

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

**DATED THIS THE 31<sup>st</sup> 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. 57/2021**

**BETWEEN:**

1. Mrs. M.S. Sushruta,  
Aged about 33 years,  
D/o Mr. Siddaiah Arakere Shankar  
Rep by her SPA holder  
Sri Siddaiah Arakere Shankar
2. Mrs. Anuradha Shankar  
Aged about 57 years,  
D/o. Mr. Ramappa,

Both are residing at  
No.21/1 [Old No. 4372],  
13<sup>th</sup> Main, A, Block,  
Subramanyanagar,  
Bangalore – 560 021.

**...APPELLANTS**

(By Sri. Manjunatha A, Advocate for Appellants)

**AND**

1. The Authorized person  
Smart Value Homes  
[Peenya Project] Private Limited  
[a subsidiary of Tata Value homes Limited]  
Regional Office: A Wing Corniche A1-Latheef  
No.25, Cunningham Road,  
Bangalore – 560 052.  
Rep. by its Authorized Signatory

Also At:  
Trade World office, 'B' Wing,  
2<sup>nd</sup> Floor, Kamala Mills Compound,  
Senapati Bapat Marg, Lower Parel [West]  
Mumbai- 400 013.

2. Karnataka Real Estate Regulatory Authority  
Rep. by its Secretary  
2<sup>nd</sup> floor, Silver Jubilee Block,  
CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.

**:RESPONDENTS**

(Sri. Sanjay Nair, for M/s. ASLF Law Offices, Advocate for R-1)  
R-2- RERA served unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to modify the impugned order dated 19<sup>th</sup> April, 2021 passed by the Adjudicating Officer, RERA Respondent No. 2 in CMP/200127/0005274.

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

**JUDGMENT**

The appellants, who are allottees of flat in a real estate project undertaken to be developed by the 1<sup>st</sup> respondent have preferred this appeal challenging the impugned order dated 19<sup>th</sup> April, 2021 in CMP/200127/0005274 passed by the Adjudicating Officer, RERA Respondent No. 2.

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

2. The appellants (hereinafter referred to as 'allottees' for short) filed a complaint against the 1<sup>st</sup> respondent - promoter (hereinafter referred to as 'Promoter' for short) before the 2<sup>nd</sup> respondent-RERA seeking the

relief of refund of money and compensation on the ground that the promoter has failed to complete the project and handover possession within the time specified in the agreement of sale dated 17.05.2014 and thereby committed breach of agreement.

**3.** According to the allottees, they agreed to purchase a flat bearing 31082 in part of tower no.31, New Heaven, on the 8<sup>th</sup> floor in a real estate project known as "Smart Value Homes (Peenya Project)" undertaken to be developed by the promoter for a total consideration of Rs.59,77,536/- and entered into an agreement for sale dated 17.05.2014 with the promoter. The promoter had agreed that the project would be completed and possession of the flat would be delivered on or before 31.12.2016. 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 them along with interest from respective dates of payments and compensation.

**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 complainants (allottees) and perusing the complaint and the documents produced by

them, allowed the complaint. The operative portion of the impugned order reads thus:

- a. The Complaint filed by the complainant bearing No.CMP/200127/0005274 is partly allowed;
- b. The respondent/developer is hereby directed to pay delay compensation to the complainants by way of interest @ 9% per annum on respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017@ 2% above the MCLR of SBI, till payment of the entire amount, until handing over the possession of the apartment to the complainants with OC issued by the competent authority;
- c. The respondent/developer is hereby directed to pay Rs.5,000/- as cost of the petition, to the complainant;
- d. 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 allottees being aggrieved by the impugned order passed by learned Adjudicating officer have preferred this appeal praying to modify the impugned order dated 19<sup>th</sup> April, 2021 in CMP/200127/0005274 passed by the Adjudicating Officer.

7. When the matter is called today, Sri. Manjunatha A, learned counsel appearing for the appellants as well as learned counsel for the 1<sup>st</sup> respondents filed a memo dated 31.01.2022 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. However, the appellants submits that since the matter is of the year 2014, 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 hold 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 2<sup>nd</sup> 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 19<sup>th</sup> April, 2021 in CMP/200127/0005274 passed by the Adjudicating Officer, RERA Respondent No. 2 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 2014 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 five days from the date of parties entering appearance;



- v) Since the appellant-allottees as well as 1<sup>st</sup> respondent - promoter had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 14.02.2022, without expecting further notice from the RERA;
- vi) In the event, if there is no sitting of RERA on 14.02.2022, 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 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**