

IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL, BENGALURU

DATED THIS THE 12th 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.161/2020

(OLD RERA APPEAL NO.232/2019)

BETWEEN:

M/s Shrivision Towers Private Limited
No. 40/43, 8th Main, 4th Cross,
RMV Extension, Sadashiv Nagar,
Bengaluru – 560 080
Represented by its Authorised Signatory
Mr. Naveen Kumar J,
S/o Late Janardhan Rao,
Age about 43 years

:APPELLANT

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

AND

1. The Adjudicating Officer,
The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
Bengaluru - 560 027
2. Hari Prasad Bhavani,
S/o. Bhavani Prasad,
Age about 38 years,
No. 8, Suvedi Nivas, Krishna Nayak Layout,
Hirandahalli, Virgonagar Post,
Bengaluru – 560 049

:RESPONDENTS

(R1- RERA served, unrepresented)

(R2-served)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the order dated 14.08.2019 in Complaint No.CMP/190407/0002589 passed by the Adjudicating Officer, RERA- 1st Respondent before the Interim Tribunal (KAT). On establishment of this Tribunal with effect from 2.01.2020, the appeal was transferred and renumbered as Appeal No.(KREAT) 161/2020.

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 14.08.2019, passed in Complaint No.CMP/190407/0002589 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, 2018 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 22.02.2021, admitted the appeal and granted time to the appellant, to deposit the total amount payable to the allottee, as per the impugned order, by deducting the amount already deposited upto 18.03.2021 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 Sameer Sharma, for M/s. JSM Law Partners, learned Counsel appearing for the appellant, submits that the appellant has got financial constraints to deposit the total amount payable to the allottee.

6. There is no representation for respondent No.1/RERA & R2.

7. Sri Naman Saraswat, for M/s. Maths Law Associates, learned Counsel appearing for respondent No.2/allottee, submits that in spite of granting sufficient time to the appellant, the appellant has failed to deposit the total amount payable to the allottee and comply with the proviso to Section 43(5) of RERA Act, and prays for dismissal of the Appeal.

8. 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.

9. 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 2nd 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**