

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

DATED THIS THE 11th DAY OF JANUARY, 2022

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 261/2020

BETWEEN:

Mr Jayapal Reddy N
Age about 50 years,
S/o Narayan Reddy,
R/ at No. 24, 7th Cross,
24th Main HSR Layout Sector-1,
Agara, Bengaluru - 560 102.

...APPELLANT

(Sri Srinivas V, for M/s Legal Whisper, Advocate for Appellant)

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound, 3rd Cross, Mission Road,
Bengaluru, Karnataka-560027
Represented by its Secretary
2. M/s Mantri Developer Pvt Ltd.,
A company incorporated under the Companies Act,-1956
And having Registered Office,
Mantri House 41, Vittal Mallya Road,
Bengaluru - 560 001.
Represented by its Director

3. Mr. Sushil Pandurang Mantri
Father name not known to Appellant
Director of the Respondent No.2
Mantri House 41, Vittal Mallya Road,
Bangalore – 560 001
Karnataka
4. Mr. Pratik Sushil Mantri
S/o Sushil Pandurang Mantri
Director of the Respondent No.2
Mantri House 41, Vittal Mallya Road,
Bangalore – 560 001
Karnataka.
5. PNB HOUSING Finance Limited,
No.5, Mathrushree Arcade, 2nd Floor,
100 Feet Ring Road, 1st Phase,
2nd Stage, BTM Layout,
Bangaluru – 560 076.
Represented by its Manager.

...**RESPONDENTS**

(R-1 RERA served, unrepresented)

(Sri Sunil P Prasad for M/s Tapasya Law Chambers, Adv
for Respondent-2)

(R-3 & R-4 Served, unrepresented. Notice held Sufficient)

(Sri Mariappa M.S for M/s. Mariappa M.S & Associates, Advs for
Respondent-5)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) before this Tribunal to call for the records pertaining to order dated 09th March, 2020 in CMP/191014/0004070 passed by the Adjudicating Officer, RERA Respondent-1 and to direct the respondents to refund a sum of Rs.17,78,808/- along with interest etc.,

This appeal coming on for hearing this day, the Chairman, made the following:

JUDGMENT

An allottee of a flat in a real estate project, having not fully satisfied with the order passed by the learned Adjudicating officer dated 09th March, 2020 in CMP/191014/0004070, has preferred this appeal seeking for enhancement of compensation.

Brief facts of the case are:

2. The appellant being interested to buy a flat in the project "MANTRI WEBCITY 3B" undertaken to be developed by M/s Mantri Developers Private Limited (hereinafter referred to as 'Promoter') - 2rd respondent, booked an apartment bearing No.P-104 in Tower-P for a total consideration of Rs.88,94,043/- under the buyback scheme, also known as Assured Return Scheme.

3. It is stated in the appeal memo that the promoter entered into Memorandum of Understanding dated Nil, Construction Agreement and Agreement to sale both dated 24.04.2014 with the allottee and agreed to complete the construction and deliver possession of the said apartment to the allottee on or before 31.08.2016.

4. The allottee alleging that there was delay in handing over possession of the apartment and lack of transparency on the part of the promoter in abiding with the terms of the MOU, Construction Agreement

and Agreement to sell, filed a complaint with RERA under Section 31 of the Act for urgent settlement of Buy Back Scheme and refund of the amount.

5. The promoter who was arrayed as respondent in the complaint before RERA appeared through his Advocate and resisted the complaint by filing statement of objections *inter alia* contending that in view of the nature of the scheme under which the appellant has intended to purchase the flat and having regard to the scope and object of the provisions of Sections 18 and 71 of the Act, the appellant is not an allottee in the eye of law, but a speculative investor and a co-promoter for the purposes of construction of an apartment and development of the project intentionally later on to sell the apartment back to the promoter for double the amount of his contribution, and as such he cannot seek the relief of compensation or refund of the amount inasmuch as the appellant is seeking double the amount which he has invested in the flat, and prayed for dismissal of the complaint on other several grounds urged in the appeal memo.

6. The learned Adjudicating officer, after hearing the complainant who appeared as party-in-person and the learned counsel appearing for the promoter, perusing the complaint filed by the appellant, statement of objections filed by the promoter and documents produced by the parties,

holding that the promoter has admitted the relationship of the appellant-complainant and the promoter has failed to complete the project and obtain occupancy certificate till the date of passing the impugned order, allowed the complaint and granted the reliefs as under:

"a. The complaint No. CMP/191014/0004070 is allowed in part.

b. The developer is hereby directed to pay Rs 17,78,808/-.

c. The developer is hereby directed to pay simple interest @ 9% annum on the respective amount paid on the respective date till 30.04.2017.

d. The developer is directed to pay simple interest @ 2% above the MCLR of SBI as on today commencing from 01.05.2017 till the realization of entire amount.

e. The developer is hereby directed to discharge the home loan raised the complainant towards the purchase of flat no. P-104 in Mantri Webcity 3B in this case along with EMI, EMI if paid by the complainant on behalf of the developer and interest and any incidental charges, if any.

f. The developer is also directed to pay Rs. 5000/- as cost.

g. The complainant is hereby directed to execute the cancellation of agreement of sale after the realization of entire amount."

7. The complainant being not fully satisfied with the order passed by the learned Adjudicating officer has preferred this appeal, praying to:

- "a) Call for records pertaining to CMP/191014/0004070, on the file of Adjudicating Officer, Karnataka-RERA-R1.
- b) Direct the Respondents to refund a sum of Rs.17,78,808/- along with assured return of equal money or 2X of the sum assured (Rs.17,78,808/- X2=Rs. 35,57,616/-)
- c) Directed the Respondents to pay interest on a sum of Rs. 35,57,616/- from the assured date of repayment i.e, August 2016 (settlement month for buyback scheme).
- d) Directed the Respondents to reimburse all the pending Pre-Emi instalment of Rs.2,06,359/- along with interest for delayed period at the rate of 12% per annum compounded from the date of respective payments till repayment or recovery and future interest at the rate of 12% per annum until repayment or recovery of closure of the loan;
- e) Directed the Respondents to clear the Bank loan amount along with all penalties etc received from or payable to PNBHFL towards Bank Loan Account No.00196660004421 and issue NOC/Loan Clearance Certificate. ALTERNATIVELY Direct the Respondent Bank to collect the balance loan amount and interest instalment from the Respondent Builder.
- f) compensation for the Mental Agony and pain and Damages to an extent of Rs.5,00,000/-".

g) Compensation for unfair Trade practice to an Extent of Rs5,00,000/-.

h) Cost of litigation and expense to an Extent of Rs.50,000/-.

i) Direct the Respondents not to charge or deduct any amount towards exiting from the project whatsoever it may be.

8. It is relevant to mention here that the promoter has not preferred an appeal challenging the impugned order passed by the learned Adjudicating Officer.

9. Sri Srinivas V, learned counsel appeared for the Appellant-allottee. R-1 RERA, R.3 and R.4 though served, remained unrepresented. Sri Sunil P Prasad for M/s Tapasya Law Chambers, learned counsel appeared for R-2-promoter. Sri Mariappa M.S, learned counsel appeared for R-5 –Bank.

10. Today, when the matter is listed for hearing, the learned counsel appearing for the appellant 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.

11. Whereas, Sri Sunil P Prasad learned counsel for Respondent No.2-promoter submits that the 2nd respondent 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 2nd Respondent may be given opportunity to put forth his case before RERA.

12. 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".

13. At the stage, it is apt 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).**

14. 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 parties, 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)*.

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

ORDER

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 9th March, 2020 in CMP/191014/0004070 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) Since the matter pertains to the year 2014, 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;

- (iv) All the contentions of the parties are kept open to be urged before RERA.
- (v) Since the appellant as well as the contesting respondents-2 and 5 have already entered appearance through their respective counsel, they shall appear before the RERA on 27.01.2022 without expecting further notice from RERA;
- (vi) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (vii) 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 JUDICIAL MEMBER**

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