

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

DATED THIS THE 17TH DAY OF JANUARY 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 105/2020

(OLD RERA. APL No.141/2019)

BETWEEN:

M/s DS & JAKS Constructions,
NEEDS 3 Projects 276,
12/1, Needs 3 Project 276,
Next to Klassic Benchmark Appts,
Kalena Agrahara, SOS Post,
Kammanahalli Main Road,
Near Meenakshi Temple, Off Bannerghatta Road,
Bengaluru-560 076,
Represented by its
Managing Partner – D. Srinivas
Aged about 49 years, S/o D. Janardhan

...APPELLANT

(By Sri K.S Uday, Advocate)

AND

1. Nazia Ahamad,
R/at 2 D West Klassik Benchmark,
Bannerghatta Road,
Near Meenakshi Temple,
Bengaluru 560 076.
2. Real Estate Regulatory Authority Karnataka,
No. 1/14, Ground Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru, Karnataka- 560 027.
Represented by its Secretary

..RESPONDENTS

(R.1 -M/s Kamal & Co., Advocates-absent)

(R2 RERA – Served unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), before this Tribunal praying to set aside the impugned order dated 04.06.2019 passed in CMP/190117/0001899 by respondent No.2 Adjudicating Officer, RERA. On establishment of this Tribunal on 2.1.2020, the appeal is renumbered as Appeal (KREAT) No.105/2020.

This appeal, coming for further hearing this day, 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 "NEEDS 3 PROJECT 276" has preferred this Appeal challenging the order dated 04.06.2019 passed in Complaint No. CMP/190117/0001899 by the learned Adjudicating Officer – 2nd Respondent.

2. The facts of the case in brief are:

The appellant is a promoter of real estate projects and one such project developed by the appellant under the name and style "Needs 3 Project 276" is situated in Sy.No.12/1, measuring 02 Acres 09 Guntas, Kalena Agrahara village, Begur hobli, Bengaluru south taluk. The 1st respondent-allottee herein, pursuant to the advertisement issued by the promoter, approached him to purchase one of the apartments proposed to be constructed in the said project and entered into an agreement of sale on 08.03.2015 much prior to the Act coming into force. As per the terms of agreement of sale, the possession of the

said flat was to be handed over to the allottee on or before December 2017 with a grace period of six months i.e., before June, 2018.

3. It is averred in the appeal memo that since the project was an ongoing project as on the date of coming into force of the provisions of the Act, the promoter was required to register the project with the RERA. That after registration, the date of completion of the project was revised as per Section 4 of the Act and thus, there was no delay in completing the project. It is further urged that the allottee, who was aware of all these factors, filed a complaint before the RERA only to harass the promoter, alleging that since the allottee did not get possession of the flat within the stipulated date as agreed between them in the agreement of sale, the allottee filed a complaint before RERA and sought for delay compensation by way of interest.

4. The learned Adjudicating officer, after hearing the allottee and the learned counsel for the promoter, by the impugned order directed the promoter to pay delay compensation to the allottee by way of interest. The operative portion of the impugned order reads thus:

“ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ: CMP/190117/0001899 ಅನ್ನು ಮಂಜೂರು ಮಾಡಲಾಗಿದೆ.

1. ಫಿರ್ಯಾದುದಾರರು ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಇದನ್ನು ಖರೀದಿಸುವ ಸಲುವಾಗಿ ಡೆವಲಪರ್‌ಗೆ ಕೊಟ್ಟಿರುವ ಒಟ್ಟು ಮೊತ್ತದ ಮೇಲೆ ಬಡ್ಡಿಯನ್ನು Delay Compensation ರೂಪದಲ್ಲಿ ಕೊಡಬೇಕಾಗುತ್ತದೆ.

2. ಜುಲೈ 2018ರಿಂದ ಅನ್ವಯವಾಗುವಂತೆ ಫಿಯಾದುದಾರರು ಕೊಟ್ಟಿರುವ ಒಟ್ಟು ಮೊತ್ತದ ಮೇಲೆ 10.75% ರಂತೆ ವಾರ್ಷಿಕ ಸರಳ ಬಡ್ಡಿಯನ್ನು ಸೇರಿಸಿ ಕೊಡತಕ್ಕದ್ದು. ಸದರಿ Delay Compensation ಅನ್ನು ಡೆವಲಪರ್ ಇವರು ತಮ್ಮ ಪ್ರಾಜೆಕ್ಟ್‌ಗೆ Occupancy Certificate ಪಡೆದಕೊಂಡು ಕ್ರಯ ಪತ್ರ ಬರೆದುಕೊಡುವ ದಿನಾಂಕದವರೆಗೆ ಕೊಡತಕ್ಕದ್ದು.

3. ವ್ಯಾಜ್ಯದ ಖರ್ಚು ಅಂತ ಡೆವಲಪರ್ ಇವರು 5,000/-ರೂಗಳನ್ನು ಕೊಡುವುದು”.

5. On 7.01.2022, when the matter was listed for further hearing, the learned counsel for the appellant sought adjournment to enable him to seek instructions from his client regarding filing a memo for setting aside the impugned order and remitting the matter to the authority for fresh consideration in view of the Judgment of the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. in Civil Appeal No(s).6745 - 6749 of 2021 **reported in 2021 SCC ONLINE SC 1044.** Accordingly, time was granted and the appeal was directed to be listed on 17.01.2022.

6. In the meanwhile, on 10.01.2022, the learned counsel for the appellant has filed a Memo enclosing a copy of the Judgment rendered in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD.(supra) and prayed for allowing the appeal in terms of the aforesaid order of the Hon'ble Supreme court.

7. Today, Sri K.S.Uday, learned counsel for the appellant submitted that in the event of this Tribunal allowing the appeal and

remanding the matter to RERA for fresh consideration in view of the Judgment of the Hon'ble Supreme court, the Registry may be directed to return the entire money deposited by the appellant towards 100% pre deposit as per proviso to Section 43(5) of the RERA Act.

8. Learned counsel for Respondent No.1 allottee is absent and Respondent No.2-RERA, though served, remained unrepresented.

9. The Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD (*supra*) while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provision 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?"

After elaborate discussion, the Hon'ble Apex court at paragraph 86 held that:

" 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”.

10. At this stage, it is relevant to note that it is a cardinal principle of construction that 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, as held by the Division Bench of the Hon'ble High Court of Karnataka in the case of **Suresh Babu -vs- Smt. S. Susheela Thimmegowda (1998 SCC OnLine Kar 691=(1999)2 Kant LJ 580(DB).**

11. 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 and submission made by the learned counsel for the appellant, without expressing any opinion on the merits

of the matter, we deem it appropriate to dispose of the above appeal, set 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)*.

12. Since the appeal is by a promoter, the appellant while preferring this appeal has deposited the total amount with this Tribunal, payable to the allottee, as per the impugned order in compliance of proviso to Section 43(5) of the RERA Act. Accordingly, the appeal has been entertained and now that is ordered to be returned to the appellant.

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

ORDER

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 04.06.2019 passed in CMP/190117/0001899 by respondent No.2 Adjudicating Officer, RERA, 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) All the contentions of the parties are kept open to be urged before the Regulatory Authority;
- (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 from the date of parties entering appearance;

- (v) Since the appellant as well as the 1st respondent had appeared before this Tribunal, they are directed to appear before the RERA on 07.02.2022 without expecting further notice from RERA;
- (vi) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in 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 the name of the appellant-company and shall hand over the cheque or DD to the Managing partner of the appellant-company who has signed the vakalath and appeal memo, on furnishing necessary documents and by following due procedure.
- (vii) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (viii) 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 ADMINISTRATIVE MEMBER