

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

DATED THIS THE 10th 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) 381/2020

BETWEEN:

L & T Realty Developers Limited
(Formerly known as L & T Construction Equipment Limited)
Realty Division, Bellary Road,
Byatarayanapura,
Bengaluru – 560 092
Represented by its Authorized signatory
Mr. Chandrashekar K

...APPELLANT

(By Sri Sunil P Prasad for M/s Sathya & Co., & Tapasya Law
Chambers, Advocates for Appellant)

AND

1. The Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
By its Secretary/Adjudicating Officer
2. Mr. Venkat S Reddy,
S/o Reddeppa Reddy,
Aged about 59 years
No. 254, 5th floor,
Rajnigandha Block, Garden Apartments,
Opposite U.B. City,
Vital Mallya Road,
Bengaluru – 560 001.

...RESPONDENTS

(R-1-RERA –served, Un-represented
Sri Santhosh Kumar, Advocate for R-2)

This Appeal is filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, praying to Call for records and also praying to set aside the impugned order dated 19th, July 2019 passed by the Adjudicating Officer, RERA, Bengaluru in CMP/190218/0002197.

This appeal coming on for hearing this day, the 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 "L & T REALTY RAINTREE BOULEVARD" has preferred this Appeal challenging the order dated 19TH July, 2019 passed in Complaint No. CMP/190218/0002197 by the learned Adjudicating Officer - 1ST Respondent directing the promoter to refund the GST amount of Rs.3,64,004/- (Rupees three lakhs sixtyfour thousand and four) and Rs.2,39,000/-(Rupees two lakhs thirtynine thousand) to the allottee.

2. The facts of the case in brief are:

The appellant is a promoter engaged in the business of construction and development of real estate projects and one such project developed by the appellant under the name and style "L & T REALTY RAINTREE BOULEVARD"" is situated in Sy.Nos.88 (part), 89/1-2, 90,91, 92/1, 93/1-2-3-4-5, 94/1-2-3-4, 95/1-2, 96/1-2 and 97/1-2-3, Byatarayanapura, Bellary Road, Bangalore. The 2nd respondent-allottee herein approached the promoter to purchase one of the units proposed to be constructed in the said project. Accordingly, the 2nd respondent-allottee made an application for allotment of an apartment bearing No.RBT11F1503 on 15th floor in

Tower/Block/Building No.T11. It is stated that based on the said application, the said unit came to be allotted to the 2nd respondent vide Allotment letter dated 23.02.2016 for a total consideration of Rs.1,53,16,650/- exclusive of other charges and taxes.

3. It is averred in the appeal memo that pursuant to the said allotment, 2nd respondent paid a sum of Rs.15,21,447/- towards booking of the said unit. Thereafter, it is stated that in spite of continuous demand calling upon the allottee to make payments, the allottee failed to adhere to the terms and conditions of allotment and honour his commitment and instead sought for cancellation of the allotment and to refund the amount. Accordingly, vide email dated 25.10.2017, the allottee informed the appellant that he would cancel the booking of the apartment allotted to him. That subsequent to the said development, after discussion between the parties, the appellant accepted the cancellation of the booking of the apartment subject to terms and formalities mentioned in the letter dated 3.11.2017.

4. It is stated that since the project was an ongoing project as on the date of coming into force of the provisions of the RERA 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 allottee, who was aware of all these factors, filed a complaint before the RERA only to harass the promoter, alleging that since the allottee did not get possession of the

flat within the stipulated date as agreed between them in the agreement of sale, the allottee sought for refund of a sum of Rs.12,39,504/- plus compensation equivalent to the amount of refund.

5. The learned Adjudicating officer, after hearing the allottee and the learned counsel for the promoter, by the impugned order directed the promoter to refund the GST amount of Rs.3,64,004/- (Rupees three lakhs sixtyfour thousand and four) and Rs.2,39,000/- (Rupees two lakhs thirtynine thousand) to the allottee.

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

7. On 22.12.2021 when the matter was listed for arguments, 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 is liable to be set aside and the matter requires to be remitted to RERA for fresh consideration and sought time to file memo to that effect. However, Sri Santosh Kumar, learned counsel for the 2nd respondent sought time to go through the said Judgment and make his submission. Accordingly, time was granted and directed the registry to list this matter on 10.01.2022.

8. Today, the learned counsel for the appellant reiterated his contention that in view of the Judgment of the Hon'ble Supreme court (*supra*), the impugned order is liable to be set aside and matter requires to be remitted to RERA for fresh consideration. The learned counsel for the 2nd respondent submits that the 2nd respondent cannot have any objection for the same in view of the aforesaid Judgment of the Supreme court.

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. 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)*.

11. 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.

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

O R D E R

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 19.07.2019 passed in CMP/190218/0002197 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 2018, the Authority shall make an endeavor to dispose of the complaint as expeditiously as possible and at any rate within the outer limit of 40 days after parties entering appearance;
- (iv) Since the appellant as well as respondent No.2 have already entered appearance through their respective counsel, they shall appear before the RERA on 25.01.2022 without expecting further notice from RERA;
- (v) 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 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, after the appeal period is over.

- (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 ADMINISTRATIVE MEMBER**