

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

**DATED THIS THE 10<sup>th</sup> DAY OF JANUARY, 2022**

**PRESENT**

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

**AND**

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

**APPEAL NO. (K-REAT) 213/2020**

**(Old No.284/2019)**

**BETWEEN:**

Sri. Elangovan Alagappan  
Son of Alagappan Bomivayar,  
Aged about 58 years,  
33-B, Skylark Greens,  
Ramagondanahalli, Whitefield,  
Bengaluru - 560 066.

Presently residing at  
No.15, Akshaya Redstone,  
Sai Baba Ashram Road,  
Seegehalli, Whitfield,  
Bengaluru-560 067.

Amended VCO Dt. 23.11.2021

**...APPELLANT**

(By Smt. Mrignayani.R.D for M/s Intellectia Legal Firm, Advocates  
for Appellant)

**AND**

1. The Interim Real Estate Regulatory Authority,  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.
2. Nitesh Shetty,  
Nitesh Columbus Square Phase-II,  
Nitesh Housing Developers Private Limited,

Level-7, Nitesh Time Square,  
No.8, M.G. Road, Bengaluru-560001.

Presently known as  
NHDPL South Private Limited,  
CIN No. U45201KA2007PTC044553,  
Previously KNOWN AS  
Nitesh Housing Developers Private Limited,  
Project Name: Nitesh Columbus Square Phase-II,  
Level-1, No.110, Andrews Building,  
M.G. Road, Bengaluru-560001.  
Represented by its Special Officer/Director  
Mr. Nitesh Shetty,

Amended VCO Dt. 23.11.2021

**..RESPONDENTS**

(R-1-RERA –served and Un-represented

By Sri Vasusena for M/s Shetty & Hegde Associates, Advocates  
for R-2)

This Appeal is filed under Section 44 (1) of the Real Estate  
(Regulation and Development) Act, 2016, praying to set aside the  
impugned order dated 1<sup>st</sup> September 2018 passed by the  
Adjudicating Officer, RERA, Bengaluru in CMP/180327/0000625.

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

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

An allottee of a flat in a real estate project, having not fully  
satisfied with the order passed by the learned Adjudicating Officer  
dated 1<sup>st</sup> September, 2018 in CMP/180327/0000625, has preferred  
this appeal praying to modify the impugned order and grant interest  
payable on the refund amount with effect from the date of  
respective payments made by him.

**Brief facts leading to this appeal are:**

**2.** The appellant, (hereinafter referred to as 'allottee' for short) filed a complaint against the 2<sup>nd</sup> respondent-Nitesh Housing Developers Private Limited (hereinafter referred to as 'Promoter' for short) before the 1<sup>st</sup> respondent-RERA seeking the relief of refund of all payments made to the promoter for purchasing of a flat along with interest from respective date of payments on the ground that promoter failed to complete the project within the time specified in the agreement of sale.

**3.** According to the allottee, he entered into an agreement to sell and construction agreement with the promoter on 12.08.2013 to purchase a flat bearing B-601, 6<sup>th</sup> floor, Block-B in the project known as 'Nitesh Columbus Square Phase-II' for a consideration of Rs.73,46,193/-. As per the terms of the agreements, the project was required to be completed and possession of the flat was required to be delivered on or before 30.06.2014 with a grace period of six months i.e., at the end of December, 2014. It is alleged that the allottee has paid the consideration amount during the period from July, 2013 to March, 2014. As the promoter has failed to fulfill his part of the obligation by handing over the possession of the flat within the stipulated period, the allottee filed

a complaint before the RERA seeking refund of the consideration amount paid by him along with interest from respective dates of payments.

4. The promoter who was arrayed as respondent in the complaint before RERA, though served with notice, did not choose to contest the matter before the RERA.

5. The learned Adjudicating officer, after hearing the complainant who appeared as party-in-person and perusing the complaint and the documents produced by him, allowed the complaint. The operative portion of the impugned order reads thus:

"ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿಯಾದು ಸಂಖ್ಯೆ: CMP/180327/0000625 ನ್ನು ಮಂಜೂರು ಮಾಡಲಾಗಿದೆ.

ಫಿಯಾದುದಾರರಿಂದ ಡೆವಲಪರ್ ಇವರು ಪಡೆದುಕೊಂಡಿರುವ ರೂ. 73,46,193/- ರೂಗಳನ್ನು ಇಂದಿನಿಂದ ಒಂದು ತಿಂಗಳ ಒಳಗೆ ಹಿಂದಿರುಗಿಸತಕ್ಕದ್ದು. ತಪ್ಪಿದ್ದಲ್ಲಿ ಸದರಿ ಹಣ ಮತ್ತು ಅದರ ಮೇಲೆ ಮಾಸಿಕವಾಗಿ 10.25% ರಂತೆ ಬಡ್ಡಿ ಹಣ ಹಿಂದಿರುಗಿಸುವವರೆಗೆ ಕೊಡತಕ್ಕದ್ದು".

6. The complainant having dissatisfied with the impugned order passed by learned Adjudicating officer not awarding interest from the date of respective payments has preferred this appeal praying to modify the impugned order dated 01.09.2018 in complaint No.CMP/180327/0000625 for refund of Rs.73,46,193/- (Rupees seventy three lakhs forty six thousand one hundred and ninety three only) with interest at the rate of State Bank of India highest

marginal lending rate plus two percent per annum till the date of payment.

**7.** When the matter is called today, Smt. Mrignayani.R.D for M/s Intellectia Legal Firm, learned counsel appearing for the appellant filed a memo dated 10.01.2022 after serving a copy of the same to the learned counsel appearing for 2<sup>nd</sup> respondent-promoter and prays this Tribunal to set aside the impugned order, remit the matter to the Real Estate Regulatory Authority for fresh disposal. The memo is placed on record.

**8.** Learned counsel for the appellant further submits that though the complaint filed before the Authority is for refund of all payments made with the promoter with interest from the respective dates of payments, in view of the latest judgment of the Hon'ble Supreme 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 impugned order passed by the learned Adjudicating Officer is not sustainable, inasmuch as, he had no jurisdiction to entertain the complaint relating to refund of the amount and hence, she prays that the impugned order may be set aside and the matter be remitted to the RERA for fresh adjudication of the complaint.

**9.** On the other hand, Sri. Vasu Sena for M/S Shetty & Hegde Associates, learned counsel appearing for 2<sup>nd</sup> respondent-promoter

fairly submits that the prayer made by the complainant in his complaint was for refund of amount with interest. He further submits that in view of the latest Judgment of the Hon'ble Apex Court in the case of ***M/S Newtech Promoters*** (supra), the promoter cannot have any objection for allowing the appeal, setting aside the impugned order and remitting the matter to the Authority for fresh consideration. However, he submits that 2<sup>nd</sup> respondent-promoter may be given an opportunity to put-forth his case before the Authority.

**10.** In view of the above submissions made across the bar and after hearing the learned counsel for the parties and on perusal of the records, the following point arise for our consideration:

- i) Whether the learned Adjudicating Officer was justified in directing the promoter to refund Rs.73,46,193/- with interest?
- ii) What order?

**11. Re issue (i):** Before adverting this issue, it is just and necessary for this Tribunal to refer to the dictum laid down by the Hon'ble 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)***. In the said case, the Apex Court, while considering the issue as to 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, was pleased to held that **"refund and compensation"** are two distinct rights under the Act and they cannot be conflated/clubbed together and the manner in which the two are to be determined would require a different process and involve different consideration. The findings recorded by the Hon'ble Supreme Court in paragraph-86 is relevant for the purpose of deciding the above issue which reads thus:

"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”

*(emphasis supplied)*

**12.** In view of the law laid down by the Hon'ble Supreme Court in the case of ***Newtech Promoters (supra)***, this Tribunal is of the considered view that the learned Adjudicating Officer has no jurisdiction to entertain the complaint filed by an allottee seeking refund of the amount invested by him with the promoter for purchase of a flat. It is the 1<sup>st</sup> respondent-RERA alone has jurisdiction to adjudicate the complaint filed by the appellant-allottee for return/refund of sale consideration. Hence, without expressing any opinion on merit of the case, this Tribunal is of the considered view that the impugned order is liable to be set aside and the matter requires to be remitted to the Authority for fresh adjudication. Accordingly, we answer the issue No (i) in the negative holding that the learned Adjudicating Officer has no jurisdiction to entertain the complaint filed by the appellant-allottee



as it relates to refund of the amount and proceed to pass the following:

**ORDER**

- i) The appeal is allowed in part and the impugned order dated 1<sup>st</sup> September, 2018 passed by the learned Adjudicating Officer, in complaint No. CMP/180327/0000625 is hereby set aside;
- ii) The matter is remitted to the RERA for fresh adjudication in accordance with law, after affording reasonable opportunity to both the parties;
- iii) All the contentions of the parties urged in this appeal are kept open to be urged before RERA while considering the complaint afresh;
- iv) Keeping in mind that the matter relates to the year 2013, the Authority shall make an endeavor to dispose of the matter on merit, as expeditiously as possible, but not later than the outer limit of forty days from the date of parties entering appearance;
- v) Since the appellant-allottee as well as 1<sup>st</sup> respondent-promoter had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 25.01.2022, without expecting further notice from the RERA;
- vi) Both the parties are at liberty to file appropriate applications before the Authority seeking amendment for change of

address of the complainant-appellant and that of the 2<sup>nd</sup> respondent-promoter;

- vii) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- viii) The Registry to comply with the provisions of Section-44 (4) of the RERA Act and to return the records to RERA if any;

No order as to the costs.

**Sd/-**  
**HON'BLE CHAIRMAN**

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

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