

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

**DATED THIS THE 18<sup>TH</sup> DAY OF JANUARY 2022**

**PRESENT**

**HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

**HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL NO. (K-REAT) 297/2020**

**BETWEEN:**

Mr. Pradeep Kumar Kotha  
S/o Mr. G S V Prasad K  
Aged about 33 years,  
Residing at:  
C-805, Purva Westend,  
Kudlu Gate, Garebhavi Palya,  
Bengaluru 560 068.

**...APPELLANT**

(Sri. Bojanna .K. J for M/s Josita juris, Advocate for Appellant)

**AND:**

1. M/s Purva Star Properties Pvt. Ltd., (Developer)  
A Private limited company registered under the  
Companies Act, 1956  
Having its registered office at:  
130/1, Ulsoor Road, Bangalore – 560 042  
Rep. by its Authorized Signatory  
Mr. Prem Chand Naidu  
Rep. by his SPA holder  
Mr. R Raghunandan
2. The Real Estate Regulatory Authority Karnataka,  
Having office at:  
2nd Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru, -560027  
Represented by its Secretary

3. M/s Purvankara Limited

(earlier known as Puravankara Project Limited)

A company registered under the provisions of Companies Act, 1956

Having its registered office at:

130/1, Ulsoor, Road,  
Bangalore – 560 042

Rep. by their POA Holder

M/s Purva Star Properties Pvt. Limited

Rep. by its Authorized Signatory

Mr. Prem Chand Naidu

Rep. by his SPA holder

Mr. R Raghunandan

**..RESPONDENTS**

{R3 impleaded V.C.O dated 05.01.2022}

(Sri Joseph Anthony, for M/s JSM Law Partners, Advocate  
for R-1 & R-3)

(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 4<sup>th</sup> January, 2020 in CMP/190309/0002402 passed by the Adjudicating Officer, RERA Respondent-2.

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

**JUDGMENT**

An allottee of a flat in a real estate project, being aggrieved by the order passed by the learned Adjudicating officer dated 4<sup>th</sup> January, 2020 in CMP/190309/0002402, has preferred this appeal praying to set aside the same and for granting delay compensation.

**Brief facts leading to this appeal are:**

2. The appellant is an allottee of a flat bearing no. C-805 on the eighth floor in C Block in the project "Purva Westend" being developed by 1<sup>st</sup> respondent- Promoter. It is stated in the appeal memo that the appellant entered into Construction Agreement and Agreement to sell both dated 19.03.2014 with the promoter for a sale consideration of Rs. 73,75,125/-. As per the agreement promoter agreed to complete the construction and deliver possession of the said flat to the allottee within 36 months from the date of agreement or upon receipt of commencement certificate issued by BBMP, whichever is later, with a grace period of 6 months. It is further stated that on the 1<sup>st</sup> respondent obtained commencement certificate on 23.04.2015 and therefore, promoter ought to have delivered possession of the apartment to the appellant, latest by 31.10.2018.

3. The allottee alleging that inspite of making payments promptly the promoter extended the date of delivery and ultimately failed to deliver possession of the flat on time. In the circumstance appellant was left with no option, but to file a complaint with RERA seeking the relief of delay compensation.

4. The promoter entered appearance before RERA and filed objections resisting the complaint.

5. The learned Adjudicating officer, after observing that the complainant remained absent on all the dates of hearing i.e.,

30.07.2019, 20.08.2019, 06.09.2019, 20.09.2019, 25.10.2019 and 20.11.2019 and holding that the complainant is not interested in prosecuting the case dismissed the complaint.

6. The complainant being aggrieved by the order passed by the learned Adjudicating officer has preferred this appeal, praying to allow the appeal and enhance the compensation.

7. Sri Bojanna, learned counsel appeared for the Appellant-allottee submitted that the notice of hearing in respect of the complaint filed by the appellant was never received by the appellant who was anxiously waiting for the information from RERA. In spite of several months of waiting, as there was no response from the RERA with regard to his complaint, he was forced to proceed to get the sale deed registered and seek for only delay compensation. However the learned adjudicating officer has dismissed the complaint without issuing notice and thus violated the principles of natural justice.

8. Be that as it may, 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.

9. Whereas, Sri Joseph Anthony, for M/s JSM Law Partners, learned counsel for Respondent No.1 and 3-promoter submits that the promoter cannot have any objections for the same in view of the aforesaid Judgment of the Supreme Court. However, he submits that the contentions of the promoter may be kept open to be urged before the Authority. Respondent No.2-RERA- though served, remained unrepresented.

10. 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".

11. At the 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).***

12. 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)*.

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

**ORDER**

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 04<sup>th</sup> January 2020 in CMP/19309/0002402 by respondent No.2 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) Since the appellant as well as the respondents have already entered appearance through their respective counsel, they shall appear before the RERA on 02.02.2022 without expecting further notice from RERA. If there is no sitting of the authority on 02.02.2022, the matter may be taken up immediately on the next date of sitting.
- (v) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (vi) 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**