

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

**DATED THIS THE 09<sup>TH</sup> DAY OF JUNE, 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. 264/2020**

**BETWEEN:**

Shri Poorna Prakash K  
904, Tower-1, Rustomjee Ozone,  
Goregaon, West Mumbai,  
Maharashtra- 400 062  
Mumbai sub urban district

**:APPELLANT**

(By Sri Bojanna, for M/s Josita Juris, Advocates)

**AND:**

1. The Adjudicating Officer,  
The Karnataka Real Estate Regulatory Authority,  
Second floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> cross, Mission Road, Bengaluru 560 027

2. LGCL Properties Pvt. Ltd.,  
12/1, Rest House Road,  
Bengaluru 560 001

**:RESPONDENTS**

(Respondent-1- served, unrepresented,  
Sri R. Krishna Murthy, Advocate for R.2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before this Tribunal, praying to set aside the order dated 14.01.2020 passed in CMP/190627/0003248 by the Adjudicating Officer, RERA Respondent No. 1 and modify the order passed by Respondent No.1 directing the 2<sup>nd</sup> respondent to refund the entire amount as per the Memo of calculation along with 18% interest per annum etc.,

This appeal coming on for Judgment this day, the Chairman, made the following:

### **JUDGMENT**

This appeal is preferred by an allottee of a villa constructed by Respondent No.2 herein, promoter of a real estate project M/s LGCL Properties Pvt. Ltd., challenging only the operative portion of the impugned order at para (b) passed by the learned Adjudicating Officer, RERA in CMP/190627/0003248 and praying to modify the said order and to direct the promoter to refund the entire amount paid by him with interest as per the Memo of Calculation filed by him.

2. The brief facts of the case are:

That in the year 2011, the allottee on coming to know the fact of sale of row houses/villas by the promoter M/s LGCL properties Pvt. Ltd, in their real estate project viz., 'LGCL STONESCAPE", booked for a unit in row houses bearing No.9 constructed in Sy.No.41/1, measuring 1 acre 36 guntas, situated at Chikkagubbi village, Bidarahalli Hobli, Bangalore East taluk, and entered into a sale agreement with the promoter for purchase of the said villa for a sale consideration of Rs.1,24,86,750/-. Pursuant to the said agreement,

the appellant claims to have paid a sum of Rs.99,64,439/- between the period from 9.8.2011 to 12.12.2017 as against the total sale consideration of Rs.1,24,86,750/- by availing loan from IDBI Bank Ltd.

3. It is averred by the appellant that since there was no progress in the construction of the project and allotment of villa by the promoter even after lapse of four years and sufficient delay in allotting the villa, he was constrained to file a complaint before the 1<sup>st</sup> respondent-RERA under Section 31 of the Real Estate (Regulation & Development) Act, 2016 ( for short, RERA Act), with a prayer to refund the amount of Rs.99,64,439/- with interest at 24% p.a., and compensation, in the interest of justice.

4. The learned Adjudicating officer after hearing both parties and taking into consideration the documents produced by them, held that the developer has not completed the project within the specified time and has failed to allot the villa within the time specified in the sale agreement. Accordingly, the 1<sup>st</sup> respondent passed the impugned order allowing the complaint and directing the promoter to return a sum of Rs.5,00,000/- together with interest at 9% p.a on the respective amount paid on the respective dates till 30.04.2017 and @ 2% above the MCLR of SBI commencing from 01.5.2017 till realization and also granted other reliefs.

5. The appellant-allottee being aggrieved by the said part of the impugned order directing the developer to return only Rs.5,00,000/- together with interest as aforesaid instead of Rs.99,64,439/-, has preferred this appeal seeking modification of the same.

6. Heard Sri Bojanna, for M/s Josita Juris, learned counsel for the appellant and Sri R.Krishna Murthy, Advocate for Respondent No.2- promoter. Respondent No.1 RERA, though served, remained unrepresented.

7. The learned counsel for the appellant submits that though the appellant has mentioned that he has paid a sum of Rs.99,64,439/- to the promoter towards part of sale consideration of Villa in the complaint as well in the Memo filed along with the complaint, the learned Adjudicating Officer has committed an error in directing the developer to return a sum of Rs.5,00,000/- only along with interest. It is submitted that even the learned Adjudicating officer in the reasoning portion of the order has observed that the complainant has filed Memo of calculation for having paid Rs.99,51,952/- between the period from 9.9.2011 to 12.12.2017. He further submits that the mistake in mentioning the amount may be either due to inadvertence or a typographical error which requires to be modified by this Hon'ble Tribunal.

8. The learned counsel for the 2<sup>nd</sup> respondent fairly submits that the allottee has paid a sum of Rs. 99,51,952/- between the

period from August 2011 to December, 2011. However, it is submitted that the promoter has now received the occupancy certificate in respect of the said project and the villa is ready for occupation and is willing to execute a registered sale deed and the appellant may be directed to take possession of the villa by paying the balance sale consideration. The learned counsel further submits that in case the allottee wants his money back, the promoter will return the amount as soon as he sells the villa allotted to appellant to third party.

9. In reply, the learned counsel for the appellant, on instructions from the appellant, submitted that the allottee is not willing to accept the offer of the 2<sup>nd</sup> respondent- promoter at this stage after a lapse of nearly seven years and instead the promoter may be directed to return the amount paid by the allottee along with interest and to comply with the other directions given in the impugned order.

10. In view of the rival contentions of the parties, the only point that arises for our consideration is:

(I) Whether the operative portion of the impugned order at para (b) directing the developer to return a sum of Rs.5,00,000/- together with interest at 9% p.a on the respective amount paid on the respective dates till 30.04.2017 and @ 2% above the MCLR of SBI

commencing from 01.5.2017 till realization, calls for interference by this Tribunal?

(II) What order?

Reg. POINT NO.(I):

11. It is evident from the impugned order and records of the case that there was inordinate delay of 7 years in completion of the project and the promoter utterly failed to deliver possession of the villa to the allottee within the prescribed period. It is also on record to show that the promoter was able to obtain the occupancy certificate only in the year 2019. The contention of the promoter that as he has now received the occupancy certificate and villa is ready for occupation, the appellant may be directed to take possession of the villa and take sale deed by paying the balance sale consideration, cannot be accepted and considered in the appeal of the allottee and in the absence of any appeal by the promoter challenging the impugned order and further he cannot seek a relief in the appeal filed by the allottee. Further, it is also seen from the records and the order of the learned Adjudicating Officer, that the project is not complete in all respects and is not in a habitant situation. Therefore, we do not find any error in the order of the learned Adjudicating Officer directing to return the amount to the allottee along with interest. However, from a perusal of the impugned order and the rival contentions of the parties it is clear that the amount directed to be returned to the allottee in

the impugned order may be either due to inadvertence or a typographical error.

12. On 19.3.2021, in view of conflicting submissions of both parties with regard to the amount stated to be paid by the appellant to the promoter towards sale consideration, we directed both the parties to file a detailed memo incorporating their submissions with regard to the amount paid by the allottee to the promoter towards sale consideration.

13. Pursuant to the said order, the appellant and Respondent No.2 filed separate Memos. In the memo filed by the appellant, the total payment made towards acquisition of villa is stated as Rs. 99,51,952/- and Respondent No. 2 has admitted in the Memo that the amount paid by the appellant during August 2011 to December 2017 is Rs. 99,51,952/-. The Memos filed by the appellant and the 2<sup>nd</sup> respondent are taken on record.

14. In view of the consensus between the parties regarding the amount paid by the allottee towards sale consideration of villa as Rs.99,51,952/- and accepting the said submission, Point No.I is answered in the affirmative.

15. For the aforesaid reasons and taking into consideration the Memos filed by the appellant and the contesting Respondent No.2, we pass the following:

**ORDER**

- (1) Appeal is allowed;
- (2) That part of the order passed at para (b) by the learned Adjudicating Officer, RERA -1<sup>st</sup> respondent dated 14.1.2020 in CMP/190627/0003248, that the developer is directed to return Rs.5,00,000/- is modified to the extent that the developer is hereby directed to return Rs.99,51,952/- together with interest at 9% p.a with effect from date of receipt of the respective amount till 30.04.2017 and @ 2% above the MCLR of SBI commencing from 01.5.2017 till realization.
- (3) The impugned order in respect of other reliefs granted to the appellant shall remain undisturbed.
- (4) In view of disposal of appeal, pending I.As if any stand disposed of as they do not survive for consideration.
- (5) Registry is directed to comply provisions of Section 44(4) of the RERA Act and return the records of RERA, if received.

**Sd/-  
HON'BLE CHAIRMAN**

**Sd/-  
HON'BLE JUDICIAL MEMBER**

**Sd/-  
HON'BLE ADMINISTRATIVE MEMBER**