

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

**APPEAL (K-REAT) NO.295/2020**

**DATED THIS THE 03<sup>RD</sup> DAY OF SEPTMEBER 2021**

**BETWEEN:**

Sri Niranjan Goyal  
S/o late Mr. Banshidhar Goyal  
aged about 44 years  
Flat No. RBA 503, Purva Riveira  
Old Airport-Varthur Road  
Marathahalli Bridge  
Bangalore-560 037.

**:APPELLANT**

**AND**

1. M/s Puravankara Limited  
A company incorporated under the  
Provisions of the Companies Act, 1956  
Having its registered office at:  
No. 130/1, Ulsoor Road  
Bangalore-560 042.  
Represented by its  
Director/Authorized Signatory
2. The Real Estate Regulatory Authority Karnataka,  
Having office at:  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru - 560 027.  
Represented by its Secretary

**:RESPONDENTS**

**Hon'ble Judges/Coram**

**HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN  
AND  
HON'BLE K P DINESH, JUDICIAL MEMBER  
AND  
HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**Counsels:**

(M/s Trial Base, Advocates for appellant)  
(M/s JSM Law Partners, Advocates for R1)  
(R2, RERA served, but unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the impugned order dated 3<sup>rd</sup> June 2020 in CMP/190525/0003132 passed by the Adjudicating officer, RERA.

This appeal having coming up for pronouncement of Judgment this day, the **Sri K.P Dinesh, Judicial Member**, Made the following:

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

This appeal is filed under Sec 44 of the Real Estate (Regulation and Development) Act, 2016 read with Rule, 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (herein after referred in short as ("**The Act and The Rules**") against the impugned order dated 03.06.2020 passed by the Adjudicating officer, RERA.

**2. The facts of the Appellant's case in brief are that:**

This appeal is preferred by the complainant/allottee against the Respondents aggrieved by the order dated 03.06.2020 passed by 2<sup>nd</sup> Respondent dismissing the complaint on the ground that since a Sale Deed has been executed during the pendency of the complaint holding that due to the extinction of the right of the complainant for claim of compensation. The appellant is an allottee of apartment consisting of a three-bed room with the super built area of 1,746 square feet and two servant room apartment with the super built area of 155 square feet bearing Nos.E-1001, E-1002 respectively, on the tenth floor in E-block of the multistoried residential apartment in the name and style (PURVA WESTEND) developed by the 1<sup>st</sup> respondent situated at Hongasandra village, BegurHobli, Bangalore south taluk, Bengaluru. Pursuant to the booking of the above flat appellant entered into two agreements one for sale and the other for construction on 17.03.2014, with the 1<sup>st</sup> Respondent. All payments under the agreement has been paid as per the schedule amounting to total sale consideration of Rs.1,05,12,806/- to the 1<sup>st</sup> Respondent. As per the terms of the agreement 1<sup>st</sup> Respondent ought to have developed the project and deliver possession of the apartment within a period of 36 months from the date of the aforesaid agreement dated 17.03.2014, with a grace period of 6 months from there or upon receipt of the

commencement certificate issued by BBMP, whichever is later. Accordingly 1<sup>st</sup> Respondent ought to have delivered possession of the apartment on or before 23.10.2018 along with all the amenities but fail to do so. The appellant feeling aggrieved approached the 2<sup>nd</sup> Respondent by way of complaint No.CMP/180225/0000512 which was allowed as per the order dated 24.05.2019 with a direction to the 1<sup>st</sup> Respondent to deliver possession of the apartment by 31.12.2018 and to pay Rs. 50,000/- towards delay compensation.

The appellant filed the present complaint before 2<sup>nd</sup> Respondent-RERA in CMP/190525/0003132 on 25.05.2019 seeking delay compensation under Section 18 of the Act. The appellant has sent number of mails and made phone calls to get an update on the status of the rectification of snags since first inspection done in February 2019. The Respondent sent reply by mail seeking further 10 days for completion and the copies of the emails are produced as ANNEXURES L and M. As per the directions of the 2<sup>nd</sup> Respondent - Authority dated 22.01.2020 for execution of the sale deed in respect of the apartment so as to take decision in subsequent complaint No.CMP/190525/0003132 and consequently, the registered sale deed came to be executed on 17.02.2020. The appellant took possession of the properties on 07<sup>th</sup> March 2020.

It is contended that due to delay in completion of the project and delivery of possession of the apartment, the 1<sup>st</sup> Respondent is liable to pay delay compensation from January 2019 till the date of execution of the sale deed and handover possession of the flat. The appellant restricts the compensation in prayer column of the complaint from January 2019 till the date of delivery of possession by way of memo date 20.11.2019 in view of the fact that the 2<sup>nd</sup> Respondent-Authority has already granted compensation till the period ending December 2018 in the earlier complaint filed by the appellant against the 1<sup>st</sup> Respondent. When the complaint under the appeal was heard and posted for orders, the respondent produced the sale deed dated 17.02.2020 and 2<sup>nd</sup> Respondent relying on a recital in the sale deed (Clause -3) dismissed the complaint.

Being aggrieved by the impugned order dated 03<sup>rd</sup> June 2020 of the learned Adjudicating Officer the appellant preferred present appeal on the following:

**3. Grounds of appeals:**

1. The impugned order dated 03<sup>rd</sup> June, 2020 passed by the 2<sup>nd</sup> Respondent are wholly arbitrary, contrary to law, against known principles of law.

2. It is contended that the impugned order stating that the Appellant cannot claim delay compensation citing Clause 3 of the Sale Deed dated 17.02.2020 is without justification and not in accordance with Section 18 of the Act.
  3. It is contended that 2<sup>nd</sup> Respondent failed to appreciate the fact that there was a delay in handing over possession of the apartments which is solely attributable to 1<sup>st</sup> Respondent.
  4. It is contended that the impugned order was passed without considering the detailed complaint filed by the appellant and assigning reasons.
  5. The impugned order is contrary to the principles of interpretation of provisions of Section 18 of the Act.
  6. It is contended that the impugned order challenged herein to the extent of the above grounds, is arbitrary, bad in law, unsustainable and same is liable to be set aside.
4. Heard argument of the learned counsel for appellant and learned counsel for 1<sup>st</sup> Respondent. There is no representation for 2<sup>nd</sup> Respondent-RERA. After hearing the appellant's counsel and the 1<sup>st</sup> Respondent's counsel, perusal of the appeal Memo,

impugned order, and the document produced following points arise for our consideration.

5. **Point No. 1: Whether the impugned orders dated 03.06.2020 passed by the Adjudicating officer is sustainable on facts and law on record?**

**Point No. 2: What order?**

Our answer to the above are as under:

- 1) **Point No. 1: In the Negative**
- 2) **Point No. 2: As per the final order**

For the following:

**REASONS**

6. **Point No. 1:** Though the case has a multi colored history and the facts are long the matter lays within a narrow compass. The core question is one relating to maintainability of the complaint filed by the allottee/complainant before the learned Adjudicating Officer. This appeal is preferred by the complainant/allottee against the Respondents aggrieved by the order dated 03.06.2020 passed by 2<sup>nd</sup> Respondent dismissing the complaint on the ground that since a Sale Deed has been executed during the pendency of the complaint

holding that due to the extinction of the right of the complainant for claim of compensation. The appellant is an allottee of apartment consisting of a three-bed room with the super build area of 1,746 square feet and two servant room apartment with the super build area of 155 square feet bearing Nos.E-1001, E-1002 respectively, on the tenth floor in E-block of the multistoried residential apartment in the name and style (PURVA WESTEND) developed by the 1<sup>st</sup> respondent situated at Hongasandra village, BegurHobli, Bangalore south taluk, Bengaluru. Pursuant to the booking of the above flat appellant executed two agreements one for sale and the other for construction on 17.03.2014, with the 1<sup>st</sup> Respondent. All payments under the agreement amounting to total sale consideration of Rs.1,05,12,806/- have been paid to the 1<sup>st</sup> Respondent. As per the terms of the agreement 1<sup>st</sup> Respondent ought to have developed the project and deliver possession of the apartment within a period of 36 months from the date of the agreement dated 17.03.2014, with a grace period of 6 months there on from or upon receipt of the commencement certificate issued by BBMP, whichever is later. The 1<sup>st</sup> Respondent ought to have delivered possession of the apartment on or before 23.10.2018 along with all the amenities but fail to do so. The appellant feeling aggrieved approached the 2<sup>nd</sup> Respondent by way of complaint No.CMP/180225/0000512 which was allowed as



per the order dated 24.05.2019 directing the 1<sup>st</sup> Respondent to deliver possession of the apartment by 31.12.2018 and to pay Rs. 50,000/- towards delay compensation.

The appellant filed the present complaint before 2<sup>nd</sup> Respondent-RERA in CMP/190525/0003132 on 25.05.2019 seeking delay compensation under section 18 of the Act starting from 1<sup>st</sup> January 2019 till the date of possession i.e 07<sup>th</sup> March 2020. There were exchange of number of emails between the appellant and the Respondent regarding the status of the project.

As per the directions of the 2<sup>nd</sup> Respondent-Authority dated 22.01.2020 for execution of the sale deed in respect of the apartment in the present complaint No. CMP/190525/0003132 a registered sale deed came to be executed on 17.02.2020. The appellant took possession of the properties on 07<sup>th</sup> March 2020.

It is contended that due to delay in completion of the project and delivery of possession of the apartment the 1<sup>st</sup> Respondent is entitled for delay compensation. The appellant restricts the compensation in prayer column of the complaint from January 2019 till the date of delivery of possession by way of memo dated 20.11.219 in view of the fact that the 2<sup>nd</sup> Respondent-Authority has already granted compensation in the earlier complaint filed against

the 1<sup>st</sup> Respondent till the period ending December 2018. The complaint under the appeal was heard and posted for orders and in the meanwhile appellant produced the sale deed dated 17.02.2020 and 2<sup>nd</sup> Respondent relying on a recital in the sale deed (Clause -3) dismissed the complaint.

The short point for consideration in the appeal on hand is whether the learned Adjudicating Officer is justified in dismissing the complaint on the basis of recital (CLAUSE-3) in the sale deed dated 17.02.2020?

The learned Adjudicating Officer in the impugned order has observed that there was no any due from the Respondent/promoter at the time of execution of the sale deed. It is further observed that during the pendency of the complaint under the appeal registered sale deed came to be executed by the promoter in favour of the appellant on 17.02.2020 registered as document No. 11144/2020. The contention of the appellant is that the promoter has not complied the order dated 24.05.2018 passed by the Adjudicating Officer in the previous complaint No. CMP/180225/0000512 by which the developer was directed to hand over possession of the flat by 31.12.2018 and also to pay Rs.50,000/- as delay compensation to the appellant. It is pertinent to note that under which provision of the Act the learned Adjudicating Officer has granted the relief in the

above complaint is not clear. However the said relief is not granted as per Section 18 of the Act. Be that as it may we are not going into the propriety of the order passed in the said complaint as parties have not carried the said order in appeal. Now coming to the case on hand, admittedly on the date of filing the present complaint under appeal there was a cause of action for the complainant to seek delay compensation in view of the fact that sale deed was not executed in favour of the appellant by the promoter handing over possession of the apartment by the promoter by 31.12.2018. The above fact was also admitted by the learned Adjudicating Officer in para 22 of the impugned order. The registered sale deed came to be executed by the promoter in favour of the appellant was only on 17.02.2020. The order dated 24.05.2018 passed by the learned A.O in earlier CMP/180225/0000512 filed by the appellant assumes significance in the present case in the context of granting a fixed amount of Rs.50,000/- as compensation and to handover possession of the flat in favour of the appellant by 31.12.2018. Now it is evident from the above order that the compensation of a fixed amount granted by the learned Adjudicating Officer in the said complaint is for the period ending 31.12.2018. Admittedly, the promoter has not executed registered sale deed and handed over possession of the flat in favour of the appellant by 31.12.2018 as per the order passed by the

learned Adjudicating Officer in the above said complaint. When the learned Adjudicating Officer granted compensation in favour of the appellant only up to 31.12.2018, then the appellant has got cause of action for further period from 01.01.2019 till the possession of the flat is handed over by executing the registered sale deed in view of the fixed amount of compensation granted by the learned Adjudicating Officer was for the period ending on 31.12.2018.

The learned counsel for the 1<sup>st</sup> Respondent contended that the delay in executing the sale deed was due to the lapse on the part of the allottee. It is further contended that the second complaint under this appeal is hit by the doctrine res-judicata. The email dated 16.07.2019 (Page No.143 of appeal memo) sent by the promoter clearly show that flat was not ready for occupation and sought ten more days time to complete it. The above document itself shows that there was delay and default on the part of the promoter. Any way we are not deciding the quantum of compensation in this appeal but only the liability of the promoter since it is the domain of Adjudicating Officer. We are restricting our order only regarding maintainability of 2<sup>nd</sup> complaint. The learned counsel for the 1<sup>st</sup> Respondent in support of his contention relied on the Judgment of

**1) Maharashtra Real Estate Appellate Tribunal B/w Saurabh Arvind Patel and Ors. Vs. M/s Rockline Developer Pvt. Ltd and Ors.**

**2) 2021 SCC Online Bom 283:(2021) 3 Bom CR 295 in the High Court of Bombay b/w M/s Macrotech Developers Limited Vs. State of Maharashtra and Ors.**

In the case of Saurabh Arvind Patel and Ors. Stated Supra Maha-REAT referring to Section 53 & 88 of the Act is of the view that a conjoint reading of the above provisions of RERA Act that a party cannot invoke two remedies against the same person for one cause of action and held that adherence to principles res-judicata can be safely taken in present case.

In the case of Macrotech Developers Limited stated Supra the Hon'ble High Court of Bombay held that the authority in the first complaint preferred by the complainants had decided the issue of maintainability against the complainant and we are of the view that it was not open for the Adjudicating Officer to have entertained the 2<sup>nd</sup> complaint. In the both the case laws stated Supra primarily it is regarding jurisdiction to entertain the complaint and the principles of res-judicata. The above case laws referred by the learned counsel for the 1<sup>st</sup> Respondent is not applicable to the facts of the present case on hand for a simple reason that the appellant in the 2<sup>nd</sup>

complaint has sought for the relief pertaining to subsequent period on a fresh cause of action. It is evident from the records that the appellant filed a memo dated 20.11.2019 restricting his claim of compensation for the period of January 2019 till the date of handing over possession. From the above it is clear that appellant has filed the complaint under appeal urging his claim of compensation for the subsequent period till the date of execution of sale deed and handing over possession of the flat and has got continuing cause of action for the complaint. Hence, the complaint under the appeal is not hit by the principles of res-judicata. In view of the above discussion we are of the considered view that the complaint under the appeal is maintainable and the impugned order passed by the learned Adjudicating Officer is not sustainable under law accordingly, the point is answered in the negative.

7. Before parting with the case we state that as per Section 44(5) of the Act, the appeal shall be disposed of within sixty days from the date of receipt of appeal. The appeal was filed before this Tribunal on 06<sup>th</sup> August, 2020. Thereafter to secure the appearance of the parties sufficient long time was taken. Further there was a lock down due to Covid-19 pandemic and for all forgoing reasons the appeal could not be disposed of within the time prescribed under Section 44(5) of the Act.

**8. Point No. 2:**

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

**ORDER**

- i) The appeal is partly allowed.
- ii) The impugned order dated 03<sup>rd</sup> June 2020 in Compliant No. CMP/190525/0003132 is set aside.
- iii) The matter is relegated to the learned Adjudicating officer for determination of the compensation issue after affording sufficient opportunities for the parties at the earliest and not later than two months from the date of appearance of parties. Both parties are directed to appear before the Adjudicating officer on their own tentatively on 20.09.2021 without waiting for further notice from the Authority.
- iv) The Registrar of the Tribunal is directed to comply with section 44(4) of the Real estate (Regulation and Development) Act, 2016.

No order as to cost.

**Sd/-  
HON'BLE CHAIRMAN**

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

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