

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

DATED THIS THE 27th DAY OF AUGUST, 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. 154/2020

(OLD RERA. APL No.219 of 2019)

BETWEEN:

Raghunatha R
S/o Late. Ramaswamy M.S.
Age 59 years,
#2557, 22nd Main, 30th Cross,
Banashankari II Stage,
Bengaluru – 560 070.

APPELLANT

(Appellant- Party-In-Person)

AND

1. M/s Mantri Developers (P) Limited.
Mantri Developers Pvt Ltd.
Mantri House #41, Vittal Malya Road,
Bangalore – 560 001.
Represented by Managing Director
2. M/s PNB Housing Finance Limited.
Ground Floor Property Bearing no.5,
Mathrushree Arcade 100 ft Ring Road 1st Phase,
Stage 2, BTM Layout,
Bangalore – 560 076
Represented by Managing Director

3. Real Estate Regulatory Authority Karnataka,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru, Karnataka-560027
Represented by Adjudicating Officer

..RESPONDENTS

(Sri Sunil P Prasad for M/s Tapasya Law Chambers, Adv for Respondent-1)

(Sri Mariyappa M S & Associates, Adv for Respondent-2)

(R-3 RERA, served- Unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 22nd March, 2019 in CMP/181125/0001666 passed by the Adjudicating Officer, RERA Respondent-3. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 154/2020.

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

JUDGMENT

An allottee of a flat in a real estate project, having not fully satisfied with the order passed by the learned Adjudicating officer dated 22nd March, 2019 in CMP/181125/0001666 , has preferred this appeal.

Brief facts leading to this appeal are:

2. The appellant filed a complaint against the 1st respondent- M/s Mantri Developers (P) Limited (hereinafter referred to as 'Promoter') before the 3rd respondent-RERA seeking the relief of immediate

settlement as per the commitments made by the promoter on the ground that promoter failed to fulfil the commitments made to him.

3. The promoter who was arrayed as respondent in the complaint before RERA resisted the complaint by filing statement of objections in the form of counter affidavit and prayed for dismissal of the complaint on several grounds.

4. The learned Adjudicating officer, after hearing the complainant who appeared as party-in-person and the learned counsel appearing for the promoter and perusing the complaint filed by the appellant and statement of objections filed by the promoter and documents produced by the parties, allowed the complaint as under:

"1. The complaint No.CMP/181125/0001666 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs.30,66,788/- to the complainant with interest @ 10.75% p.a from today.
- b) The developer is hereby directed to return the 2X amount to the complainant.
- c) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.

d) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.

e) The developer shall pay Rs.5,000/- as cost of this petition.”

5. The complainant having not fully satisfied with the order passed by learned Adjudicating officer has preferred this appeal praying as follows:

- 1) “The developer shall refund Rs. 69,57,057/- (Rupees Sixty-nine lakh fifty seven thousand fifty seven)+ 5000, five thousand RERA awarded Legal expenses + 30000 thirty thousand, + as on August 2019 and with additional interest at 10.75% if there is further delay.
- 2) The developer (Respondent 1) shall take complete financial responsibility to close the loan, penal charges with the PNBHFL(respondent 2) as promised in buyback subvention scheme and confirmed through emails and scheme advertisements and MOU.
- 3) The appellant prays that this Hon’ble court be pleased to allow the appeal pass necessary order against the respondent 1, for a sum of Rs. 7,000,000+100,000/- ... seventy lakh together with court costs, Rs.100,000/- one lakh, and current and future interest at 10.75% from the date of the appeal till the

date of realization of entire amount, together with such other relief or reliefs, as this Hon'ble court deems fit to grant under the circumstances of the case, in the ends of justice. And the order dated 22.03.2019, In CMP No.181125/0001666 by RERA."

6. In the appeal, promoter was arrayed as 1st respondent, M/s PNB Housing Finance Limited (PNBHFL)-Bank was arrayed as 2nd respondent without making an application for impleading the said Bank and RERA as 3rd respondent.

7. Later the appellant filed an application praying the Tribunal to implead M/s PNB Housing Finance Limited (PNBHFL) as 2nd respondent to the appeal. The application was allowed and appellant was permitted to implead PNBHFL as respondent No.2.

8. Thereafter promoter has filed statement of objections denying the averments made in the appeal memo and praying the Tribunal to dismiss the appeal mainly on the ground that the appellant is neither an allottee nor a consumer, but he is only an investor and therefore, he cannot invoke the provisions of the Act.

9. The 2nd respondent-Bank also filed statement of objections contending that Bank had never promoted any buy back scheme as

alleged by the appellant and they had sanctioned the loan and disbursed the amount within the frame work of law and guidelines governing the same. Further, it is averred that if the appellant has any dispute against the promoter with regard to deficiency of service, he can seek appropriate relief only against the promoter and not against the Bank. The 2nd respondent while denying all other averments in the appeal memo as false and baseless, sought for dismissal of the appeal as against the Bank.

10. It is relevant to mention here that the promoter and the PNBHFL have not preferred any appeal challenging the impugned order passed by the learned Adjudicating Officer.

11. The appellant-complainant though preferred this appeal seeking as many as three reliefs as stated above, but, later, by filing a memo got the appeal restricted to prayer (1) only. The said memo is taken on record.

12. That in view of the memo filed by the appellant restricting the reliefs sought in the appeal to prayer (1) and in the absence of an appeal by the promoter and the PNBHFL -Bank challenging the impugned order passed by the learned Adjudicating officer, the Tribunal has to consider only the prayer made at Sl.No.(1) of the appeal memo, which pertains to

the relief granted by the learned Adjudicating officer at Sl.No.1(a) of the impugned order. Therefore, the only question that arises for consideration in the appeal is:

(I) Whether the impugned order passed by the learned Adjudicating Officer at Sl.No.1(a) of the impugned order calls for interference and requires modification?

(II) What order?

13. We have heard the appellant as party-in-person, Sri Sunil P Prasad for M/s Tapasya Law chambers, learned counsel for 1st respondent-promoter and Sri Mariyappa.M learned counsel for 2nd respondent- PNBHFL-Bank. Perused the Memorandum of appeal, statement of objections filed by respondents 1 and 2 and documents produced by the promoter and the allottee.

14. The third respondent-RERA, though served remained unrepresented.

15. The appellant, in the course of arguments vehemently contended that since the promoter failed to complete the project and give possession of the flat allotted in his favour in accordance with the terms of the agreement for sale, he is entitled for return of his own contribution as well as discharge of housing loan raised by him with the

2nd respondent –Bank and remitted to the promoter as per Section 18 of the Act with such rate of interest as provided under Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (for short, the Rules).

16. The appellant further submits that despite the specific direction issued to the promoter under the impugned order directing to return his own contribution and discharge the housing loan, the promoter has neither returned his own contribution nor discharged the housing loan. He submits that in spite of specific direction issued at Sl.No.1(c) of the impugned order, the second respondent-Bank so far has not taken any steps against the promoter for recovery of the housing loan raised by the appellant. On the contrary, the Bank has been demanding the appellant to discharge the loan by issuing notice after notice.

17. The main grievance of the appellant is that the learned Adjudicating officer ought to have directed the promoter to return the own contribution of the appellant amounting to Rs. 30,66,788/- with interest at State Bank of India highest marginal cost of lending rate with effect from the respective dates of payment of the said amount. The further grievance of the appellant is that despite specific direction issued to promoter at Sl.No.1(c) of the impugned order, the Bank has not been

taking any steps against the promoter for recovery of the housing loan raised by him with the 2nd respondent-Bank.

18. The appellant submits that apart from Rs.30,66,788/- which the promoter was directed to return to him with interest at 10.75% from the date of the order, he has paid another Rs.5,00,000/- (Rupees five lakhs) towards other heads.

19. The appellant, while preferring the appeal, calculated the interest payable on his own contribution with effect from the respective dates of payment of the amount to the promoter and prayed for a direction to refund a sum of Rs. 69,57,057/- and while doing so it is not clear as to whether the appellant has included Rs.5,00,000/- stated to have been paid by him to the promoter. However, by filing a Memo, the appellant has restricted the reliefs sought in the appeal to prayer (1) only.

20. With the above submissions, the appellant prayed to allow the appeal and grant the relief sought at prayer (1) of the appeal memo by modifying the relief granted by the learned Adjudicating Officer at Sl.No.1(a) of the impugned order.

21. Whereas Sri Sunil P Prasad, learned counsel for the promoter fairly submits that the promoter could not develop the project and deliver possession of the flat to the allottee as promised under the Agreement of sale entered into between the appellant and 1st respondent and secure Occupancy Certificate till day.

22. The learned counsel further submits that the promoter does not dispute the own contribution made by the appellant and remittance of housing loan raised with the 2nd respondent-Bank directly to the promoter towards sale consideration for purchasing of a flat undertaken to be constructed by the promoter.

23. The learned counsel fairly admits that promoter has not preferred any appeal challenging the impugned order.

24. The learned counsel further submits that in view of the relief granted at Sl.No.1(b) of the impugned order directing the promoter to return the 2X amount to the appellant, the appellant is not entitled for interest at SBI Marginal Cost of Lending rate plus two per cent on his own contribution. He submits that the impugned order passed by the learned Adjudicating officer is just and proper and does not call for interference.

25. With the above grounds, learned counsel prays for dismissal of the appeal.

26. The learned counsel appearing for the 2nd respondent-Bank submits that since the Bank was not made as party to the complaint filed by the appellant before RERA, the Bank could not take steps against the promoter for recovery of housing loan raised by the appellant with their Bank. Now the Bank is made as party and arrayed as 2nd respondent in the appeal, it would certainly take appropriate steps against the promoter as well as the appellant for recovery of its loan and after discharge of its loan it would issue loan discharge certificate in favour of the promoter as well as appellant, and there is no reason for the apprehension of the appellant, that after discharge of loan Bank would not issue loan discharge/clearance certificate in his favour. The said submission of the learned counsel for 2nd respondent is placed on record.

27. The learned counsel further submits that it would be more convenient either on an application by appellant or by suo motu if RERA is directed to incorporate the Bank as 2nd respondent in the cause title of the impugned order, so as to facilitate the Bank to initiate proceedings for recovery of its loan raised by the appellant. The said request made by

the learned counsel for the Bank is not opposed by the appellant as well as the learned counsel appearing for the 1st respondent-Promoter.

28. The learned counsel appearing for the 2nd respondent Bank fairly admits that the loan raised by the appellant with their Bank was directly remitted to the 1st respondent-Promoter towards sale consideration for the purpose of purchase of a flat in the project undertaken to be constructed by the promoter.

29. It could be seen from the impugned order that at Sl.No.1(a) of the operative portion of the impugned order, the learned Adjudicating Officer has directed the promoter to return the own contribution amount of Rs.30,66,788/- to the complainant with interest @ 10.75% p.a from today (i.e., the date of the order of AO).

30. It is relevant to mention here that there is no dispute that the 1st respondent is a promoter as defined under Section 2(zk), the project undertaken by the 1st respondent is a real estate project as defined under Section 2(zn) of the Act and the project is situated within the planning area as defined under Section 2(zh) of the Act. As such, the provisions of the Act and Rules made thereunder are applicable to the facts of the case.

31. It is also not in dispute that since the promoter failed to keep up his promise made to the appellant in developing the project and delivering possession of the flat in accordance with the agreement that was entered into between the promoter and the allottee, the allottee filed a complaint with RERA against the promoter seeking the relief of immediate settlement as per the commitments made by the promoter.

32. Section 18 of the RERA Act deals with return of amount and compensation which reads thus:

“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 provides for rate of interest payable by the promoter and the allottee which reads as under:

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.”

33. The appellant has filed a Memo dated 12.8.2021 showing the details of payment, quantum and mode of payment of his own contribution. The promoter has not denied the own contribution made by the appellant amounting to Rs.30,66,788/- as directed to be returned to him by the learned Adjudicating officer in the impugned order. Therefore, all that is required to be considered in this appeal is that whether the promoter is liable to return the own contribution of the appellant towards part of sale consideration with interest from the respective dates of payment.

34. Admittedly, it is a case of return of own contribution of the appellant and discharge of his bank loan raised with the 2nd respondent and remitted to the promoter towards sale consideration for purchasing of a flat in the project undertaken to be developed, on account of failure on the part of the promoter in developing the project and delivering possession of the flat in favour of the appellant as specified in the agreement. The 1st respondent-promoter also does not dispute the amount of appellant's own contribution and contribution made by way of housing loan through the 2nd respondent-Bank. If that is so, it is needless to say that the promoter is liable to return the own contribution of the appellant with such rate of interest from respective dates of payment.

35. It is to be stated that as per Section 8 of the Karnataka Ownership Flats (Regulation of the promotion of construction, sale, Management and Transfer) Act, 1972 the promoter in the event of failure on his part to develop the project and deliver possession of the flat to the allottee, was liable to return the amount to the allottee with interest at 9% p.a from the respective dates of payment till 1.5.2017 (the date of coming into force of RERA Act) and after RERA Act coming into force, he is liable to pay interest at the State Bank of India highest marginal cost of lending rate plus two per cent, which is 10.75% p.a during the relevant period.

36. At the cost of repetition, it is to be stated that in the absence of an appeal by the promoter and the Bank challenging the impugned order, it would be suffice, if relief 1(a) granted by the learned Adjudicating officer in respect of prayer (1) in this appeal, is modified by holding that the promoter has to return the own contribution of the appellant amounting to Rs.30,66,788/- with interest at 10.75% p.a from respective dates of payment.

37. Point No. (I) is answered accordingly and in the affirmative.

38. In view of the above, we pass the following :

ORDER

- (a) The appeal is partly allowed.
- (b) The relief granted by RERA at para (a) is modified directing that the promoter-1st respondent is directed to return the own contribution of the appellant amounting to Rs.30,66,788/- with interest at 9% p.a from the respective dates of payment of the said amount till 30.4.2017 and from 1.5.2017 to pay interest at 10.75% p.a till the date of payment;
- (c) The impugned order of the Adjudicating Officer at paras (b), (c), (d) and (e) shall remain undisturbed;
- (d) It is open to the appellant as well as 2nd respondent-Bank to enforce the relief granted by RERA at paras (b), (c), (d) and (e) in accordance with the procedure known to law;

- (e) The promoter shall discharge the loan of 2nd respondent – Bank raised in the name of the appellant as directed by RERA at relief (c);
- (f) The 2nd Respondent after discharge of their loan raised by appellant shall issue discharge certificate in favour of the promoter as well as the appellant so as to avoid any apprehensions in their minds;
- (g) RERA is hereby directed to incorporate M/s PNB Housing Finance Limited, as 2nd respondent in CMP/181125/0001666 filed by the appellant against the promoter and in the order dated 22nd March, 2019 passed by it, so as to facilitate the 2nd respondent- Bank to recover the loan amount due to them by the appellant;
- (h) Registry is directed to comply with the provisions of Section 44(4) of the Act and to 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