

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

DATED THIS THE 22ND DAY OF SEPTEMBER, 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. 14/2021

(OLD RERA. APPL No.41 of 2018)

BETWEEN:

M/s Bhumika Builders,
A Partnership Firm,
Having its Office at No. 455, 9th Cross,
1st Block, Jayanagar,
Bangalore – 560 011

Represented by its Partners

1. Mr. Suresh B
S/o Sri G Byrappa
Aged about 42 years
2. Smt D.S. Kavitha Suresh
W/o Sri Suresh B
Aged about 38 years

Both are residing at No. 455, 9th Cross,
1st Block, Jayanagar,
Bangalore – 560 011

:APPELLANT

(By Sri S Nagaraja, Advocate for appellant)

AND

The interim Real Estate Regulatory Authority
Constituted under
The Real Estate (Regulation and Development) Act 2016
Having its office at
No.1/14, Ground floor,
Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027
Represented by its Secretary. **:RESPONDENT**

(Sri Rajashekhar K, Advocate for Respondent- RERA)

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 19.05.2018 in PR/KN/180118/002650 passed by the Authority, RERA-Respondent. This appeal was transferred to this Tribunal on 12.02.2021 and renumbered as Appeal No.(K-REAT) 14/2021.

This appeal, is coming on for pronouncement of Judgment this day, the Administrative Member, pronounced the following:

JUDGMENT

The appellant has filed this appeal under Section 44 of the Real Estate (Regulation and Development) Act 2016, challenging the order dated 19.05.2018 passed by the Interim Real Estate Regulatory Authority, Karnataka RERA vide Ref No. PR/KN/180118/002650.

The Authority by impugned order allowed the application submitted by the appellant for registration of the project "**BHUMIKA PRIMROSE**" by imposing penalty of 1% on the estimated cost of the

project amounting to Rs. 8,31,224/- under Section 3(1) read with Section 59(1) of the Act.

The case of the Appellant in brief

2. The appellant is a partnership firm registered under the provisions of the Indian partnership Act, in Form 'C' – 10(A) with the Registrar of Firms, Government of Karnataka on 15.09.2014, in the name and style "**M/s BHUMIKA BUILDERS**", No. 455, 9th Cross, 1st Block, Jayanagar, Bangalore – 560 011.

3. The appellant had filed an application on 18.01.2018 before the Interim Real Estate Regulatory Authority (for short Interim Authority) through online for registration of their project "**BHUMIKA PRIMROSE**" situated at survey No.2986/2065/2142/96,97,98,99, Kothanur, Uttarahalli, Bangalore Urban as required under Section 4(2) of the Act Real Estate (Regulation and Development) Act, 2016 (herein after referred to as Act). The Interim Authority, on receipt of the application filed by the firm assigned provisional No. PR/KN/180118/002650.

4. After notices were served on the appellant from the Interim Authority for submission of explanation, hearing was conducted on 03.05.2018, 11.05.2018 and 19.05.2018 respectively. That on 19.05.2018 one Mr. Nikhil appeared on behalf of the promoter before

the Interim Authority and orally submitted that their project was completed prior to coming into force of the Act.

5. After hearing the parties, the Interim Authority by observing that the promoter has not submitted occupancy certificate and other necessary documents to show that the project was completed before the Act coming into force has held that the project undertaken by the appellant was an **"ONGOING PROJECT"** as on the date of the Act especially provisions of Sections 3 and 4 of the Act coming into force i.e. 01.05.2017. Thus, the interim Authority by impugned order allowed the application submitted by the appellant and granted registration for the project by imposing penalty of 1% on the estimated cost of the project amounting to Rs.8,31,224/- under Section 59(1) of the Act for violation of Section 3 of the Act, and directed to pay the penalty within 7 days from the date of communication of the impugned order. In the impugned order it is also mentioned that if the promoter fails to deposit the said penalty amount, provisional number/registration of the said project will be liable to be rejected.

6. The appellant being aggrieved by the impugned order initially preferred this appeal before the Interim Appellate Tribunal (KAT), praying to set aside the impugned order on several grounds urged in the appeal memo in so far as imposition of penalty is concerned by depositing 30% of the penalty amounting Rs. 2,49,370/- in favour of the Chairman, RERA. The Interim Appellate Tribunal (KAT) by order

dated 31.07.2019, dismissed the appeal for non-prosecution. The appellant aggrieved by the order of dismissal of the appeal for non-prosecution, filed an application under Section 151 of the CPC, for recalling the said order. The Interim Appellate Tribunal (KAT) rejected the application however, by holding that the appellant has to make a miscellaneous application for recalling the order dated 31.7.2019 and for restoration of the appeal. That in view of the establishment of this Tribunal the appellant filed a miscellaneous application before this Tribunal on 9.10.2020. This Tribunal after hearing learned counsel appearing for the parties, allowed the Miscellaneous application and restored the appeal to the file and directed the registry to call for the original records in RERA Appeal No.41/2018 from the Interim Tribunal (KAT). Accordingly, on receipt of the appeal papers from KAT, the appeal was re-numbered as Appeal No. (K-REAT) – 14/2021.

7. Thereafter, we heard Sri S Nagaraja learned counsel appearing for the appellant and Sri Rajashekhar for RERA.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT

8. Learned counsel apart from reiterating the grounds urged in the appeal memo submits that impugned order is not a speaking order, and therefore, the same is liable to be set aside.

9. Learned counsel submits that appellant has produced certain documents like encumbrance certificate, sale deeds, valuation certificate

from the competent agency, power sanction letter from BESCO and flat sharing agreement dated 24.05.2016 supporting his contention that the project was completed prior to commencement of the Act.

10. Learned counsel submits that the project was started on 18.12.2014 and completed on 15.07.2016. It is a joint venture project with the appellant and the land owner having sharing in the ratio 51% and 49% respectively. The same is mentioned in the registered joint development agreement. As per the sharing ratio of the project, 16 flats out of 32 flats constructed belong to the appellant/promoter and remaining 16 flats belong to the land owner. The appellant has sold 7 flats and rest are kept for his own use.

11. The learned counsel submits that penalty imposed by RERA, is disproportionate to the nature of lapses alleged to have been committed by the appellant in not registering the project within the stipulated time as provided in the Act.

12. The learned counsel submits that promoter has undergone financial crisis due to prevailing COVID-19 pandemic situation and stagnation in the market.

13. The learned counsel in the course of his arguments submits that the size of the project is very small and in view of recession in the Real Estate market and prevailing pandemic situation, the appellant is facing great hardship and therefore, in the event of this Tribunal coming

to the conclusion that the project was an ongoing project as on the date of Act coming into force and there was delay on part of the appellant in filing application for registration of their ongoing project, may be pleased to take a lenient view to provide a breathing support to the appellant by imposing a reasonable penalty as it deems it. In support of the above contentions, the appellant has filed memo dated 08.07.2021 enclosing certain documents and affidavit dated 14.08.2021 and they are taken on record.

14. With the above submissions learned counsel for the appellant prays for allowing the appeal by setting aside the impugned order in so far as imposition of penalty is concerned.

SUBMISSIONS OF SRI RAJASHEKAR K LEARNED COUNSEL APPEARING FOR RERA.

15. Learned counsel for RERA tried to substantiate the impugned order passed by RERA by inviting our attention to the records of RERA and contented that the appellant had applied for registration of their ongoing project after due date i.e., 31.07.2017 and thereby the appellant has violated the provisions of Section 3 of the Act and therefore, the penalty imposed by RERA is just and proper.

16. Learned counsel for RERA submits that for violation of proviso to Section 3(1) of the Act, Authority is entitled to impose penalty upto 10% of the estimated cost of the project. Whereas, it has

imposed only 1% of the cost of the project which is on the lower side and therefore, the impugned order does not call for interference.

17. With the above submissions he prayed for dismissal of the appeal.

18. **POINTS FOR CONSIDERATION:**

That after hearing learned counsels appearing for the parties, perusing the grounds of appeal, documents produced along with the appeal memo and the impugned order passed by RERA, the points that arise for our consideration are:

Point No.1: Whether the impugned order dated 19.05.2018 passed by the Interim Authority suffers from infirmity which warrants interference by this Tribunal?

Point No.2: What order?

REASONS

19. **Point No.1:** In the instant case, it could be seen from the appeal memo and the documents produced along with the appeal, the appellant is a registered partnership firm called "**M/s BHUMIKA BUILDERS**" registered with the Registrar of Firms, Karnataka. The appellant firm had undertaken to construct a project in the name and style "**BHUMIKA PRIMROSE**" in the land bearing survey No.2986/2065/2142/96,97,98,99, situated at Kothanur, Uttarahalli, Bangalore Urban. Therefore, the appellant admittedly is a promoter

within the meaning of Section 2 (zk) of the Act. The project "**BHUMIKA PRIMROSE**" undertaken by the appellant is a Real Estate Project within the meaning of Section 2(zn) of the Act and it is situated in a planning area as defined under Section 2(zh) of the Act. In the above circumstances, of the case the provisions of the Act are applicable to the appellant's project which facts are not in dispute.

20. The Real Estate (Regulation and Development) Act, 2016 was enacted, to protect the interest of home buyers from developers who fail to deliver possession of the flats on time, and ensure efficiency in all property related transactions, and attract more investments to the housing sector.

21. Certain provisions of the Act viz., Sections 2, 20 to 39, 41 to 58, 71 to 78 and Section 81 to 92 have come into force w.e.f 1st day of May, 2016, whereas Sections 3 to 19, 40, 59 to 70 and 79 to 80 have come into force w.e.f 1st day of May 2017. In addition to that Rule 4 of the Real Estate (Regulation and Development) Rules, 2017 (for short, rules) which provides for additional disclosure by promoters of ongoing projects has come into force on 11.07.2017.

22. Section 3 of the Act mandates that every Real Estate project shall be registered with RERA. Non-compliance of Section 3 of the Act, attracts penal provision and the developer is punishable under Section 59(1) of the Act, by imposing penalty which may extend upto 10% of the estimated cost of the Real Estate Project.

23. Further, as per proviso to Section 3(1) of the Act, projects that are ongoing on the date of commencement of the Act, and for which the completion certificate has not been issued, the promoter is required to file an application to the Authority for registration within 3 months from the date of commencement of the Act.

24. In the present case appellant has applied for registration of the project before the respondent on 18.01.2018. Admittedly, the appellant has not filed the application within the period as prescribed under the Act. Appellant has filed the application for registration in web-portal of RERA after delay of 5 months. Hence, there is violation of Proviso to Section 3(1) of the Act by the appellant as he failed to submit the application for registration of the project within a prescribed period of 3 months from the date of commencement of the Act i.e., 31.07.2017.

25. The appellant has contended that the project work though was completed on 15.07.2016 but due to bank's requirements and as appellant was not aware of the fact that application for registration of ongoing project was to be filed within 3 months from the date of Act coming into force, he could not submit the application for registration in time .

26. It is pertinent to mention here that Rules of Karnataka Real Estate (Regulation and Development) Rules, 2017 have come into force with effect from 11.07.2017.

27. As per Rule 4 of the said Rules, where completion certificate has not been issued but if the project fulfills certain criteria as enumerated under explanation 1 to 5 of the said Rule on the date of notification of the Rules such project will be exempted from registration. Whereas appellant in the present case has not obtained the completion certificate/occupancy certificate from the competent Authority and the additional disclosures submitted as above by the appellant does not fulfill the criteria for exemption from registration under this Act. As such, there is violation of proviso to Section 3(1) of the Act and consequently, promoter is liable to pay penalty as contemplated under Section 59(1) of the Act.

28. However, taking into consideration the facts and circumstances of the case and size of the project, some lenience may be shown while imposing penalty. Accordingly, we are of the considered view that the penalty imposed by Interim Authority at 1% of the estimated cost of the project deserves to be reduced from 1% to 0.50% and point no. 1 is answered accordingly and in the affirmative.

29. Before parting with the case we would like to state that the appeal was not disposed of within the stipulated period as prescribed

under Section 44(5) of the Act, due to the time consumed in compliance of office objections and lockdown due to COVID-19 pandemic.

30. **Point No.2**: As per the final order.

In view of our findings. On point No. 1 we proceed to pass the following:

ORDER

1. The appeal filed by the appellant is partly allowed.
2. The penalty amount is hereby reduced from 1% to 0.50% of the penalty imposed by the Authority under the impugned order. Accordingly, impugned order dated 19.05.2018 in Ref no. PR/KN/180118/002650 of the respondent Authority is modified.
3. The appellant is directed to pay 0.50% of the estimated cost of the project i.e. Rs. 4,15,612/- (Rupees Four Lakhs Fifteen Thousand Six Hundred and Twelve) inclusive of the 30% pre-deposit of Rs. 2,49,367/- (Rupees Two Lakhs Forty Nine Thousand Three Hundred and Sixty Seven) made by the appellant with the office of the RERA at the time of preferring the appeal. The appellant is directed to comply with this order within four weeks from the date of communication of the order.

4. The Authority is directed to issue registration to the project within fifteen days from the date of compliance of this order by the appellant.
5. The Registry of the Tribunal is directed to comply with Section 44(4) of the Act.
6. The office is directed to return the records.

No order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

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

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

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