

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

DATED THIS THE 14TH 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) 44/2021

BETWEEN:

Mrs. Rani Appaiah,
Aged about 73 years
W/o Mr. P.D. Appaiah,
Residing at P.B. No.26,
Gundigadde Estate Balele Post,
Kodagu – 571 219.

...APPELLANT

(By Sri M.V.Prashanth, Advocate for M/s India Law Practice LLP)

AND

1. M/s Pathak Developers Pvt. Ltd.,
Having registered office at:
No.2997/2, Rukma Complex,
Kalidasa Road, VV Mohalla,
Mysore – 570 002
Represented by its:
Managing Director
Mr. Srihari Pathak
2. The Karnataka Real Estate Regulatory Authority,
Represented by its Secretary
The Department of Housing,
Second Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru - 560 027.

..RESPONDENTS

(R1& R2 served, unrepresented)

This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), before this Tribunal praying to set aside the impugned order dated 18.12.2020 passed in CMP/180228/0000524 by respondent No.2 Adjudicating Officer, RERA.

This appeal, coming for orders this day, Hon'ble Chairman delivered 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 18.12.2020 in CMP/180228/0000524, has preferred this appeal seeking for modification of the impugned order by enhancing the compensation.

Brief facts leading to this appeal are:

2. The appellant is an allottee of a 3 BHK flat bearing No.G2, in the ground floor of the real estate project "PRATHAM SHILP" developed by M/s Pathak Developers Private Limited (hereinafter referred to as 'Promoter') – 1st respondent. It is stated in the appeal memo that she entered into Agreement of sale dated 25.10.2010 with the promoter and paid the entire sale consideration of Rs.36,25,000/- and 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 within eighteen months from the date of execution of

agreement of sale. However, the project could not be completed within the specified date.

3. The complainant, alleging that there was enormous delay of more than 8 years in handing over possession of the apartment, filed a complaint with RERA under Section 31 of the Act for recovery of money with interest. However, during the course of hearing the complaint, complainant's son appeared before the learned Adjudicating Officer as per power of attorney and filed a Memo stating that the prayer has been modified to delay compensation.

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 Power of Attorney holder of the complainant through skype and perusing the memo filed by the promoter admitting the liability, allowed the complaint and granted the reliefs as under:

- a. The complaint No. CMP/180228/0000524 is allowed.
- b. The developer shall pay simple interest @ 9% per annum on the amount paid by the complainant from the due date till 30-04/2017 and @2% above the MCLR of SBI commencing from May 2017 till the possession is delivered by executing the Sale Deed after obtaining the Occupancy Certificate.
- c. The developer is directed to pay Rs. 5,000/- as cost towards this petition.

d. The complainant may file memo of calculation as per this order after 60 days in case the developer has failed to comply with the same to enforce the order.”

6. The complainant being not fully satisfied with the order passed by the learned Adjudicating officer has preferred this appeal, praying to allow the appeal and enhance the compensation.

7. Sri M V Prashanth, learned counsel appeared for the Appellant-allottee. Respondents though served, remained unrepresented.

8. Today, when the matter is listed for orders on I.A.I, the learned counsel appearing for the appellant filed a memo praying to dispose of the appeal by remanding the matter to the RERA with a direction to consider the complaint filed in CMP No.180228/0000524 along with the new complaint stated to have been filed by the appellant on 7.1.2021, in the light 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 memo is taken on record.

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. 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).***

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 18.12.2020 passed in CMP No.180228/0000524 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/180228/0000524 along with the new complaint stated to have been filed by the appellant on 7.1.2021, 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 25.2.2010, 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 has already entered appearance through her counsel, she shall appear before RERA on 28.01.2022 without expecting further notice from RERA;
- (vii) Appellant is at liberty to file an application or memo praying RERA to correct the description of the

respondent-promoter in CMP No.180228/0000524 and also for consideration of clubbing this complaint along with the new complaint stated to have been filed by the appellant on 7.1.2021;

- (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**