

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

DATED THIS THE 18th DAY OF JANUARY 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 374/2020

BETWEEN:

M/s Shrivision Towers Pvt Ltd.
No.192, 2nd Main, T. Chowdaiah Road,
Sadashivanagar,
Bengaluru – 560 080.

Represented by its Authorised Signatory/Representative

Mr. Naveen Kumar J.

...APPELLANT

(Sri. Joseph Anthony for M/s JSM Law Partners, Advocate for Appellant)

AND

1. The Karnataka Real Estate Regulatory Authority ,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
Bengaluru- 560 027.
Represented by its Secretary

2. Sri D. Karthik,
No. 44, 2nd Floor, 3rd Cross,
Vinayaka Layout,
Marathahalli,
Bangalore-560 037.

..RESPONDENTS

(R-1 RERA – Served unrepresented)

(Sri. Srinivasa D.C. Advocate for R2)

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 16.06.2020 passed in CMP/191102/0004607 by respondent No.1 Adjudicating Officer, RERA.

This appeal, coming for 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 "SHRIRAM GREEN FIELD PHASE-1" has preferred this Appeal challenging the order dated 16.06.2020 passed in CMP/191102/0004607 by the learned Adjudicating Officer – 1st Respondent.

2. The facts of the case in brief are:

The appellant is a promoter of real estate projects and one such project undertaken to be developed by the appellant under the name and style "SHRIRAM GREEN FIELD PHASE-1" is situated in Sy.Nos.73/1,73/2A, 74 and 81 of Bommenahalli village, Bidarahalli Hobli, Bangalore East Taluk, Bangalore. The 2nd respondent-allottee herein pursuant to the advertisement issued by the promoter, booked an apartment proposed to be constructed in the said project and entered into an agreement of sale and construction Agreement on 17.02.2016. 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 due to various reasons such as demonetization, truck- strike, shortage of building material and skilled labour etc., there was slight delay in completion of the project. However, the allottee, who was aware of all these factors, filed a complaint before the RERA alleging that the promoter has failed to deliver possession of the flat to the allottees within the stipulated date as agreed between them in the agreement of sale and sought for compensation.

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:

"a. The complaint filed by the complainants bearing no. CMP/191102/0004607 is hereby allowed.

b. The developer is hereby directed to pay delay compensation in the form of interest on the total amount paid @ 2% above the MCLR of SBI commencing from July 2018 till 07.12.2019 since the possession is delivered on 08.12.2019. (MCLR to be calculated @ prevailing rate as on today);

c. The developer is also hereby directed to pay Rs. 5,000/- as cost of the petition".

5. The promoter being aggrieved by the impugned order has preferred this appeal.

6. Today, when the matter is listed for hearing Sri Joseph Anthony, learned counsel appearing for the appellant orally submitted that 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**, the impugned order passed by the learned Adjudicating officer lacks jurisdiction and is liable to be set aside and the matter requires to be remitted to RERA for fresh consideration. The learned counsel also further submitted that a direction may be issued to the Registry to return the entire money deposited with this Tribunal towards pre-deposit as per the provision of Section 43(5) of the RERA Act.

7. Whereas, Sri D.C.Srinivasa, learned counsel for Respondent No.2 submits that the allottee cannot have any objections for the same in view of the aforesaid Judgment of the Supreme Court. However he submits that in the event of remitting the matter to the Regulatory Authority, the contesting Respondents may be given opportunity to put forth their case before RERA and all their contentions may be kept open to be raised before RERA while considering the matter.

8. Respondent No.1- 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 submissions made by the learned counsel for the parties and 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, 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 16.06.2020 passed in CMP/191102/0004607 by respondent No.1 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 2016, 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-promoter and allottee- Respondent No.2 have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on 03.02.2022 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 Authorised signatory 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

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