

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

DATED THIS THE 11th DAY OF JANUARY, 2022

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 313/2020

BETWEEN:

Mr. Rakesh V.S,
Aged about 40 years,
S/o. Surendrababu.V,
No.18, 1st Cross, Sheshadri Layout,
Bagalgunte,
Bengaluru-560 073.

...APPELLANT

(By Sri. Srinivas.V for M/S Legal Whisper, Advocate)

AND

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru-560 027
Represented by its Secretary.
2. M/S. Mantri Developers Pvt Ltd.,
A company incorporated under the Companies Act, 1956
And having registered office
Mantri House, 41, Vittal Mallya Road,
Bengaluru-560001.
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,
Bengaluru-560001.

4. Mr. Pratik Sushil Mantri,
S/o. Sushil Pandurang Mantri,
Director of the Respondent No.2,
Mantri House, 41, Vittal Mallya Road,
Bengaluru-560001.
5. Axis Bank, Loan Centre,
No. 2nd, 3rd & 4th Floor, Sona Tower,
32-E Cross, 4th Block, Jayanagar,
Bengaluru-560041,
By its Manager.

..RESPONDENTS

Note: R-5 is impleaded VCO Dt. 07.04.2021

(R-1-RERA –served and Un-represented

Sri. Sunil P. Prasad for M/S Tapasya Law Chambers,
Advocate for R-2

R-3, 4, service held sufficient VCO Dt.13.10.2020

Sri. Dileep.D for M/S J.S. Advocates & Legal Consultants,
Advocate for R-5)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to call for records pertaining to complaint No.**CMP/190628/0003413**, direct the respondents to refund a sum of Rs.6,97,576/- along with assured return of equal money or 2x of the sum assured Rs.6,97,576/- x 2 = Rs.13,95,152/- from April, 2018; to direct the respondent to reimburse Rs.10,96,202/- towards pre-EMI installment amount paid up to October,2019 with interest at the rate of 12%; further to direct the respondents to clear the bank loan amount along with all penalties received from 5th respondent-Axix Bank relating loan Account No.PHR000901465829 and issue NOC etc.

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 11th March, 2020 in CMP/190628/0003413, has preferred this appeal praying to modify the impugned order and grant the reliefs narrated in the preamble of the Judgment.

Brief facts leading to this appeal are:

2. The appellant, (hereinafter referred to as 'allottee' for short) filed a complaint against the Respondents 2 to 4 (hereinafter referred to as 'Promoter' for short) before the 1st respondent-RERA seeking the relief "Exit from project with all refund, sum assured by way of 2x, reimbursement of pre-EMI and interest, delayed compensation and interest, damages compensation" on the ground that promoter has failed to complete the project within the time specified in the agreement of sale/construction and thereby committed breach of agreement.

3. According to the allottee, he agreed to purchase a flat bearing L-1606 in Tower-L in a real estate project known as "Mantri Web City" undertaken to be developed by the respondents 2 to 4, under buy back scheme and assured return scheme for a total consideration of Rs.66,08,631/- and entered into an agreement for construction dated 07.06.2015 and agreement for sale dated

27.06.2015 vide Annexures-D & E respectively with the promoter. Initially, the appellant paid a sum of Rs.6,97,576/- and another sum of Rs.41,12,989/- through 5th respondent-bank, out of total loan of Rs.45,47,810/- and thereby, he paid totally a sum of Rs.48,10,565/-. 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 30.04.2018. As the promoter has failed to fulfill his part of the obligation by handing over the possession of the flat within the stipulated time, 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 promoters were arrayed as respondents 1 to 3 in the complaint before RERA. Though the 1st respondent-company appeared through advocate, the Directors of the company who were respondents-2 & 3 before the RERA, though served with notice, did not choose to contest the matter before the RERA.

5. The learned Adjudicating officer, after hearing the complainant and perusing the complaint and the documents produced by him, allowed the complaint. The operative portion of the impugned order reads thus:

- a. The complaint No. CMP/190628/0003413 is allowed in part.
- b. The developer is hereby directed to pay Rs.6,79,576/-.
- c. The developer is hereby directed to pay simple interest 9% per 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 by the complainant towards the purchase of flat No.L-1606 in Mantri Webcity 2B in this case along with EMI, EMI if paid by the complainant on behalf of the developer and interest and 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.

6. The complainant (allottee) having dissatisfied with the impugned order passed by learned Adjudicating officer has preferred this appeal praying to modify the impugned order dated 11.03.2020 passed in complaint No.CMP/190628/0003413.

7. When the matter is called today, Sri. Srinivas.V for M/S Legal Whisper, learned counsel appearing for the appellant fairly 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 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, he prays that the impugned order may be set aside and the matter may be remitted to the RERA for fresh adjudication of the complaint. Further, he submits that since the matter is of the year 2015, the RERA may be directed to dispose of the matter expeditiously. The submission made by the learned counsel is placed on record.

8. On the other hand, Sri. Sunil P. Prasad for M/S Tapasya Law Chambers, learned counsel appearing for 2nd 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 2nd respondent-promoter may be given an opportunity to put-forth his case before the Authority.

9. 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 had jurisdiction to entertain the complaint filed by the allottee for refund of the amount and pass the impugned order?
- ii) What order?

10. Re issue (i): Before advertizing 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 hold 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)

11. 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 had 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 1st respondent-RERA alone has jurisdiction to adjudicate the complaint filed by the appellant-allottee for return/refund of sale consideration.

12. 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 in 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 the 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)**.

13. In view of the foregoing paragraphs, 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 11th March, 2020, 2018 passed by the learned Adjudicating Officer, in complaint No. CMP/190628/0003413 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 2015, 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 1st respondent-promoter had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 27.01.2022, without expecting further notice from the RERA;
- vi) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- vii) 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 JUDICIAL MEMBER**

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