

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

DATED THIS THE 19TH DAY OF JULY 2021

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 386/2020

BETWEEN

M/s Godrej Properties Limited
A Company incorporated under the
Provisions of the Companies Act, 1956,
Having its registered office at GODREJ ONE
5th Floor, Pirojshanagar,
Eastern Express, Highway Vikroli
Mumbai-400 079.

Represented by its Authorized Signatory
Mrs Padmavathi L

Appellant

(By M/s MRP Legalis, Advocates for appellant, Absent)

AND

1. Mr. Pradeep Kumar Gupta
Gupta House, Survey No.51-A
Meetha Nagar, Kondwa Khurd
Pune-411 048.

2. The Secretary
Karnataka Real Estate Regulatory Authority Bangalore,
No.1/14, Ground Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru
Karnataka-560 027.

Respondents

(M/s George Advocate for M/s George & Co., for R1)

(R2 RERA served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the impugned order dated 29th September, 2020 passed in Complaint No.CMP/200108/0005167 by respondent No.2-Adjudicating Officer.

This Appeal, coming on for Orders, this day, the Hon'ble Chairman, delivered the following:

JUDGMENT

There is no representation for appellant and R2.-RERA.

2. Sri George for M/s George & Co. learned counsel appearing for R1 submits that appellant has not deposited the remaining amount of Rs. 1,60,000/- towards total amount payable to the allottee as per the impugned order and prays for dismissal of the appeal.

3. The appellant, who is Promoter of a Real Estate Project, has preferred this Appeal challenging the order dated 29th September, 2020 passed in Complaint No.CMP/200108/0005167 by learned Adjudicating Officer, directing to pay delay compensation to the allottee.

4. In part compliance of proviso to Section 43(5) of the RERA Act, the appellant, while preferring the Appeal, had deposited certain

amount with this Tribunal, payable to the allottee, as per the impugned order.

5. That on 03.03.2021 this Tribunal while admitting the appeal granted time for the appellant to deposit the total amount payable to the allottee as per the impugned order after deducting the amount already deposited.

6. 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 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 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 EXPERION DEVELOPERS PVT. LTD. vs. STATE OF HARYANA AND OTHERS (CWP No.38144/2018) which in turn passed by relying upon the judgment of the Hon'ble Supreme Court in the case of M/s TECHNIMONT PVT LTD1 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 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 Appeal cannot be heard.

7. This Tribunal, based on a Memo Of Undertaking filed by the appellant undertaking to deposit the remaining amount payable to the allottee as per the impugned order on or before 03.03.2021, granted time to the appellant, finally, upto 31.03.2021 and in the event of appellant depositing the amount directed the office to list the appeal on 05.04.2021 for argument.

8. That on 05.04.2021, on the submission of the appellant that he has deposited the total amount payable to the allottee by the promoter as per the impugned order, office was directed to verify as to whether the appellant has deposited the total amount. The matter was adjourned to 28.5.2021 and due to Covid-19 pandemic, the case was further adjourned to 14.06.2021.

9. On 14.06.2021 as there was no representation from both sides and considering that it may be on account of lockdown, matter was adjourned to 24.06.2021. On 24.6.2021, noticing that the appellant has not deposited the total amount, appellant was finally

granted time till 17.07.2021 to deposit the difference amount of Rs. 1,60,000/- and to list the matter on 19.7.2021.

10. Even today, there is no representation for the appellant.

11. For the reasons stated above and as the appellant has failed to deposit the balance amount as undertaken by him in the memo, we pass the following:

ORDER

- 1) Appeal is dismissed for non-depositing 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 Registry is hereby directed to release the amount deposited by the appellant while preferring the Appeal before this Tribunal in part compliance of proviso to Section 43(5) of the Act, along with interest, if any, accrued thereon, if any, by issuing either a cheque or DD in favour of the allottee-Respondent No.1, within two weeks from the date of allottee furnishing necessary documents.
- 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 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

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