

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

**DATED THIS THE 30<sup>th</sup> DAY OF JULY, 2021**

**PRESENT**

**HON'BLE K P DINESH, JUDICIAL MEMBER**

**AND**

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

**APPEAL NO. (K-REAT) 271 /2020**

**BETWEEN:**

M/s Shrivision Towers Private Limited  
No. 192, 2<sup>nd</sup> main, T Chowdaiah Road,  
Sadashivanagar,  
Bengaluru – 560 080.  
Represented by its Authorised signatory,  
Mr. Naveen Kumar J

**...APPELLANT**

(Rep. by M/s JSM Law Partners, Advocate for Appellant)

**AND**

1. The Karnataka Real Estate Regulatory Authority,  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI compound,  
Bengaluru – 560 027  
Represented by its Secretary
2. Smt. Neha Agarwal,  
#46/19, Ram Bagh Road,  
Near Mandi Muzaffar Nagar,  
Uttar Pradesh – 251 001.

**...RESPONDENTS**

(R1 Served, Unrepresented)

(R2 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 23<sup>rd</sup> August, 2019 passed in Complaint No. CMP/190506/0002922 by respondent No.1-Adjudicating Officer, RERA.

This appeal, coming on for orders this day, Hon'ble Judicial Member delivered 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 23<sup>rd</sup> August, 2019 passed in Complaint No. CMP/190506/0002922 by learned Adjudicating Officer, directing to pay delay compensation to the allottee.

2. 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.

3. That on 31.03.2021 this Tribunal while admitting the appeal granted time on request of appellant to settle the dispute with the allottee amicably before 19.05.2021 and if the appellant is not able to settle the matter with allottee amicably, he shall deposit the total amount payable to the allottee on or before 19.05.2021.

4. Further on 25.06.2021 the appellant was granted time finally up to 12.07.2021 to deposit the total amount payable to the allottee as per the impugned order after deducting the amount already deposited, failing which

to list the appeal for dismissal on 14.7.2021. On 14.7.2021, at the request of the learned counsel for the appellant, finally time was granted till 26.7.21021 to deposit the amount. If the amount is not deposited, to list the appeal for dismissal on 30.7.2021.

5. Even today, Sri Sameer sharma learned counsel appearing for appellant submits that Appellant is unable to deposit the remaining 70% of the compensation amount as ordered by the learned Adjudicating Officer in compliance of proviso to Section 43(5) of the Act.

6. Though sufficient opportunity is given to the appellant, the appellant has failed to comply with the statutory provision of proviso to Section 43(5) of the Act.

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 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 to pay the delay compensation for the delay in delivering the 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.

8. There is no representation for Respondents.

9. For the reasons stated above and as the appellant has failed to deposit the balance amount as per the impugned order, 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, by issuing either a cheque or DD in favour of the allottee-Respondent No.2, after 30 days from this date, if he turns up and claims the same in response

to the notice issued by the Registry and furnishing necessary documents.

- 3) The Registry is also hereby directed to issue notice to the allottee in this regard as the allottee has not appeared before the Tribunal even after the service of the notice in appeal. If the allottee fails to appear before the Registry and claim the deposit amount even after 15 days of the service of notice, the appellant/promoter can approach the Tribunal for refund of the amount by filing an application and necessary documents.
- 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.

No order as to costs.

**Sd/-**

**HON'BLE JUDICIAL MEMBER**

**Sd/-**

**HON'BLE ADMINISTRATIVE MEMBER**