

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

**DATED THIS THE 5<sup>th</sup> DAY OF JULY, 2021**

**PRESENT**

**HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN**

**AND**

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

**APPEAL NO. (K-REAT) 15/2020  
(RERA APPEAL (Old) NO.04/2019)**

**BETWEEN:**

1. Sri. Sushil D Mandape  
S/o Mr. Dhanykumar C Mandape  
Age about 41 years.  
Occupation: Service.
2. Mrs. Swati mandape  
w/o Sri. Sushil D Mandape  
Age about 36 years.  
Occupation: House wife

Both R/o: Flat no 212, DSR Daffodil Apt.,  
Sarjapur-ORR, Bellandur  
Bengaluru 560103.

**...APPELLANTS**

(Rep. by Sri R.A.Anagolkar for Sri Sachin Bichu, Advocate)

**AND:**

1. Nitesh Urban Development Private Limited  
(A Company incorporated under the  
Companies Act ) having its registered office  
at 7<sup>th</sup> floor, Nitesh Timesquare,  
No.8, Mahatma Gandhi Road,  
Bengaluru – 560001.  
Rep. by its Managing Director.

2. REAL ESTATE REGULATORY AUTHORITY KARNATAKA  
Represented by its Chairman,  
Having its office at Ground floor,  
Silver Jubilee Block, Unity Building,  
CSI Compound 3<sup>rd</sup> Cross,  
Mission Road, Bengaluru,  
Karnataka 560027. .

**.RESPONDENTS**

( Sri Vasusena, for M/s Shetty & Hegde Associates, Advocates  
for R.1,  
R.2 served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) praying to modify the order dated 18<sup>th</sup> August, 2018 passed in CMP/180413/0000727 by the respondent No.2,-Adjudicating Officer and the 1<sup>st</sup> respondent may be directed to pay the amount of Rs.91,70,172/- along with interest @ 18% p.a from 2.9.2014 till the date of actual payment by the respondent to the appellants. This appeal was later transferred to this Tribunal on 02.01.2020 and re-numbered as Appeal (K-REAT) No.15/2020.

This appeal, coming on for arguments this day, Hon'ble Chairman delivered the following:

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

The appellants/allottees having not fully satisfied with the impugned order passed by the learned Adjudicating officer in not awarding interest on the amount ordered to be returned to them, have preferred this Appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred in short as '**The Act**') praying this tribunal to direct the developer to return the amount along with interest, by suitably modifying the impugned order.

**Facts of the case in brief are:**

2. The 1<sup>st</sup> respondent is a company incorporated under the Companies Act and it is engaged in real estate business by constructing plots and residential apartments.

3. The appellants on coming to know that the 1<sup>st</sup> respondent is a developer engaged in constructing the residential apartments and to sell the same in favour of the aspiring persons, approached the developer for the purpose of purchasing a flat in the project undertaken by them and known as "NITESH CAPE COD PHASE -I".

4. That after negotiation, the appellants and the 1<sup>st</sup> respondent entered into a Construction Agreement dated 9.5.2014. Under clause (6) of the said agreement, the developer has undertaken to complete construction and deliver possession of the flat in favour of the appellants on or before 31.12.2015 with a grace period of six months. This fact is not disputed by the developer. According to the said agreement, the 1<sup>st</sup> respondent-developer ought to have completed the construction of the project and delivered possession of the flat in favour of the appellants on or before 31.12.2015 and with a grace period of six months i.e, on or before 30.6.2016.

5. The 1<sup>st</sup> respondent having failed to develop the project and deliver possession of the flat to the allottees within the time stipulated in the

agreement despite repeated requests and demands, the allottees were constrained to file a complaint before RERA contending that the 1<sup>st</sup> respondent after receiving sale consideration from them has failed to develop the project and deliver possession of the flat in their favour within the time specified in the Construction Agreement and prayed as under:

“Request for the cancellation of sale deed  
(Construction Agreement) and full refund with interest “

6. 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 by the developer- respondent No.1, and accepting the case of the appellants has rightly ordered for return of the amount of the appellants without awarding interest.

7. The appellants/allottees being not fully satisfied by the impugned order in not directing the 1<sup>st</sup> respondent to return their amount with interest from the respective date of payments, have preferred this appeal seeking to direct the 1<sup>st</sup> respondent to pay interest.

8. Heard Sri R.A.Anagolkar, for Sri Sachin Bichu, learned counsel for the appellants and Sri Vasusena, for M/s Shetty & Hegde Associates, learned Advocate for respondent No.1 developer.

9. There is no representation for Respondent No.2 RERA, despite service of notice on them.

10. Sri Anagolkar, learned counsel for the Appellants, apart from reiterating the grounds urged in the appeal memo, submits that the learned Adjudicating Officer inspite of accepting the case of the appellants that the developer has failed to deliver possession of the flat in favour of the appellants within the time specified under Clause (6) of the Construction Agreement entered into between the appellants and the 1<sup>st</sup> respondent, and rightly ordering for return of the amount paid by the allottees to the developer towards sale consideration, has committed an error in not directing the developer to return the said amount with interest from the respective dates of payment of amounts. The learned counsel further submits that the order passed by the learned Adjudicating Officer is in violation of the provisions of Section 18 of the Act and Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred in short as 'The Rules').

11. The learned counsel submits that the developer having failed to develop the project and deliver possession of the flat within the time specified in the agreement entered into between the developer and the allottees, ought to have returned the amount paid by the allottees for purchasing of a flat with interest from respective date of payments of the amount. With the above and other grounds urged in the appeal memo,

the learned counsel prays for allowing the appeal by suitably modifying the impugned order passed by the learned Adjudicating Officer.

12. Whereas, Sri Vasusena, learned counsel appearing for the 1<sup>st</sup> respondent-developer submits that the developer has already taken decision for transferring the entire project in favour of another developer after obtaining necessary permission from RERA and with the consent of more than 50% of the allottees and it is in the interest of the allottees. With the above submissions, he prays for dismissal of the appeal.

13. After hearing the learned counsel for the parties and perusing the impugned order passed by the learned Adjudicating Officer, the points that arise for our consideration in this appeal are:

- (I) Whether the learned Adjudicating Officer was justified in not awarding interest on the amount ordered to be returned by the developer in favour of the allottees?
- (II) Whether the appellants-allottees are entitled for interest on the amount from the date of respective payments?
- (III) What order?

### **REASONS**

14. **Point No.(I):-** Admittedly, the 1<sup>st</sup> respondent is a company incorporated under the Companies Act and engaged in the real estate

business. It has undertaken to construct residential flats in a project known as 'NITESH CAPE COD PHASE I' located at Bellandur, Bengaluru.

15. A perusal of the Construction Agreement dated 9.5.2014 entered into between the appellants and 1<sup>st</sup> respondent, would show that under clause (6) thereof, the 1<sup>st</sup> respondent has agreed to deliver possession of the flat in favour of the appellants on or before 31.12.2015 with six months grace period additionally. According to the said agreement, the 1<sup>st</sup> respondent developer ought to have developed the project and delivered possession of the flat in favour of the appellants on or before 31.12.2015 and latest within the grace period of six months i.e, on or before 30.6.2016. Whereas, the 1<sup>st</sup> respondent failed to complete the construction of the project and deliver possession of the flat to the allottees within the time specified in the agreement despite repeated requests and demands made by the appellants.

16. It is the case of the 1<sup>st</sup> respondent before RERA and before this Tribunal that they have taken steps to transfer the entire project in favour of another real estate developer. It is their further case that they have obtained permission of RERA and have taken consent of more than 50% of the allottees for transferring the project in favour of another developer and the process is at the stage of completion. The submission made by the learned counsel for the developer in effect is that if some more time is granted to the developer, the process of transfer of project to another

developer will be completed and the prospective developer would complete the project expeditiously and deliver possession to the allottees. This submission of the learned counsel for the 1<sup>st</sup> respondent itself would go to show that the 1<sup>st</sup> respondent- developer failed to develop the project and deliver possession of the flat in favour of the appellants within the time stipulated under the agreement.

17. It is not the case of the 1<sup>st</sup> respondent-developer either before RERA or before this Tribunal that they had completed the project and were ready to deliver possession of the flat to the appellants within the time specified in the agreement. On the other than, it is their admitted case that even to this day, construction is not complete and as stated above, they have already taken decision for transferring the entire project in favour of another builder after obtaining necessary permission from RERA and with the consent of more than 50% of the allottees. However, no material is produced in this regard.

18. The learned Adjudicating Officer having accepted the case pleaded by the appellants and rightly ordered for return of the amount of the appellants, but, at the same time, failed to notice the mandatory provisions of Section 18 of the Act and Rule 16 of the Rules.



19. In this context, it is useful to extract relevant portion of Section 18 of the Act, which 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;

b) xx xx ,

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 the handing over of the possession, at such rate as may be prescribed”.

Further, Rule 16 of the Rules reads thus:

**Rule 16: Rate of interest payable by the promoter and the allottee.-** The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.”

20. In the case on hand, since 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 Construction Agreement, the appellants were forced to withdraw from the project and demanded for return of their money with interest.

21. According to the above mandatory provision of Section 18(1)(a) of the Act, the developer in the event of failing to complete the construction of the project and deliver possession of the flat shall be liable on demand of 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 towards sale consideration of an apartment, plot, building, as the case may be, along with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

22. Thus, the learned Adjudicating officer is not justified in simply directing the developer to return the amount of the allottees without awarding interest thereon.

23. Before concluding 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 also on account of periodical lockdowns due to covid-19 pandemic.

24. For the reasons stated hereinabove, we answer:

Point No.1 in the negative, and

Point No.2 in the affirmative.

25. In view of the above, the following:

**ORDER**

- 1) Appeal filed by the appellant is allowed.
- 2) The impugned order passed by the learned Adjudicating officer, RERA-2<sup>nd</sup> respondent, dated 18<sup>th</sup> August, 2018 in CMP/180413/0000727, is modified and 1<sup>st</sup> respondent-developer is directed to return the amount received from the appellants towards sale consideration of Flat No.C0602 undertaken to be constructed in "NITESH CAPE COD-PAHSE I with interest from respective dates of payments of the amount chargeable by the State Bank of India highest marginal cost of lending rate plus two percent till the date of return of the amount by the 1<sup>st</sup> Respondent, after deducting the amount already paid to the appellants-allottees, if any, within a period of two months from the date of receipt of a copy of this order.
- 3) In view of disposal 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 ADMINISTRATIVE MEMBER**

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