

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

DATED THIS THE DAY OF 13th DECEMBER ,2021

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 370/2020

BETWEEN:

Provident Housing Limited
Having its registered office at,
#130/1, Ulsoor Road,
Bangalore-560 042
Represented by its authorized representative
Sonali Sylvia (Executive-Legal)
Age: 25 years

.. APPELLANT

(By Sri Nirupan Gowda for M/s JSM Law Partners, Advocate)

AND

1. Naveen Shetty
Residing at,
Shetty Compound, Site No.64
9th Block, Katipalla Post,
Mangalore-575 030.
2. Karnataka Real Estate Regulatory Authority
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
Bengaluru-560 027.
Represented by its Secretary

...RESPONDENTS

(Sri N.P Kalleth Gowda, Advocate for R1)
(R2-RERA served, Unrepresented, placed ex-parte)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the impugned order dated 09.08.2019 passed in Complaint No. CMP/190108/0001834 passed by respondent No.2.-Adjudicating Officer.

This Appeal, coming on for orders this day, the Hon'ble Chairman, delivered the following:

J U D G M E N T

The appellant who is a promoter of a Real Estate project known as "PROVIDENT SKYWORTH 1" has preferred this Appeal on 17.11.2020 challenging the order dated 09.08.2019 passed in Complaint No. CMP/190108/0001834 by the learned Adjudicating Officer - 2nd Respondent. The operative portion of the impugned order reads thus:

- "The Complaint No. CMP/190108/0001834 is allowed.
- a. The developer is directed to return amount of Rs.50,56,669/- to the complainant.
 - b. Out of the same he is also liable to pay the interest @9% P.A. on the respective date on respective amount till 30.04.2017 and 10.75% P.A., from 01.05.2017 today till the realization of the amount.
 - c. The developer shall pay Rs.3,45,031/- which was collected towards tax.
 - d. The developer is also directed to pay Rs.5,000/- as cost of the petition."

2. By reading of the above impugned order it is clear that in view of delay on the part of the promoter in delivering possession of the flat to the allottee in accordance with the agreement entered

between them, the promoter was directed to return the amount paid by the allottee towards purchase of the flat with interest.

3. The appellant has preferred this appeal on 17.11.2020, and, in part compliance of proviso to Section 43(5) of the RERA Act, on 9.3.2021, the appellant has deposited part of 30% of the amount awarded by the learned Adjudicating Officer with this Tribunal payable to the allottee. Pursuant to the order dated 08.03.2021, the appellant has deposited the balance of 30% of the amount.

4. That after service of notice to all the respondents, on the submission made by the learned counsel appearing for the promoter and the allottee that efforts are being made and the matter is likely to be settled amicably, the matter was adjourned from time to time and on 3.12.2021, as a last chance, the appellant was granted time upto 13.12.2021 either to deposit the entire amount or to report settlement. In the event, appellant fails to deposit the entire amount or report settlement, the appeal was directed to be listed on 13.12.2021 for dismissal.

5. Even today, the appellant neither reported settlement nor deposited the total amount payable to the allottee. But, the learned counsel appearing for appellant/promoter sought further time to deposit the total amount. It could be seen that though the appeal was filed on 17.11.2020, despite lapse of more than one year, the

appellant has failed to deposit the total amount payable to the allottee as per the impugned order in compliance of proviso to Section 43(5) of the Act.

6. It is appropriate to refer to proviso to Section 43(5) of the Act which mandates that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty percent, of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

7. In this regard, we deem it just and proper to refer to the latest decision of the Hon'ble Supreme court of India in the case of M/s NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs. STATE OF U.P AND OTHERS (Civil Appeal Nos.6745-6749 of 2021) DD 11.11.2021, wherein, in paragraphs 136 & 137, it is held as follows:

"136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given

time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfillment of precondition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.”

8. In view of non-compliance of the mandatory provision of proviso to Section 43(5) of the Act by the appellant and the law laid down by the Hon'ble Apex court, we pass the following:

ORDER

- 1) Appeal is dismissed for non-depositing of the total amount payable to the allottees as per the impugned order as contemplated under proviso to Section 43(5) of the RERA Act.
- 2) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in part

compliance of proviso to Section 43(5) of the Act, along with interest, if any, accrued thereon, by issuing either a cheque or DD in favour of the allottee-Respondent No.1, after the appeal period is over, on furnishing necessary documents and by following due procedure.

- 3) In view of dismissal of the Appeal, the allottee is at liberty to recover the balance amount awarded to him under the impugned order by initiating appropriate proceedings against the promoter.
- 4) In view of dismissal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration.
- 5) The Registry is hereby directed to comply with Section 44(4) of the RERA Act and return the records of the RERA, if received.

**Sd/-
HON'BLE CHAIRMAN**

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

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