IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL, BENGALURU

DATED THIS THE 25th DAY OF JUNE 2021

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT)239/2020

BETWEEN:

Biju Joseph,
S/o Joseph, Aged 51 years,
Residing at 'Plamoottil House',
Kallur, P.O. Muttithadi,
Thrissur District,
Kerala State- 680 317. **APPELLANT**

(Rep. by Sri Nagesh Poojari. Y, Advocate)

AND

1. Air Force Naval Housing Board
   Air force station
   Race course Road,
   New Delhi,
   Central Delhi District
   Delhi State- 110 003.

2. Real Estate Regulatory Authority,
   Represented by Secretary, Department of Housing
   Second floor, Silver Jubilee Block,
   Unity Building, CSI Compound,
   3rd Cross, Mission Road,
   Bengaluru- 560 027. **RESPONDENTS**

(Rep by Sri Ramachandar Desu, Advocate for R1)
(R2 served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Karnataka Real Estate Appellate Tribunal, Bengaluru, to set aside the impugned order dated 18.11.2019, in CMP/190702/0003427 passed by the Adjudicating officer, RERA-Respondent No.2.

This appeal having been heard and reserved for Judgment, coming on for pronouncement of Judgment this day, the Administrative Member pronounced the following:

J U D G M E N T

This Appeal is filed under Section 43(5) and 44 of the Real Estate (Regulation and Development) Act, 2016 r/w Rule 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred in short as **'The Act and the Rules')** against the impugned order dated 18.11.2019 in complaint No. CMP/190702/0003427 passed by the Adjudicating officer, RERA-2nd respondent, in so far as not awarding interest from the date of respective payments of the amount towards purchase of a residential house.

Facts of the case in brief are:

2. The appellant is a retired short service Commissioned Officer from Indian Navy. The Appellant had applied for a residential house under A2 category simple dwelling unit in "JAL VAYU TOWERS" undertaken to be constructed by the Respondent No.1, *Air* Force Naval Housing Board (for short AFHNB) which is a welfare society registered under the Societies

Registration Act 1860 with the objectives of providing residential houses to the serving Indian Air Force and Navy personnel, and war widows of these services. The society provides houses on "no profit no loss basis" under self-finance housing scheme. This society came up with the object of developing a housing project in Mysore, Karnataka. The total cost of the unit was Rs.53,04,684/-.

3. As per Allotment letter dated 4th March, 2016, the developer specified the tentative date of completion of the project as middle of 2018. Whereas, in the application submitted to RERA for registration, different date of completion of the project is mentioned. Subsequent to the award of contract to the builder M/s GJS Infrastructure Pvt Ltd, Hyderabad, the 1st Respondent revised the plan and decided to complete the project in two phases against sanctioned plan to develop the entire project in a single phase.

4. According to the appellant, the AFNHB entered into a supplementary agreement with the contractor without the knowledge and consent of the members/allottees. The details of supplementary agreement was intimated to the allottees only on 15.04.2018 through web update. That under the supplementary agreement, the respondent No.1 also agreed to transfer half of the units in favour of the builder without the consent of the allottees of the said project. The appellant also submitted that there was deviation in the construction of the project from the

sanctioned plan. Thus it lead to completion of the project in two phases against the sanctioned plan to develop the entire project in a single phase. Because of the revision in the plan the payment schedule was revised and allottees were informed to make the entire payment year before the completion of the project. With this compulsion and circumstances, the appellant decided to withdraw from the scheme. Hence, appellant filed a complaint under Section 31 of RERA Act 2016 against respondent No.1 for refund of his amount paid towards sale consideration with interest and compensation.

5. The learned Adjudicating officer, after hearing both parties and considering the documents produced by them, held that there is delay in completion of the project within the time prescribed in the allotment letter. However, based on the submission made by the developer that the project is being developed on the amount paid by members, the Adjudicating officer allowed the complaint and directed the developer to return the amount received from the consumer within 30 days and if not from 31st day it will carry simple interest at 2% p.a above the State Bank of India, MCLR as on today till the realization of entire amount.

6. The appellant/allottee being aggrieved by the impugned order in not awarding the interest on the amount paid by him towards sale consideration from the respective dates of payment, has preferred this appeal seeking to set aside the impugned order and thereby direct the 1st

respondent to pay interest and compensation on the amount received from him.

7. Heard Sri Nagesh poojari, learned counsel for the appellant and Sri Ramachandar Desu, learned Advocate for respondent No.1 -developer. Respondent No.2 RERA, though served, remained unrepresented.

8. The learned counsel for the Appellant apart from reiterating the grounds urged in the appeal memo, contended that Respondent No.1 entered into a supplementary agreement with the contractor without the prior consent of the allottees which is against the provision of RERA Act. It is further submitted that the date of completion of the project published by Respondent No.1 on the website and date of completion mentioned in the RERA registration certificate are different and thus, the developer has not published the correct time schedule of the project works and has not periodically up dated the same. Therefore, the allottees are mislead. Appellant also pointed out that on the strength of the supplementary agreement, the respondent No.1 has agreed to transfer rights of 180 units out of the total units of 388 in favour of the builder and therefore the purpose and object of "no profit no loss" of the project has been lost. It is further contended that though Section 18 provides that the authority has to award interest by way of compensation,

the learned Adjudicating Officer erred in not awarding interest on the sale consideration paid by the appellant from the respective dates of payments.

9. It is contended that Respondent No.1 by entering into supplementary agreement with the builder has transferred half of the units in favour of the builder without getting the consent from the allottees and approval from RERA. Further, it is stated that the 1st respondent has made deviations from the sanctioned plan and not providing financial status report to the allottees and not maintaining accurate account for the project.

10. The learned counsel also submitted that in view of indefinite delay in completion of the project the appellant had no option than to withdraw from the scheme and made requests for the withdrawal from the scheme and for refund of money. But his request was not considered by the contesting respondent. Thus appellant was compelled to file a complaint under Section 31 of the RERA Act against the 1st respondent before RERA for refund of money paid with interest and compensation. The appellant further submitted that the Adjudicating Officer, RERA though allowed the complaint for return of his money, rejected the plea for interest and compensation.

11. Pursuant to the said order, 1st respondent submitted that they have transferred an amount of Rs. 53,05,000/- to the account of the appellant.

12. It is further urged that the impugned order is erroneous, contrary to the facts and law and therefore liable to set aside. The order is passed without properly considering the complaint and in violation of provisions of RERA Act, 2016.

13. The appellant, with the above submissions has sought for setting aside the impugned order passed by the RERA dated 18.11.2019 in complaint No. CMP/190702/0003427 and thereby to direct the 1st respondent to pay interest over an amount of Rs. 53,05,000/- which was paid by the appellant towards the cost of apartment unit.

14. Learned counsel for Respondent No.1 submits that Air Force Naval Housing Board is a welfare society registered under the societies Registration Act, 1860 with the objectives of providing residential house to the serving Air Force and Navy personnel and widows of these services on "No profit No loss basis". The scheme which is being implemented is under self-finance housing scheme, under which society collects contribution from allottees of the project as a resources/finance for implementation of the project. The amount collected from allottees is solely used for the

projects of their clients and not for investment or sale benefits like a business organization.

15. It is submitted that the Air Force Navy Housing Board launched Mysore scheme during October, 2012. This scheme was planned for construction of 388 residential houses. Initially 353 persons were registered for allotment. After completion of requisite approvals and tendering process for civil work, construction work started in August, 2015. The Respondent awarded the contract for Rs. 171.4 crores. The Respondent No. 1 initially projected the basic tentative cost and this was subject to change depending upon other factors like cost of award of contract, development charges, super area, parking area, cost of additional area, taxes etc. This was mentioned in paras 4 & 5 of the allotment letter dated 14.03.2013 issued to the appellant. It is also mentioned in the allotment letter that escalation is payable due to possible increase in the prices of land, material, labour, taxes and other mandatory charges and changes in other specific areas etc.

16. The learned counsel for Respondent No.1 while drawing our attention to Rules mentioned in allotment letter at para 16 and 0703 of chapter VIII of Master Brochure submitted that the appellant was informed of the same which reads:

"No withdrawal is generally permitted, if a waitlist does not exist. However, even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allottee joins in and pay the due installments. No interest shall be paid on such refunds and cancellation charges as mentioned in para 0702 above shall be deducted as per existing rules."

17. Respondent No.1 further submitted that as per the agreed terms no interest/ compensation is payable to appellant in case the projects get delayed further as per terms refund is payable only where there is a waiting list in a particular category. The refund is also subject to deduction of cancellation charges and without any interest.

18. It is contented that the Respondent No.1 being a welfare society which has no funds of its own, it works on "No profit No Loss" basis has not made any provisions for paying interest/compensation to allottees at the time of costing of the project. When respondent having implemented self-financed schemes, the respondent society cannot be treated on par with a private builder while imposing penalty under RERA. Further, the respondent stated that Section 4(2) (l) (D) of RERA Act mandates that "*seventy percent of the amount realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost*

of construction and the land cost and shall be used only for that purpose". According to respondent no. 1 it contemplates that promoter is having an approx 30% profit margin. But in case of AFNHB all the amount received from allottees in respect of a project is kept in a separate account and spent for implementation of that project even before RERA came into existence. Thus, in case of a builder, he can bear penalty/compensation from the balance of 30% margin, whereas in case penalty is imposed on the 1st respondent-Board, it would have to be put in the project fund which ultimately will have to be recovered from the allottees.

Respondent No. 1 also denied that they have huge corpus of funds which has come through various projects. It is submitted by respondent - 1 that when there is no element of profit in the costing, then how such a huge amount can be collected. Respondent No. 1 in this regard has produced a document at Annexure - RA9 regarding current financial status of Mysore project.

Points for Consideration:-

19. That after hearing the learned counsel appearing for the parties and perusing the grounds of appeal, and documents produced along with the appeal and written arguments including the impugned order passed by RERA, the points that arise for our consideration is:-

(I) Whether the learned Adjudicating Officer was justified in not awarding interest on refund amount?

(II) Whether the appellant-allottee is entitled for interest on refund amount?

(III) What order?

R E A S O N S

20. **Point No. (I):-** It is evident from records submitted before the Tribunal that there was inordinate delay in completion of the project by the Respondent/developer. The respondent No.1 failed to deliver possession of apartments to the allottee within the prescribed period as per agreement, and further it is clear from perusal of the order of learned Adjudicating officer that the project is not complete in all respects. Therefore, Respondent No.1 has rightly accepted the order and returned the amount to the allottee.

21. In this context, firstly, it is apt to extract the Rules mentioned in the allotment letter para 16 & 0703 of chapter VIII of Master Brochure:

"No withdrawal is generally permitted, if a waitlist does not exist. However, even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new

allottee joins in and pay the due installments. No interest shall be paid on such refunds and cancellation charges as mentioned in para 0702 above shall be deducted as per existing rules."

Vide clause 19 of the allotment letter has been clarified that "due to enforcing circumstances behind the control of AFNHB, if the project gets delayed, no interest/compensation shall become payable.

This is basically on the ground that the scheme is self financed and all the expenditure in the project has to be contributed by the allottees. That based on the above Rule, it appears that Respondent No.1 made clear to the appellant that the refund would be possible only when category is fully subscribed and new alottees join the scheme and pay their installments.

22. In view of the above submissions now the question arises regarding payment of interest on the amount deposited by the allottee with the developer for purchase of a residential house.

Section 18 (1) of the Act reads:-

"18(1)**:** If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of an apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till handing over of the possession, at such rate as may be prescribed".

23. Admittedly the project was launched in October 2012. It was initially planned for 388 dwelling units, as against those proposed units, 353 persons registered at that point of time. Further the tendering process for civil work started in August-2015 i.e., prior to RERA Act coming into force. Further the said project was not completed before the

Act comming into force and therefore it is an on gonging project as per the provisions of the RERA Act. Even though the project is initiated prior to RERA Act and agreements between developer and allottee have been made on terms and conditions of the concerned by-laws of the society then existing, the provisions of the Act and Rules of the RERA will apply as on the date. In the case on hand, the allottee had withdrawn from the project as the developer had failed to complete the project in time and was unable to deliver possession of the apartment in accordance with the terms of the agreement for sale. Therefore the provisions of the RERA Act is applicable to the said project and the allottee is entitled to interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. Even assuming that the allottee had not withdrawn from the project, proviso to Section 18 of the Act mandates that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

24. It is also relevant to mention here that prior to commencement of the RERA Act, Karnataka Apartments Ownership Flats (Regulation of the Promotion of Construction, sale, Management and Transfer) Act 1972 was in force. Even under the said Act there was provision under Section 8

for refund of amount paid with interest for failure to give possession within the specified time.

25. It is an established fact that under Section 18 of the RERA Act when a developer has not completed the project as per within the time specified in the agreement, he is liable to pay compensation or refund deposited amount to the allottee with interest. Though Section 18 of the Act, provides and allow the Authority to award interest by way of compensation, by the impugned order, the Adjudicating officer has directed the 1st respondent just to return the amount deposited by the appellant without interest based on the submissions and pleadings made by the developer/respondent. Therefore, in the circumstances of the case, we hold that the appellant is entitled for interest on the amount paid by him towards sale consideration of the apartment as per Section 18 of the Act.

26. The conditions mentioned in the letter of allotment and agreed by the developer and the allottee that in case of return of amount, the allottee is not entitled for interest on the said amount will not have over-riding effect against the provision of Section 18 of the Act, which provides for return of the amount with interest and compensation in the event of allottee withdrawing from the project for lapse and laches on the part of the developer in not delivering possession of the apartment within the

time specified in the agreement. Further, it is also pertinent to mention that the 1st respondent-developer has not filed any appeal challenging the impugned order or applicability of the provisions of the Act and Rules to the projects undertaken by them.

27. The very fact that Respondent No.1 has entered into supplementary agreement with the builder thereby agreed to transfer half of the units infavour of the builder would falsify the contention of the Respondent No. 1 that scheme of the 1st Respondent is on "No profit and no loss" basis. Further 1st Respondent has failed to demonstrate that the amount received from allottees towards sale consideration is invested towards the cost of land and construction and development of the project by producing relevant material.

28. The very fact that the learned Adjudicating officer being satisfied with the case of the appellant that there was lapse on the part of the developer in delivering possession of the apartment within the time specified in the allotment letter, rightly ordered for return of the amount paid towards sale consideration of the apartment, but erred in not awarding interest on the said amount. R1 has accepted the order and returned the amount of the appellant and has not chosen to carry the matter in appeal.

29. Admittedly, respondent no.1 has paid entire amount to the appellant as per the impunged order. Appellant is entitled for the interest on the amount paid as per Section 18 of the Act read with Rule 16 of the Rules.

30. Before parting with the case, we would like to state that the appeal could not be disposed of within 60 days as per the requirement of Section 44(5) of the Act, due to time consumed in securing the records and negotiating for settlement and so also the lockdown due to covid-19 pandemic.

31. Having regard to the facts of the case and for the reasons stated hereinabove, we answer:

Point No.1 in the negative, and

Point No.2 in the affirmative.

32. For the aforesaid reasons and taking into consideration the arguments of the learned counsel appearing on both sides, records and documents filed by the appellant and contesting respondent No. 1, we pass the following:

O R D E R

1) Appeal filed by the appellant is partly allowed.

2) The impugned order passed by the learned Adjudicating officer, RERA-2nd respondent, dated 18.11.2019 in CMP/190702/0003427, is modified and 1st respondent-developer is directed to return the amount of Rs. 53,05,000/- received from the consumer with interest at the rate of 9% per annum on the amount deposited by the appellant from respective dates of deposits till the date of coming into force of RERA Act i.e, 26.03.2016 and from 26.03.2016 at the rate of interest of State Bank of India highest marginal cost of lending rate plus two percent till the date of return of the amount by the 1st Respondent, after deducting the amount already paid to the allottee, within a period of two months from the date of receipt of this order.

3) In view of disposed of appeal, pending 1.As, if any stand disposed of as they do not survive for consideration.

4) The Registry is directed to comply provisions of Section 44(4) of the RERA Act 2016, and return the records to RERA, if any, received.

There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER