

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

DATED THIS THE 20th DAY OF DECEMBER, 2021

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 24/2021

BETWEEN:

Mr.Madhu.R
S/O Mr. Revanasiddappa G.K.
Aged about 35 years,
Residing at Flat No.Q 103,
Vaishnavi Ratham,
SM Road, Prashanth Nagar,
T.Dasarahalli,
Bengaluru-560057

...APPELLANT

(Rep. by Sri.E. Suhail Ahemed for M/s Trialbase, Advocates)

AND

1. The Secretary,
Real Estate Regulatory Authority, Karnataka,
Having office at:
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road
Bengaluru-560 027.
2. M/S G.M.Infinite Dwelling(India) Pvt. Ltd.,
A company registered under the provisions of
Companies Act, 1956,
Having its office at:
#06 GM Pearl BTM Layout, 1st stage 1st Phase,
Bangalore-560068

Also having corporate office at:
#105-47, Dickenson Road,
Yellappa Garden, F M Cariappa Colony,
Sivanchetti Gardens,
Bengaluru-560001.

3. Mr. Gulam Mustafa,
Director,
M/S G.M.Infinite Dwelling(India) Pvt. Ltd.,
4. Mr. Jawid Hussain,
Director,
M/S G.M.Infinite Dwelling(India) Pvt. Ltd.,

R-3 & 4 having corporate office at:
#105-47, Dickenson Road,
Yellappa Garden, F M Cariappa Colony,
Sivanchetti Gardens,
Bengaluru-560001.

...RESPONDENTS

(R-1 RERA served unrepresented)

(Sri. J.P.Darshan for Ayana Legal, Advocate for R2 to R4)

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 also set aside the impugned order dated 21.12.2020 passed by the Adjudicating Officer, RERA in the complaint No. CMP/191206/0004905, and praying to direct the respondent No.2 to refund the entire sale consideration of Rs.54,46,740/- paid by the appellant along with interest etc.

This appeal, coming on for hearing today, 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 Real Estate project known as "**GM Infinite Silver Spring Field**" undertaken to be developed by the Respondent-2 has preferred this Appeal challenging the

order dated 21.12.2020 passed by the Adjudicating Officer, RERA in the complaint No. CMP/191206/0004905.

2. The appellant-allottee had filed a complaint before RERA contending that he booked a flat bearing No.T-4-F-604 in the project known as **GM Infinite Silver Spring Field** and entered into an agreement of sale and construction agreement on 10.06.2015 with the promoter for a total consideration of Rs.54,46,740/- and paid the entire amount on various dates/installments. It is averred that as per the terms of the said agreements, the project was to be completed by 31.05.2015 after having obtained occupancy certificate. As, the 2nd 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:

- "a) The complaint filed in CMP/191206/0004905 is hereby allowed in part;
- b) The developer is hereby directed to pay delay compensation on the amount paid by complainant as on May 2016 @ 9% per annum from June 2016 till 30.04.2017 and @ 2% above the MCLR of SBI from May, 2017 till the sale deed. Further the developer

is to pay simple interest @ 2% above the MCLR of SBI on the principal amount paid on the sale deed from the date of sale deed till the date of receipt of occupancy certificate;

- c) In case any delay compensation has been paid by the developer under the sale deed or before execution of sale deed the same may be deducted in the delay compensation as ordered;
- d) The complainant may file memo of calculation as per this order after 60 days in case the developer has failed to comply with the same to enforce the order. Intimate the parties regarding this order;
- e) The developer is also directed to pay Rs.5,000/- as cost of this case."

4. By reading of the above impugned order it is clear that even though the allottee sought for refund of entire amount, the learned Adjudicating Officer, contrary to the relief sought for in the complaint directed the promoter to pay delay compensation on the amount paid by the allottee with interest as stated in the operative portion of the order which has been extracted above.

5. When the matter is called today, the learned counsel for the appellant filed a memo dated 20.12.2021 stating that in view of Judgment of the Supreme Court in the case of ***M/s NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs. STATE OF U.P AND OTHERS,*** the appellant prayed for remanding the matter to the RERA for fresh consideration and for a direction to RERA for disposal of the complaint in a time bound manner. The memo is taken on record.

6. There is no representation for 1st respondent-RERA. Sri. J.P. Darshan for Ayana Legal, learned counsel appeared for 2nd respondent-promoter and for respondents No. 3 & 4 who are directors of the promoter's company.

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 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 and delay compensation with 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 21.12.2020 passed by the Adjudicating Officer, RERA in the complaint No. CMP/191206/0004905 is hereby set aside;
- iii) The matter is remanded to the RERA for consideration of the complaint filed by the appellant-allottee afresh treating the same as one filed in form No.'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 2015, 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) As the appellant and respondents No. 2 to 4 have already entered appearance through their counsel, they shall appear before the RERA on 05.01.2022 without expecting further notice from RERA and extend co-operation with RERA so as to enable the authority to dispose of the appeal in time.
- 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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