

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

DATED THIS THE 28th DAY OF JANUARY, 2022

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 49/2021

BETWEEN:

Sri. M Ramu,
Flat # 001, Roshan Palace Apartment,
92/A, 1st Cross, Kartiguppe,
BSK 3rd Stage,
Bengaluru – 560 085.

...APPELLANT

(By Sri. A. Rajesh for Sri. G S Venkat Subbarao, Advocate)

AND

1. Real Estate Regulatory Authority
No.1/14, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
Rep. By its Secretary
2. Sri H S Sridhara Murthy
S/o H.K. Srinivasa Sharma
Aged about 45 years,
No. 220, Ayyappa Swamy Temple Road,
Katriguppe, BSK 3rd Stage,
Bengaluru -560 085.
3. Smt Shreedevi Sridhar,
W/o H.S. Sridhar Murthy,
Aged about 39 years,

No. 220, Ayyappa Swamy Temple Street,
Katriguppe, BSK 3rd Stage,
Bengaluru -560 035.

:RESPONDENTS

Note: R-3 impleaded V.C.O. dated 26.10.2021.

(1st respondent-RERA served unrepresented
R-2 and R-3 appears as Parties in person)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the order dated 24th February, 2021 in CMP/190120/0001927 passed by the Adjudicating Officer, RERA Respondent No. 1.

This appeal coming on for hearing this day, the Chairman, delivered the following:

JUDGMENT

The appellant/promoter has preferred this Appeal challenging the impugned order dated 24th February, 2021 in CMP/190120/0001927 passed by the Adjudicating Officer, RERA Respondent No. 1.

Brief facts leading to this appeal are:

2. The respondents -2 and 3 (hereinafter referred to as 'allottees' for short) filed a complaint against the appellant (hereinafter referred to as 'Promoter' for short) before the 1st respondent-RERA seeking the relief of refund of money on the ground that promoter has failed to complete the project within the time specified in the agreement of sale dated 19.06.2015 and thereby committed breach of agreement.

3. According to the allottees, they agreed to purchase a flat bearing 2047 on the first floor in a real estate project known as "Roshan Gardenia Apartment" undertaken to be developed by the promoter for a total consideration of Rs.68,42,250/- and entered into an agreement for sale dated 19.06.2015 with the promoter. The promoter had verbally agreed that the project would be completed and possession of the flat would be delivered on or before March 2016. 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 allottees 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 promoter who was arrayed as respondent in the complaint before RERA appeared and contested the case 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 filed by the complainant bearing No.CMP/190120/0001927 is partly allowed;

b. The respondent/developer is hereby directed to return an amount of Rs.15,75,722/- to the complainant along with interest @ 9% per annum

from 01.09.2015 and also to return Rs.10,00,000/- received on 10.02.2016, Rs.04,50,000/- received on 01.04.2016, Rs.10,00,000/- received on 16.07.2016 and Rs.10,00,000/- received on 21.03.2017 respectively along with 9% per annum from respective dates of receipt of said amount to the complainant till realization of the entire amount;

- c. The respondent/developer is hereby directed to refund Rs.6,24,278/- to the complainant which has been paid towards tax and reimburse the same from the department or from the new buyer;
- d. The complainant is hereby directed to execute the cancellation agreement of sale after realization of the entire amount;
- e. The respondent/developer is hereby directed to pay Rs.5,000/- as cost of the petition, to the complainant;
- f. The complainant may file memo of calculation as per this order after 60 days in case respondent/developer failed to comply with the same to enforce the order".

6. The promoter being aggrieved by the impugned order passed by learned Adjudicating officer has preferred this appeal praying to set

aside impugned order dated 24th February, 2021 in CMP/190120/0001927 passed by the Adjudicating Officer.

7. When the matter is called today, Sri. A. Rajesh for G.S. Venkat Subbarao, learned counsel appearing for the appellant filed a memo dated 28.01.2022 stating 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. The memo is placed on record.

8. Sri. H.S Sridhara Murthy and Smt. Shreedevi Sridhar (R-2 and 3) also filed a memo dated 28.01.2022 and submitted that in view of the latest Judgment of the Hon'ble Apex Court in the case of ***M/S Newtech Promoters*** (supra), the allottee 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 since the matter is of the year 2015, the RERA may be directed to dispose of the matter expeditiously and that the allottees may be given

an opportunity to put-forth their case before the Authority. The memo and submission made by the allottees is placed on record.

9. 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)***, 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 held 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)

10. 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.

11. 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).**

12. 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 proceed to pass the following:

ORDER

- i) The appeal is allowed in part and the impugned order dated 24th February, 2021 in CMP/190120/0001927 passed by the Adjudicating Officer, RERA Respondent No. 1 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 and this is third round of litigation between the parties, the Authority is directed 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-promoter as well as R-2 and R-3 (allottees) had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 11.02.2022, without expecting further notice from the RERA;
- vi) In the event, if there is no sitting of RERA on 11.02.2022, the matter may be taken immediately on the next date of hearing;
- vii) It is made clear that if the claim made by the allottee is for both refund and compensation, the Authority shall obtain fresh application in Form-O from the allottee and thereafter transmit the same to the Adjudicating Officer.
- viii) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- ix) The Registry is hereby directed to return the entire 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 favour of the appellant and hand over the cheque/DD to him after following the due procedure;

- x) 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 ADMINISTRATIVE MEMBER

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