

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

DATED THIS THE 21TH DAY OF JANUARY 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 252/2020

BETWEEN:

Ashok Kumar Pati
Son of Late NC Pati
Aged about 64 years
Residing at: 805, Floriana Estates,
Sarjapur Road,
Koramangala, 3rd Block,
Bangalore-560 034.

...APPELLANT

(Sri Abhilash Raju, Advocate for Appellant)

AND:

1. Prestige Royale Gardens Phase 2
Prestige Estates Projects Limited
Falcon House, No.1,
Main Guard Cross Road,
Bangalore- 560 001.
2. Adjudicating Officer
Real Estate Regulatory Authority,
No.1/14, 2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.

..RESPONDENTS

(Sri Mohumed Sadiqh B.A for M/s KV Legal, Advocate for R1)
(R-2 RERA served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 31st October, 2019 in CMP/190520/0003069 passed by the Adjudicating Officer, RERA Respondent-2.

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

J U D G M E N T

An allottee of a flat in a Real Estate Project, being aggrieved by the order passed by the learned Adjudicating officer dated 31st October, 2019 in CMP/190520/0003069, has preferred this appeal seeking for setting aside the said order.

Brief facts leading to this appeal are:

2. The appellant is an allottee of a flat bearing No. PRG6026, in Tower No.6 on level 2 in the real estate project "M/s Prestige Royale Gardens" developed by M/s Prestige Royale Gardens (hereinafter referred to as 'Promoter') – 1st respondent. It is stated in the appeal memo that allottee along with his wife entered into Agreement of sale dated 25.11.2014 with the promoter and paid a sum of Rs.67,79,150/- towards sale consideration of the said flat. That as per the Agreement of sale, the promoter ought to have completed the construction and deliver possession of the said apartment to the allottee before 30.04.2017. However, the project could not be completed within the specified date.

3. The complainant, alleging that there was delay in delivery of possession of the flat, filed a complaint with RERA under Section 31 of the Act for refund of the sums paid with interest.

4. The promoter who was arrayed as respondent in the complaint before RERA appeared through their counsel and resisted the complaint by filing statement of objections.

5. The learned Adjudicating officer, after hearing the complainant and learned counsel for the promoter and perusing the documents filed by the parties, allowed the complaint and instead of ordering for refund of the amount as sought by the allottee in the complaint, granted delay compensation. The operative portion of the order reads as under:

“ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ: CMP/190520/0003069 ಅನ್ನು ಮಂಜೂರುಗೊಳಿಸಿದೆ.

1. ಡೆವಲಪರ್ ಇವರು ಫಿರ್ಯಾದುದಾರರಿಗೆ ದಿನಾಂಕ: November 2017 ರಿಂದ ದಿನಾಂಕ: 09.07.2018ರ ವರೆಗೆ ಒಟ್ಟು ಮೊತ್ತದ ಮೇಲೆ State Bank of India ಅವರು ಗೃಹ ಸಾಲಕ್ಕೆ ನಿಗದಿ ಪಡಿಸಿರುವ ಬಡ್ಡಿಗಿಂತ ಶೇಕಡಾ 2% ರಷ್ಟು ಹೆಚ್ಚುವರಿ ಬಡ್ಡಿಯನ್ನು ಕೊಡುವಂತೆ ಆದೇಶಿಸಿದೆ.
2. RERA ಕಾಯ್ದೆ ಕಲಂ 19(10) ರ ಪ್ರಕಾರ ಪಕ್ಷಕಾರರು ನಡೆದುಕೊಳ್ಳುವುದು.
3. ಇಂದಿನಿಂದ 30 ದಿನಗಳ ಒಳಗಾಗಿ ಡೆವಲಪರ್ ಇವರು ಫಿರ್ಯಾದುದಾರರ ಕ್ರಯಪತ್ರವನ್ನು ಬರೆದುಕೊಡತಕ್ಕದ್ದು.
4. ಸದರಿ ಹಣವನ್ನು ಡೆವಲಪರ್ ಇವರಿಗೆ ಫಿರ್ಯಾದುದಾರರು ಕೊಡಬೇಕಾಗಿರುವ ಯಾವುದೇ ಮೊತ್ತ ಇದ್ದಲ್ಲಿ ಹೊಂದಾಣಿಕೆ ಮಾಡಿಕೊಳ್ಳಬಹುದಾಗಿದೆ.
5. ವ್ಯಾಜ್ಯದ ಖರ್ಚು ಅಂತ ಫಿರ್ಯಾದುದಾರರಿಗೆ ಡೆವಲಪರ್‌ರವರು ರೂ.5000/-ಗಳನ್ನು ಕೊಡತಕ್ಕದ್ದು.”

6. The complainant being aggrieved by the order passed by the learned Adjudicating officer inasmuch as though the allottee has sought for refund of the amount the learned Adjudicating Officer has directed the promoter to pay delay compensation, has preferred this appeal, praying to allow the appeal and to set aside the impugned order.

7. However, Sri Abhilash Raju, learned counsel for the Appellant-allottee has filed a memo dated 10.01.2022 praying that in view of the Judgment of the 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 above appeal may be allowed in part and the impugned order may be set aside and the matter be remitted back to RERA for fresh adjudication in accordance with law, keeping all contentions of the parties open. Memo is taken on record.

8. Today, when the matter is listed for hearing, the learned counsel appearing for the 1st Respondent filed a memorandum of objection to the memo dated 10.01.2022 filed by the appellant, which reads as follows:

"01. The memo filed by complainant is not maintainable in law or on facts and the same is liable to be rejected in limine.

02. The Respondent submits if this Hon'ble court holds that Supreme Court Judgment passed in M/s New tech Promoter V/s State of UP is applicable for the facts & circumstance of the case, then this Hon'ble court has no jurisdiction to remit back to the RERA. The Appellant has to withdraw the appeal and file fresh complaint before the competent authority".

Memorandum of objections is taken on record.

9. Be that as it may, 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 memo filed by the learned counsel for the appellant 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 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 impugned 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. Accordingly, we pass the following:

ORDER

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 31st October, 2019 in passed in complaint No.CMP/190520/0003069 by respondent No.2 Adjudicating Officer, RERA, is set aside, as one passed without jurisdiction;
- (iii) The matter is remanded to RERA for reconsideration of the complaint in CMP/190520/0003069 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;
- (iv) All the contentions of the parties are kept open to be urged before the Regulatory Authority;
- (v) Considering the date of agreement that it was entered into between the parties on 25.11.2014, the Authority shall make an endeavor to dispose of the complaints as expeditiously as possible and at any

rate within the outer limit of 45 days after parties entering appearance;

- (vi) Since the appellant and 1st respondent have already entered appearance through their counsel, they shall appear before RERA on 08.02.2022 without expecting further notice from RERA;
- (vii) If there is no sitting of the authority on 08.02.2022, the matter may be taken up immediately on the next date of sitting.
- (viii) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (ix) 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**