

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

**DATED THIS THE 26<sup>th</sup> DAY OF OCTOBER, 2021**

**PRESENT**

**HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN**

**AND**

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

**AND**

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

**APPEAL NO. (K-REAT) 29/2021**

**BETWEEN:**

M/S Housing Development Finance Corporation Limited,  
A non-banking financial company  
incorporated under the Companies Act, 1956,  
Having its registered office at:  
Raman House, H.T.Parekh Marg,  
169, Backbay Reclamation,  
Mumbai – 400 020.

Represented by its Credit Risk Management - Legal  
Mr. Shridhar Chinni,  
Having office at:  
HDFC House, No. 51,  
Kasturba Road,  
Bengaluru-560 001

**...APPELLANT**

(By Sri. Raghunath for Sri. C.K Nandakumar, Advocate )

**AND**

1. Mr. Pankaj Gupta  
Son of Mr. Balbir Kumar Gupta, Major,  
Permanently residing at:  
House no. 34, Phulkian Enclave,  
Patiala, Punjab – 147 001.

Also at:  
House no. I-1207,  
BTM 2<sup>nd</sup> Stage,  
SNN Raj Lake view Apartments,

29<sup>th</sup> main Road,  
Bangalore – 560 076

2. M/s Unitech Limited  
A Company Incorporated  
Under the companies Act, 1956.  
Having its registered office at  
6, Community Centre,  
Saket, New Delhi- 110 017.

Also at  
No. 10/8, Umiya Landmark, Lavelle Road,  
Bangalore – 560 001.

3. Secretary,  
The Karnataka Real Estate Regulatory Authority,  
Bengaluru, No. 1/14, Ground Floor,  
Silver Jubilee Block,  
Behind Unity Building, CSI compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.

**..RESPONDENTS**

(By Sri. V. Prathap Kumar Advocate for R-1  
Notice to R-2 is held sufficient V C O dated 23.07.2021  
R-3-RERA –served and Un-represented)

This Appeal is filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 14<sup>th</sup> January 2020 passed by the Adjudicating Officer, RERA, Bengaluru in CMP/191003/0004394.

This appeal having been heard, reserved for judgment coming for pronouncement of judgment this day, the Hon'ble Chairman delivered the following:

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

The appellant, which is a non-banking financial company, incorporated under the companies Act, 1956, has preferred this appeal challenging the impugned order dated 14<sup>th</sup> January 2020 passed by the learned Adjudicating Officer, RERA, Bengaluru in

CMP/191003/0004394 insofar as it relates to the direction issued in clause (d) of the operative portion of the impugned order.

**2.** By impugned order, the learned Adjudicating Officer, while allowing the complaint filed by the 1<sup>st</sup> respondent-allottee directed the 2<sup>nd</sup> respondent developer to discharge the bank loan availed by the first respondent-allottee from the appellant-bank vide clause (d) of the impugned order.

**3.** For the purpose of convince and ready reference, hereinafter, the appellant will be referred to as 'Bank' the 1<sup>st</sup> respondent will be referred to as 'Allottee' and 3<sup>rd</sup> Respondent will be referred to as 'Developer'.

**4.** The appellant, being aggrieved by the direction issued at clause (d) of the operative portion of the impugned order has preferred this appeal assailing the said portion of the order along with an application (IA-I) under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016 praying the Tribunal to grant leave to file and prosecute the appeal on the ground that the allottee, while filing the complaint before RERA has not made the appellant-bank as party to the said complaint. After hearing the learned counsel appearing for the appellant and the learned counsel appearing for the complainant-allottee, by order dated 19<sup>th</sup> August,

2021, this Tribunal allowed the said application and thereby, granted leave to the appellant to prefer this appeal.

**FACTS OF THE CASE IN BRIEF:**

5. The Appellant being a financial institution, vide sanction letter dated 22.01.2014 (Annexure-B) agreed to sanction the housing loan of Rs. 75,00,000/- (Seventy Five Lakhs only) in favour of the allottee for the purpose of purchasing a flat bearing no. 16-B, Unit No. B, Tower-16, in a real estate project known as "Uniworld Resorts" undertaken to be developed by M/s. Unitech Limited (2<sup>nd</sup> Respondent). Accordingly, a Tripartite loan agreement dated 05.03.2014 (Annexure-F) has been entered into between the Appellant, Allottee and the Developer. As per clause 2.11 therein, the liability to repay the said loan amount was joint and several of the allottee and the developer. Thereafter, on 04.02.2014 another Tripartite Agreement (Annexure-H) has also been entered into between parties, under which, it was categorically agreed that any dispute between allottee and developer will not affect repayment of EMI by the allottee. When things stood thus, to the utter shock of the appellant, the allottee issued notice to the appellant through an Advocate stating that in view of the direction issued by the learned Adjudicating Officer at clause (d) of the impugned order, the allottee would no longer liable to pay the EMIs towards outstanding

loan payable to the appellant-bank. Since, the impugned order was passed without making the bank as a party to the proceedings and without affording of an opportunity of being heard and the direction issued by the Learned Adjudicating Officer at clause (d) of the operative portion of the impugned order would adversely affect the interest of the appellant-bank, it was forced to prefer this appeal praying to set aside the impugned order, as it relates to direction issued at clause (d) of the impugned order.

**6.** We have heard sri. Raghunath for Sri C.K Nandakumar, learned counsel appearing for the appellant-Bank, Sri V. Prathap Kumar, learned counsel appearing for the 1<sup>st</sup> respondent-allottee, perused the impugned order and the records. As stated earlier the 2<sup>nd</sup> respondent- developer, the 3<sup>rd</sup> respondent – RERA though served remained unrepresented.

**7.** Learned counsel appearing for the appellant, while reiterating the averments and grounds made in the memorandum of appeal made three fold arguments and prays for setting aside the impugned order:

i) Firstly, he contended that since, the appellant bank has not been made as party to the complaint filed before the RERA, it has been deprived of an opportunity to put-forth its case before the RERA which is against the principles of natural justice.

ii) Secondly, he contended that as per the terms of the Tripartite agreement entered into between Bank, Allottee and Developer, repayment of loan borrowed from the appellant is joint and several of the appellant and the promoter.

iii) Thirdly, he contended that in view of the direction issued by the Learned Adjudicating Officer under clause (d) of the impugned order, the appellant bank has been restrained from recovering its loan amount from the allottee who is a principal borrower. Therefore, he prays for setting aside the impugned order only insofar as its relates to clause (d) of the impugned order and remand the matter for fresh adjudication.

**8.** On the other hand, learned counsel appearing for the allottee tried to substantiate the direction issued under clause (d) of the impugned order. He contended that since, the learned Adjudicating Officer conferred liberty/right on the appellant to recover the loan amount from the developer, no hardship would be caused to the appellant, inasmuch as, there is no legal impediment for the appellant to recover the loan from the developer. Hence, he prays for dismissal of the appeal.

**9.** In view of the above rival contentions urged across the Bar, the following points arise for our consideration:

- i) Whether direction issued by the learned Adjudicating Officer under clause (d) of the impugned order is sustainable in law?
- ii) What Order?

**10.** Before advertng to the above issue, it is just and necessary for us to refer to clause (d) of the operative portion of the impugned order which reads thus:

“(d) The developer is hereby directed to discharge bank loan with its interest, EMI if any, EMI if paid by the complainant and any other statutory charges”.

**11.** As could be seen from clause 2.11 of the ‘Home Loan Agreement’ dated 05.03.2014 (Annexure-F) entered into between the Bank, developer and allottee, the liability of the borrower is joint and several of the allottee and the developer. Apart from that, clause (f) of the “Tripartite Agreement” dated 04.02.2014 (Annexure-H), provides that in the event of cancellation of allotment of the flat either by builder or borrower, the builder is directly liable to repay the said loan amount paid towards sale consideration to HDFC, notwithstanding whether the flat is resold or not. Since, the above two agreements entered into between the parties are Tripartite Agreements, the allottee ought to have impleaded the appellant-bank as necessary party to the complaint that he has filed before the RERA and the appellant bank would

have been afforded with an opportunity of being heard, to put-forth its case. Further, there is a considerable force in the submissions made by the learned counsel for the appellant-bank that by virtue of the direction issued at clause (d) of the impugned order, it would come in the way of the appellant-bank initiating recovery proceedings against 1<sup>st</sup> respondent-allottee who is the principal borrower to recover the loan advanced to him. Further, impugned order was passed affecting the interest of the appellant without being a party and thereby deprived of an opportunity to place its case. Under the circumstances, this Tribunal deems it just and proper to remand the matter back to the learned Adjudicating Officer of the RERA for fresh adjudication of the issue relating to the direction issued at clause (d) of the impugned order by affording reasonable opportunity to both the parties to put-forth their case.

**12.** For the foregoing reasons, this Tribunal is of the considered view that the impugned order is not sustainable under law. The appeal must succeed in part and the matter requires to be remanded to the RERA for fresh adjudication. Accordingly, we answer the point No (i) in the negative and pass the following:

**ORDER**

- 1) Appeal stands allowed in part;



- 2) The impugned order dated 14<sup>th</sup> January, 2020 passed by the learned Adjudicating Officer in CMP/191003/0004394 is hereby set aside only insofar as it relates to direction issued under clause (d) of the operative portion of the impugned order is concerned. However, the remaining part of the impugned order shall remain intact;
- 3) The matter is remanded to the learned Adjudicating Officer of the 3<sup>rd</sup> respondent RERA, with a direction to the complainant-allottee to implead the appellant- M/s Housing Development Finance Corporation Limited as additional respondent No.2 to the complaint;
- 4) The learned Adjudicating Officer is hereby directed to dispose of the complaint afresh insofar as the issue relating to direction issued at clause (d) of the operative portion of the impugned order after affording a reasonable opportunity to the parties to put-forth their case;
- 5) Since the appellant-bank and the 1<sup>st</sup> respondent-allottee were represented in this appeal through their Advocates, they are hereby directed to appear before the learned Adjudicating Officer on 18.11.2021 without expecting further notice from RERA.
- 6) The complainant shall intimate the date of hearing before the RERA to the Developer/Promoter through RPAD or such other mode of service and on such intimation, it is open for the Developer to appear either by person or through an Advocate and defend their interest in the matter, so as to enable the

Adjudicating Officer to dispose of the appeal expeditiously;

- 7) The learned Adjudicating Officer shall make an endeavor to dispose of the matter as expeditiously as possible, but not later than the outer limit of 45 days from 18.11.2021;
- 8) Registry is hereby directed to comply with the provision of Section 44(4) of the Act and to return the records to RERA;
- 9) In view of the disposal of the appeal, pending interlocutory applications, if any, shall stand disposed off;
- 10) No order as to costs.

**Sd/-  
HON'BLE CHAIRMAN**

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

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