

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.86/2020****(OLD RERA APPEAL NO.90/2019)****BETWEEN:**

Shriram Sameeksha (a project of),
Shriram Properties Limited,
No. 40/43, 8th Main, 4th Cross,
RMV Extension, Sadashiv Nagar,
Bengaluru – 560 080
Represented by its Authorised Signatory
B S Nagaraj, S/o Late B K Subba Rao,
Age about 71 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* Sri P S Jambulingam
S/o P Siddaramaiah
Aged about 54 years,
Both R/at No. 407, A Block,
Sri Sai Sumukh Apartments,
1st Main, 6th Cross, Shivu Badavane, Mariyappana Palya,
Bengaluru – 560 056
- 3* G C Shankari,
W/o P S Jambulingam,
Major age 50 years,
R/at No. 407, A Block, 1st Main,
6th Cross, Shivu Badavane,
Sri Sai Sumukh Apartments, Mariyappana Palya,
Bengaluru – 560 056

:RESPONDENTS

(R1- RERA served, unrepresented, Sri R A Kulkarni, Advocate for R2 & R3)

*corrected V.C.O. dated 15.07.2021

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the order dated 24.05.2019 in Complaint No.CMP/181105/0001611 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) 86/2020.

This appeal coming on for orders 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 24.05.2019, passed in Complaint No.CMP/181105/0001611 by learned Adjudicating Officer, directing the developer to pay Rs.17,89,315/- to the complainant with interest @ 9% p.a. on the respective amount paid on the respective dates till 30/04/2017 and interest @ 10.75% p.a. till the recovery of entire amount.

2. In part compliance of proviso to Section 43(5) of the RERA Act, the appellant had deposited certain amount payable to the allottee, as per the impugned order, with the RERA and this Tribunal.

3. This Tribunal, by order dated 15.02.2021, admitted the appeal and the appellant was granted time, finally upto 12.03.2021 to deposit the total amount payable to the allottee. In the event of appellant depositing the amount, as stated above, the Office was directed to list the Appeal for arguments on 16.03.2021 failing which to list the appeal for dismissal.

4. That on 16.03.2021, appellant was granted, further time upto 08.04.2021 to deposit the total amount payable to the allottee. In the event

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

6. Sri R A Kulkarni, learned Counsel appearing for respondents No.2 & 3/allottees, 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.

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.
- 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 allottees, 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) 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 Respondents 2 & 3/allottees, 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.

- 4) 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.
- 5) In view of dismissal of the Appeal, all pending I.As., stand rejected, as they do not survive for consideration.
- 6) The Registry is hereby directed to comply with 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**