

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

DATED THIS THE 6th DAY OF DECEMBER, 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) 343/2020

BETWEEN:

1. Sri. Shivanand S Dhupad,
Aged about 47 Years,
S/o. Late Shree Shantappa Dhupad,
2. Dr. Vijaya Shivanand,
Aged about 42 years,
W/o. Sri. Shivanand S. Dhupad,
Both are residing at No.7/5, 2nd Floor,
SIMI Nilayam, Basavanagar Main Road,
Vignam Nagar, Opposite Venus Hospital,
Bengaluru-560 037.

...APPELLANTS

(By Sri. M. Mohan Kumar for M/S Lawman & Associates Advocates)

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound, 3rd Cross, Mission Road,
Bengaluru-560 027.
Represented by its Secretary.
2. M/S. Sanchaya Land & Estate
Private Limited,
No. 478 & 479, PID No. 98-45-479,
HMT Layout, R.T. Nagar,
Bengaluru-560 032,

Represented by its Director,
Project: The Greens Phase-II.

...RESPONDENTS

(R-1-RERA –served unrepresented
Notice to R-2 is held sufficient vide order dated 19.01.2021)

This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal praying to call for the records and set aside the impugned order dated 10th October, 2018 passed in CMP/180706/0001010 passed by learned Adjudicating Officer.

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

J U D G M E N T

Challenging the impugned order dated 10th October, 2018 passed by the learned Adjudicating Officer in Complaint No.CMP/180706/0001010, the complainants-allottees have preferred the present appeal on the ground that the learned Adjudicating Officer has committed an error in not ordering to return their amount with interest from respective date of payments.

- 2.** The respondents though served remained un-represented.
- 3.** According to the appellants-allottees, they entered into an agreement of sale and construction on 20th February, 2014 with the 2nd respondent-promoter to purchase a flat bearing No.501 in OAK Block, Tower-B in a real estate project known as Green Phase II Indya Estates, undertaken to be developed by the promoter. Since, the promoter has failed to develop the project and handover possession of the flat within the time stipulated under the agreements entered into between the

parties, the allottees filed a complaint before the 1st respondent-RERA claiming refund of the amount deposited with the 2nd respondent with interest. It is contended that the 2nd respondent, though entered appearance in the complaint before the learned Adjudicating Officer, their Advocate did not chose to contest the claim of the appellants. However, the learned Adjudicating Officer, by the impugned order, allowed the complaint and directed the promoter to return the amount received from the allottees within 30 days from the date of the order and in case of failure to return the principal amount, the same shall carry interest at the rate of 10.25% per annum from 31st day of the impugned order. Aggrieved by the same, the present appeal is filed by the allottees.

4. When the matter is called today, Sri. Mohan Kumar for M/S Lawman & Associates, learned counsel appearing for the appellants by submitting that in view of the recent Judgment of the Apex Court in the case of ***M/S Newtech Promoters and Developers Pvt Ltd –vs- State of UP and others (2021 SCC Online SC-1044)***, the claim for refund of the amount, with interest 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, has filed a memo praying this Tribunal to remand the matter to the Real Estate Regulatory Authority. Memo is taken on record.

5. Admittedly, in the case on hand, though the complaint filed by the allottees was for refund of the amount with interest, the same has been dealt with the learned Adjudicating Officer. While ordering refund of the amount, the learned Adjudicating Officer has failed to consider the issue as to whether the appellants are entitled for interest on the said refund from respective dates of payment or not. It is relevant to note that the order of refund passed by the learned Adjudicating Officer is not challenged by the promoter.

6. Under the above circumstances, and in view of the dictum of the Hon'ble Apex Court in the case of **M/S Newtech Promoters (supra)** and in view of the memo filed by the learned counsel for the appellants, this Tribunal is of the considered view that the impugned order is liable to be set aside and the matter is required to be remitted to the Authority for fresh consideration without expressing any opinion one way or the other on merits of the case. Accordingly, we pass the following:

ORDER

- 1) Appeal is allowed in part and the impugned order dated 10th October, 2018 passed by the learned Adjudicating Officer in Complaint No.CMP/180706/0001010 is set aside. The matter is remitted to the Authority for fresh consideration in the light of the observations made in paragraph-5 herein above, with reference to the observations made by the Hon'ble Supreme Court in paragraph-86 in the case of **M/S Newtech Promoters (supra)** and in accordance with law;

- 2) All the contentions urged by the appellants in this appeal are kept open to be urged before the Authority;
- 3) Since the appellants are represented in the appeal through an Advocate, they are directed to appear before the Authority on 20.12.2021 without expecting fresh notice from the authority and thereafter, the appellants may request the Authority for issuing notice to the respondent-promoter;
- 4) Keeping in mind the fact that the matter pertains to the year 2013, the Authority shall make an endeavor to dispose of the appeal as expeditiously as possible, but not later than the outer limit of 45 days from 20.12.2021;
- 5) In view of disposal of the disposal of the appeal, pending I.As, if any, do not survive for consideration and shall stand disposed of;
- 6) Registry is hereby directed to comply with the provision of Section 44(4) of the Act and to return the record to RERA, if received.

No order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

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

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