 12.04.2021 failing which to list the appeal for dismissal.

5. Sri R Muralidharan, learned Counsel appearing for respondent No.2/allottee, submits that the Appeal is liable to be dismissed for non-compliance of proviso to Section 43(5) of the RERA Act, and prays for dismissal of the Appeal.

6. There is no representation for respondent No.1/RERA.

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,

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.

8. 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 Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in part compliance of proviso to Section 43(5) of the Act in favour of the 2<sup>nd</sup> Respondent/allottee, along with interest, if any, accrued thereon, by issuing a cheque/ Demand Draft, but after the expiry of the Appeal period and within next four weeks.
- 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**

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