

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

DATED THIS THE 23rd DAY OF DECEMBER 2021

PRESENT

HON'BLE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL No.(K-REAT)-15/2021

BETWEEN:

Mr.Arun Radhakrishna Pillai,
S/O Radha Krishna Pillai,
Aged 32 years,
R/o 17B/8, Jamuna Darhan CHS,
Bangur Nagar, Goregaon West,
Mumbai-400090, Maharashtra.

....APPELLANT

(By Smt. Sharadha H.V, Advocate)

AND

1. The Secretary,
Real Estate Regulatory Authority,
No.1/14, Ground Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Missions Road,
Bengaluru, Karnataka-560027.

2. Ithaca Estates Pvt., Ltd.,
Represented by its Managing Director,
Skylark Chambers, No.37/21,
Yellappachetty Layout,
Ulsoor Road, Bangalore-560042.

....RESPONDENTS

(R.1/RERA –served,unrepresented
(Sri Aakash Raman Sinha for M/s Singhania & Co.,Adv.for R.2-
absent)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Karnataka Real Estate Appellate Tribunal, Bengaluru, praying to allow the appeal by directing the respondent No.2 to refund or pay the opportunity cost of Rs.5,55,503/- with interest as per the RERA Act and pay the interest at the rate of SBI MCLR plus two percent for the amount remitted to the unit from the date of agreement till the date of refund and further directing respondent No.2 to refund the amount and etc., as ordered by the Adjudicating officer vide order dated 09.10.2020, in complaint No. CMP/200203/0005358.

This appeal coming on for hearing this day, Hon'ble Chairman delivered the following:

J U D G M E N T

The appellant who is an allottee of a flat in a real estate project "Phase II of SKYLARK ITHACA" developed by the 2nd respondent-Promoter, being not satisfied with the impugned order dated 09.10.2020 passed in complaint No. CMP/200203/0005358 by the learned Adjudicating Officer, has preferred this appeal. The operative portion of the impugned order reads as under:

"a. The complaint no CMP/200203/0005358 is allowed by directing the developer to return Rs. 7,32,633/- to the complainant.

b. The developer is directed to pay simple interest @ 9% P.A. on the respective amount paid on the respective date till 30.04.2017 and simple interest @ 2% above the MCLR of SBI commencing from May 2017 on the said amount till it is realized.

c. The developer is directed to discharge bank loan along with interest, EMI paid by the complainant on behalf of the developer and any other statutory charges.

d. The developer is also liable to pay cost of Rs. 5,000/- to the complainant”.

2. Smt H.V.Sharada, learned counsel appeared for the appellant-allottee. Respondent No.1- RERA and the 2nd respondent-promoter, remained unrepresented.

3. On 15.11.2021, after recording the submission of the learned counsel for the appellant that she has already concluded her arguments, the matter was set down for pronouncement of Judgment on 2.12.2021. Respondents 1 and 2 remained unrepresented.

4. However, before pronouncement of Judgment in the above appeal, the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. reported in 2021 SCC ONLINE SC 1044 (disposed of on 11.11.2021)- while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), has framed a question as follows:

"2. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?"

5. After elaborate discussion, the Hon'ble Apex court while distinguishing the powers of Authority and Adjudicating Officer to deal with the matters under Sections 12,14,18 and 19 of the Act, at paragraphs 83 to 86 of the said Judgment held that:

"83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per Form (M) or for compensation under Form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

84. So far as submission in respect of the expeditious disposal of the application before the adjudicating officer, as referred to under sub-section (2) of Section 71 is concerned, it pre-supposes that the adjudicatory mechanism provided under Section 71(3) of the Act has to be disposed of within 60 days. It is expected by the regulatory authority to dispose of the application expeditiously and not to restrain the mandate of 60 days as referred to under Section 71(3) of the Act.

85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the Courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', **a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint.** At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016".

{emphasis supplied}

6. In view of the aforesaid order of the Hon'ble supreme court, categorically holding that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint, we are of the considered opinion that the impugned order passed by the learned Adjudicating officer requires to be set aside as one without jurisdiction and the matter is to be remitted to the Authority for fresh consideration in the light of the observations made in paragraphs 83 to 86 of the Judgment of the Apex court supra.

7. On 02.12.2021, as there was no representation on both sides and in view of the Judgment of the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. (supra), in order to give one more opportunity to the parties to address their arguments, the appeal was ordered to be listed on 7.12.2021.

8. On 7.12.2021, Smt H.V.Sharada, learned counsel for the appellant submitted that as regards applicability of the latest judgment of the Supreme Court, the same cannot be made applicable to the present case and prayed for allowing the appeal. However, there was no representation for the respondents.

9. The submission of the learned counsel for the appellant that the said judgment cannot be made applicable to the present case which is pending, is not tenable. In applying the above decision of the Hon'ble Supreme court to the present case, we are supported by a Judgment of a Division Bench of our High court in the case of SURESH BABU Vs. SMT. S. SUSHEELA THIMMEGOWDA reported in 1999(2) Kar.L.J, 580, wherein following the ruling of the Hon'ble Supreme Court in the case of MAJOR GENERAL GAURAYA Vs. S. N. THAKUR (AIR 1986 SC 1440), in paragraphs 13 to 15, has categorically held as under:

“13. In Major General A.S. Gauraya v S.N. Thakur, the Supreme Court held that "there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by this (Supreme) Court applies to all pending proceedings".

14. One of us had occasion to consider the effect of the decisions of the Supreme Court on pending proceedings in Brindavan Roller Flour Mills Private Limited v Joint Commissioner of Commercial Taxes (Appeals), Mysore Division, Mysore, and held as follows.- "A decision of the Supreme Court, being a declaration of the true and correct position of law becomes applicable to all transactions and proceedings which have not become final and concluded. The common use of the words 'prospective operation' and 'retrospective operation' with reference to a decision of the Supreme Court is misleading. The use of the words 'prospective' and 'retrospective' are more appropriate while referring to statutes. Rendering of a judgment by the Supreme Court is not the same as enactment of a statute. A decision of Supreme Court does not make the law, but merely explains and puts in proper perspective the true position and effect of law by declaring the law. The true position of law so declared exists from the very date of making the law and not from the date of declaration by the Supreme Court When a legislature enacts a statute, it creates rights or obligations and therefore, its operation can be prospective or retrospective, depending on the provisions of the statute. But when the Supreme Court gives a decision declaring the law, it does not create rights/obligations but merely identifies and declares the pre-existing rights/obligations and declares the true position of law. Consequently, the terms 'prospective' and 'retrospective' strictly do not apply to decisions of the Supreme Court, as all decisions are 'retrospective'. It is thus a cardinal principle of construction that every Statute is presumed to be prospective unless it

is expressly or by necessary implication made retrospective in operation; and every decision of the Supreme Court declaring the law is retrospective, unless it is expressly or by necessary implication restricted to prospective operation. The true and correct position of law declared by the Supreme Court applies not only to transactions and proceedings subsequent to the decision, but also to transactions and proceedings prior to the decision. This of course is subject to the rule of finality of proceedings; that is, the law declared by the decision cannot be used to reopen concluded decisions which have become final; it will apply to all pending transactions and proceedings. A proceedings in regard to which there is a provision for appeal, revision, review or rectification and the time prescribed for such remedy, has not expired, then such a proceeding cannot be said to have become final or concluded. It is no doubt true that where injustice and oppression will be caused by applying the decision to past transactions/proceedings, the Court while giving the decision, may stipulate that it will not affect past transactions. When and where the line should be drawn, restricting the application of the decision, are to be decided by the Court rendering the decision.. When the Supreme Court while rendering a decision, does not choose to restrict its operation, it will not be proper for the High Court to read such a restriction into the decision of the Supreme Court.

In *Golak Nath v State of Punjab* (AIR 1967 SC 1643) and *Managing Director, ECIL, Hyderabad v B. Karunakaran* (AIR 1994 SC 1074) the Supreme Court has made it clear that the discretion to restrict the operation of a decision prospectively, vests only with the Supreme Court. The High Court cannot, therefore, entertain or consider any contention or prayer for holding that the decision of the Supreme Court

in any matter is only prospective in its operation or that it does not apply to pending cases”.

10. Therefore, in view of the law laid down by the Hon'ble supreme court distinguishing the powers of the Authority and the Adjudicating Officer under the RERA Act and holding that the decision of the supreme court in any matter will apply to all pending transactions and proceedings, we deem it appropriate to dispose of the above appeal by setting aside the order as one without jurisdiction and remand the matter to the Authority for fresh consideration in the light of the Judgment of the Apex court in the case of *M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT LTD.,(supra)*.

11. In the circumstance of the case, we pass the following:

O R D E R

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 9th October, 2020 Passed by the Adjudicating officer in No. CMP/200203/0005358 is set aside, as one passed without jurisdiction and the matter is remanded to RERA for fresh consideration in the light of the Judgment of the Apex Court in the case of *M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs. STATE OF UP & ORS. ETC. (supra)* and in accordance with law;
- (iii) Since the matter pertains to the year 2016, the Authority shall make an endeavor to dispose of

the complaint as expeditiously as possible and at any rate within the outer limit of 45 days after parties entering appearance;

- (iv) Since the appellant as well as the respondents have already entered appearance through their respective counsel, they shall appear before the RERA on 03.01.2022 without expecting further notice from RERA;
- (v) In view of dismissal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (vi) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

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

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