

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

**DATED THIS THE 20<sup>th</sup> DAY OF DECEMBER, 2021**

**PRESENT**

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

**AND**

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

**APPEAL NO. (K-REAT) 312/2020**

**BETWEEN:**

Mahalakshmi M.S.  
D/o Sundar Raj M C,  
Aged about 58 years,  
R/at No.285, "Sri Krishna"  
4<sup>th</sup> Cross, 5<sup>th</sup> Main, Coffee Board Layout,  
Kempapura, Hebbal,  
Bengaluru - 560 024.

**...APPELLANT**

(Sri M. Mohan Kumar for M/S. Lawman & Associates, Advocate)

**AND**

1. The Karnataka Real Estate Regulatory Authority,  
2nd Floor, Silver Jubilee Block,  
Unity Building, CSI compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.  
Represented by its Secretary

2. Unishire Skyscapes LLP  
No. 42, Castle Street,  
Ashoka Nagar,  
Bangalore - 560 025.  
by its Designated Partner.

Old Address

Unishire Skyscapes LLP  
No.36, Railway Parallel Road,  
Kumara Park (West),  
Bangalore - 560 020.

**...RESPONDENTS**

{amended vco dated 12.11.2021}

(R-1-RERA -served un-represented  
(R-2 served un-represented)

This Appeal is filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to call for the records in Complaint No. CMP/180905/0001235 and for a direction to the 2<sup>nd</sup> respondent-promoter to return total sum of Rs.1,09,40,755/- along with interest from the date of respective payment till realization etc.,

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

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

The appellant who is an allottee of a residential flat in a project known as "**Unishire Belvedere Premia**" undertaken to be developed by the Respondent-2 has preferred this Appeal challenging the order dated 6<sup>th</sup> March, 2019 passed by the learned Adjudicating Officer in Complaint No. CMP/180905/0001235.

**2.** The appellant-allottee filed a complaint contending that she booked a flat bearing No.801, 8<sup>th</sup> floor in the project known as **Unishire Belvedere Premia** in the month of August, 2013 for a total consideration of Rs.1,15,15,306/- and paid a sum of Rs.1,09,40,755/- as on June, 2015 on various dates. It is averred that as per the terms of sale agreement, the project was to be completed and handed over within 30 months from the date of obtaining commencement certificate i.e., before 12.08.2016. As, the 2<sup>nd</sup> respondent-promoter neither completed the project nor delivered possession within the stipulated time as per the terms of the agreement, the allottee filed a complaint before RERA seeking refund of the amount with interest.

**3.** The learned Adjudicating Officer, by the impugned order, allowed the complaint and directed the promoter to return the amount along with interest. The operative portion of the impugned order reads thus:

“ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿಯಾದು ಸಂಖ್ಯೆ CMP/180905/0001235 ಅನ್ನು ಮಂಜೂರುಮಾಡಲಾಗಿದೆ.

1. ಫಿಯಾದುದಾರರು ಡೆವಲಪರ್‌ಗೆ ಕೊಟ್ಟಿರುವ ಪೂರ್ಣ ಪ್ರಮಾಣದ ಮೊತ್ತ ರೂ.33,40,755/- ರೂಗಳನ್ನು ಹಿಂದಿರುಗಿಸತಕ್ಕದ್ದು.
2. ಸದರಿ ಹಣದ ಮೇಲೆ ಈ ದಿನದಿಂದ ಪೂರ್ತಿ ಹಣ ತೀರುವಳಿ ಆಗುವವರೆಗೆ ವಾರ್ಷಿಕವಾಗಿ 10.75% ರಷ್ಟು ಸರಳ ಬಡ್ಡಿಯನ್ನು ಕೊಡತಕ್ಕದ್ದು.
3. ಫಿಯಾದುದಾರರು ಬ್ಯಾಂಕ್ ಮೂಲಕ ಕೊಟ್ಟಿರುವ ಉಳಿದ ಹಣವಾದ ರೂ.76,00,000/- ರೂಗಳನ್ನು ಡೆವಲಪರ್ ಇವರು ಅದರ ಬಡ್ಡಿ ಮತ್ತು EMI ಗಳನ್ನು ಸೇರಿಸಿ ಸಾಲ ತೀರಿಸತಕ್ಕದ್ದು.
4. ಒಂದು ವೇಳೆ ಫಿಯಾದುದಾರರು ಫ್ಲಾಟ್‌ಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸರ್ಕಾರಕ್ಕೆ Tax ತುಂಬಿದ್ದರೆ ಆ ಮೊತ್ತವನ್ನು ಫಿಯಾದುದಾರರಿಗೆ ಕೊಡಬೇಕಾದ ಹಣದಲ್ಲಿ ಕಳೆಯುವುದು ಮತ್ತು ಅದನ್ನು ಫಿಯಾದುದಾರರು ವಾಪಾಸ್ ಪಡೆಯಲು ಡೆವಲಪರ್ ಇವರು ಸೂಕ್ತ ದಾಖಲೆಗಳನ್ನು ಕೊಡತಕ್ಕದ್ದು.
5. ಪೂರ್ಣ ಹಣ ವಾಪಾಸ್ ಆದ ನಂತರ ಡೆವಲಪರ್‌ಗೆ ಒಪ್ಪಂದದ ರದ್ದು ಪತ್ರವನ್ನು ಕೊಡತಕ್ಕದ್ದು.
6. ಡೆವಲಪರ್ ಇವರು ಫಿಯಾದುದಾರರಿಗೆ ವ್ಯಾಜ್ಯದ ಖರ್ಚು ಅಂತ ರೂ.5,000/- ರೂಗಳನ್ನು ಕೊಡತಕ್ಕದ್ದು”.

**4.** 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.

**5.** When the matter is called today, the learned counsel for the appellant filed a memo praying the Tribunal to remand back the matter for consideration before the RERA as per the latest

Judgment of the Supreme Court, with liberty to make fresh application for impleading. The memo is taken on record.

6. There is no representation for respondents 1 and 2.

7. In this regard, we deem it just and proper to refer to the 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 (2021 SCC OnLine SC-1044)*** wherein, in paragraph 86, it is held as follows:

**"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".

8. As per the latest Judgment of the Hon'ble Apex Court referred supra, the claim for return or refund of the amount paid by a home buyer with or without interest falls within the jurisdiction of the Authority and the claim for compensation with or without interest falls within the jurisdiction of the Adjudicating Officer.

9. In view of the memo filed by the learned counsel for the appellant and the dictum of the Hon'ble Supreme Court referred to supra, we pass the following:

**ORDER**

- i) The appeal is allowed in part;
- ii) The impugned order dated 6<sup>th</sup> March, 2019 passed by the learned Adjudicating Officer in Complaint No. CMP/180905/0001235 is hereby set aside as one passed without jurisdiction;
- iii) The matter is remanded to the RERA for consideration of the complaint filed by the appellant-allottee afresh by treating it as one filed in From-N in the light of the observations made in paragraph-86 of the Judgment of the Supreme Court rendered in the case of ***M/S Newtech Promoters and Developers Pvt Ltd., -vs- State of U.P and others (2021 SCC OnLine SC-1044)***;
- iv) Since the matter pertains to the year 2013, 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;
- v) Since the appellant has already entered appearance through her counsel, she shall appear before the RERA on 03.01.2022 without expecting further notice from RERA;

- vi) In view of disposal of the Appeal, pending I.As, if any, do not survive for consideration and shall stand disposed of;
- vii) 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 ADMINISTRATIVE MEMBER**

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