IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

DATED THIS THE 24th DAY OF MARCH, 2022

PRESENT

HON'BLE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

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APPEAL No.(K-REAT)-226 of 2020
(Old Appeal No.297 of 2019)

C/W

APPEAL No.(K-REAT)-01 of 2021

IN APPEAL No.(K-REAT)-226 of 2020

BETWEEN:

K.A. Thomas,
S/o. Augustin, K.J,
Aged about 51 years,
Occupation: Software Architect,
No.29, Matha House,
2nd Cross, Sanjaynagar,
Bengaluru-560 094. **....APPELLANT**

(By Sri. Hedge Prakash, Advocate)

AND

1. The Adjudicating Officer,
   The Karnataka Real Estate
   Regulatory Authority,
   Second Floor, Silver Jubilee Block,
   Unity Building, CSI Compound,
   3rd Cross, Missions Road,
   Bengaluru, Karnataka-560027.

2. M/s Antevorta Developers Pvt. Ltd,
   100 Feet Road, HAL 2nd Stage,
   Indiranagar, Bengaluru – 560038,
   Represented by Mr. Sandeep Shete,
   The Authorised Signatory of
   M/s Antevorta Developers Pvt. Ltd. **....RESPONDENTS**

(R.1/RERA –served, unrepresented)
(Sri S. C. Venkatesh, Advocate for R-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Karnataka Real Estate Appellate Tribunal (KAT), Bengaluru, praying to modify the impugned order by directing the respondent No.2 to repay the amount of Rs.1,09,05,399/- mentioned in the impugned order passed by the Adjudicating Officer vide order dated 10.10.2019, in complaint No. CMP/190131/0002029. On establishment this Tribunal on 02.01.2020 the above appeal was transferred and re-numbered as appeal No.(K-REAT)-226 of 2020.

IN APPEAL No.(K-REAT)-01 of 2021

BETWEEN:

M/s Antevorta Developers Private Limited,
No. 757/B, 100 Feet Road,
HAL 2nd Stage, Indiranagar,
Bengaluru – 560038,
Represented by its
Authorized Signatory, Mr. Chethan B.S,
S/o Somaiah B. C, Aged about 35 years,
Being Authorized vide its Board resolution
Dated 18.06.2018. **....APPELLANT**

(By Sri S. C. Venkatesh, Advocate)

AND

1. The Adjudicating Officer,
   The Karnataka Real Estate
   Regulatory Authority,
   Second Floor, Silver Jubilee Block,
   Unity Building, CSI Compound,
   3rd Cross, Missions Road,
   Bengaluru-560027.

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2. Mr. Thomas. K.A,
S/o. Augustin, K.J, Aged about 52 years,
Occupation: Software Architect,
No.29, Matha House, 2nd Cross, Sanjaynagar,
Bengaluru-560 094. **....RESPONDENTS**

(R.1/RERA –served, unrepresented)
(Sri. Hedge Prakash, Advocate for R-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal, praying to set aside the impugned order passed by the Adjudicating officer vide order dated 10.10.2019, in complaint No. CMP/190131/0002029.

These appeals having been heard and reserved, coming on for pronouncement of judgment, this day, Hon'ble Chairman pronounced the following:

J U D G M E N T

Appeal No.226/2020 is preferred by the allottee of a flat in a real estate project undertaken to be developed by the 2nd respondent in the above appeal seeking modification of the impugned order passed by the learned Adjudicating Officer vide order dated 10.10.2019, in complaint No. CMP/190131/0002029. Whereas, appeal No.01/2021 is preferred by the promoter of a real estate project praying to set aside the same. Since, the challenge in the above appeals is against the common impugned order, common questions are involved, both the appeals are clubbed together, heard and disposed of by this common judgment.

For the purpose of ready reference, convenience and to avoid confusion, the appellant in appeal No.226 of 2020 will be hereinafter

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referred to as 'the allottee' and appellant in appeal No.01 of 2021 will be hereinafter referred to as 'the promoter'.

Facts of the case:

2. The allottee had entered into an agreement for sale dated 26.05.2016 with the promoter to purchase a flat bearing No. A-1303, 13th floor, 'A' block in a real estate project "House of Hiranandani-Hebbal" undertaken to be developed by the Promoter for a total consideration of Rs.1,08,81,590/-. As per the e-mail communication of the promoter dated 02.05.2016, the promoter assured the allottee to handover possession of the flat at the end of 2017; having good faith, the allottee signed the agreement for sale and paid the sale consideration amount to the promoter; subsequently, the promoter addressed one more e-mail communication stating that possession of the flat will be delivered within the second quarter of 2018 and apart from that, while applying for registration of the project, the promoter filed an affidavit before the KRERA stating that said project will be completed on or before 31.05.2018; since, the promoter has failed to complete the project within the stipulated time, the allottee filed a complaint before the KRERA, which is numbered as CMP/190131/0002029; initially the allottee sought for interest compensation till the possession of the flat is handover to the allottee; subsequently, during the pendency of the proceedings before the

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KRERA, the allottee filed an application for amendment of the prayer made in the complaint, seeking additional prayer to direct the promoter to refund the entire amount paid by him on the ground that the promoter has failed the complete the project within the stipulated time and suppressed the ongoing several litigations, as regards title of the property.

3. The promoter contested the complaint before the KRERA by filing statement of objections dated 11.06.2019 *inter alia* contending that as per the terms of agreement dated 26.05.2016, the promoter is required to complete the project within 46 months plus 6 months grace period with comes to an end on 26.09.2020; the promoter has completed the project much prior to the stipulated time and obtained occupancy certificate on 03.04.2019 and on 15.04.2019 the promoter raised final demand with the allottee and requested the allottee to pay the remaining amount and get the sale deed registered in his favour but the complainant not only reluctant to come forward for registration but also committed default in payment of remaining amount payable to the promoter and hence, the promoter is not liable to pay either interest or compensation, inasmuch as, there is no violation by the promoter and requested the Adjudicating Officer for dismissal of the complaint as premature.

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4. After considering the material placed by the parties, the learned Adjudicating Officer by the impugned order dated 10.10.2019, allowed the complaint filed by the allottee in part and directed the promoter to return the amount of Rs.1,09,05,399/- to the allottee. Being not satisfied with the impugned order, insofar as it relates to not awarding interest from the respective date of payments, the allottee filed appeal No. 226 of 2020. The promoter, being aggrieved by the impugned order directing them to return the amount of the allottee also filed appeal No.01 of 2021 praying to set aside the impugned order. The operative portion of the impugned order reads as under:

> "The complaint no CMP/190131/0002029 is allowed in part.
>
> The developer is directed to return the amount of Rs.1,09,05,398.77 make it round figure as 1,09,05,399/- to the complainant within 30 days from today.
>
> In case of failure, the developer is directed to pay interest at the rate of 2% above the MCLR commencing from the 31st day till the realization of entire amount.
>
> The developer is also directed to pay Rs.5,000 as cost".

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5. Respondent No.1- RERA, though served with the notice of this appeal, remained unrepresented.

We have heard Sri. Hegde Prakash, learned counsel appearing for the allottee and Sri. S.C. Venkatesh, learned counsel appearing for the promoter and perused the records.

Submissions of the parties:

6. Sri. Hegde Prakash, learned counsel for the allottee made four fold contentions. Firstly, he contended that though there is no specific date was stipulated in the agreement for sale dated 26.05.2016 regarding delivery of possession of the flat to the allottee, however, in the e-mail communication dated 01.05.2016, the promoter has agreed to deliver possession of the flat by June, 2017 and further, in the affidavit dated 29th July, 2017 filed by the promoter before the RERA at the time of filing Form-B seeking registration of the project, the promoter has categorically mentioned therein that date for completion of the project was 31st May, 2018. Hence, the date due for delivery of possession is to be reckoned as 31.05.2018; secondly, he contended that since there was delay in delivery of possession of the flat, the appellant-allottee filed the complaint initially seeking delay compensation, subsequently, on coming to know about the pending litigations before civil Courts regarding title, apprehending that there would be further delay in completion of the project and handing over possession, he got the prayer made in the complaint amended seeking for refund/return of the amount with interest; thirdly, he submitted that when the occupancy certificate has been obtained by the promoter on 03.04.2019, the learned Adjudicating Officer was not justified in awarding interest from 31st day, after the date of order and

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it ought to have awarded interest from the date of respective payments; lastly he contended that the Judgment of the supreme Court in the case of ***M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. reported in 2021 SCC ONLINE SC 1044*** cannot be made applicable to the facts of the present case and the appeal is required to be heard and decided on merit by this Tribunal instead of remanding the matter back to the Authority. In support of his contention he relied upon the decision of the Supreme Court in the case of ***Baburam –vs- C.C. Jacob and others (1999) 3 Supreme Court Cases 362)*** and prays for allowing the appeal No.226/2020 by modifying the impugned order by awarding interest from the date of respective payments.

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7. Per contra, Sri. S.C. Venkatesh, learned counsel appearing for the promoter, while reiterating the contentions urged before the RERA, submitted that though the prayer sought in the complaint was only for delay compensation, the learned Adjudicating Officer committed an error in directing the promoter to return the amount; though the agreed time for delivery of possession was 26.09.2020, the promoter obtained the occupancy certificate on 03.04.2019 itself and hence, the promoter is not liable either to pay the delay compensation or to return the amount of the allottee with interest from respective dates of payments. During the course of his argument, the learned counsel for

the promoter filed a memo dated 03.03.2022 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 & ORS. ETC. reported in 2021 SCC ONLINE SC 1044***, the impugned order is liable to be set aside and the matter is required to be remitted to the KRERA for fresh adjudication.

8. At this juncture it is just and necessary for us to point out that the allottee, during the pendency of the appeal, has filed IA-I and IA-II under Section 44(3) read with 53(4) of the RERA Act, read with Order XII Rule 14(3) of the CPC for production of additional documents. IA-II along with documents annexed therein was taken on record.

9. The Hon'ble Supreme Court, while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provisions 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?"

10. After elaborate discussion, the Hon'ble Apex court while distinguishing the powers of Authority and Adjudicating Officer to deal

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with the matters under Sections 12,14,18 and 19 of the Act, at paragraphs 83 to 86 of the said Judgment held that:

> "83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per Form (M) or for compensation under Form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.
>
> 84. So far as submission in respect of the expeditious disposal of the application before the adjudicating officer, as referred to under sub-section (2) of Section 71 is concerned, it pre-supposes that the adjudicatory mechanism provided under Section 71(3) of the Act has to be disposed of within 60 days. It is expected by the regulatory authority to dispose of the application expeditiously and not to restrain the mandate of 60 days as referred to under Section 71(3) of the Act.
>
> 85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the Courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.
>
> 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

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> 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".
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> *{emphasis supplied}*

11. In view of the aforesaid judgment of the Hon'ble supreme court in the case of ***M/s. NEWTECH PROMOTERS*** (supra), categorically holding 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, we are of the considered opinion that the impugned order passed by the learned Adjudicating officer requires to be set aside as one without jurisdiction and the matter is to be remitted to the Authority for fresh consideration in the light of the observations made in paragraphs 83 to 86 of the Judgment of the Apex court supra.

12. The submission of the learned counsel for the appellant that the said judgment cannot be made applicable to the present case which is pending is not tenable. In applying the above decision of the Hon'ble Supreme court to the present case, we are supported by a Judgment of a Division Bench of our High court in the case of ***SURESH BABU Vs.***

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SMT. S. SUSHEELA THIMMEGOWDA reported in ***1999(2) Kar.L.J, 580***, wherein following the ruling of the Hon'ble Supreme Court in the case of MAJOR GENERAL GAURAYA Vs. S. N. THAKUR (AIR 1986 SC 1440), in paragraphs 13 to 15, has categorically held as under:

> "13. In Major General A.S. Gauraya v S.N. Thakur, the Supreme Court held that "there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by this (Supreme) Court applies to all pending proceedings".
>
> 14. One of us had occasion to consider the effect of the decisions of the Supreme Court on pending proceedings in Brindavan Roller Flour Mills Private Limited v Joint Commissioner of Commercial Taxes (Appeals), Mysore Division, Mysore, and held as follows.- "A decision of the Supreme Court, being a declaration of the true and correct position of law becomes applicable to all transactions and proceedings which have not become final and concluded. The common use of the words 'prospective operation' and 'retrospective operation' with reference to a decision of the Supreme Court is misleading. The use of the words 'prospective' and retrospective' is more appropriate while referring to statutes. Rendering of a judgment by the Supreme Court is not the same as enactment of a statute. A decision of Supreme Court does not make the law, but merely explains and puts in proper perspective the true position and effect of law by declaring the law. The true position of law so declared exists from the very date of making the law and not from the date of declaration by the Supreme Court ..... When a legislature enacts a statute, it creates rights or obligations and therefore, its operation can be prospective or retrospective, depending on the provisions of the statute. But when the Supreme Court gives a decision declaring the law, it does not create rights/obligations but merely identifies and declares the pre-existing rights/obligations and declares the true position of law. Consequently, the terms 'prospective' and 'retrospective' strictly do not apply to decisions of the Supreme Court, as all decisions are 'retrospective'. It is thus

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a cardinal principle of construction that every Statute is presumed to be prospective unless it is expressly or by necessary implication made retrospective in operation; and 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. This of course is subject to the rule of finality of proceedings; that is, the law declared by the decision cannot be used to reopen concluded decisions which have become final; it will apply to all pending transactions and proceedings. A proceedings in regard to which there is a provision for appeal, revision, review or rectification and the time prescribed for such remedy, has not expired, then such a proceeding cannot be said to have become final or concluded. .... It is no doubt true that where injustice and oppression will be caused by applying the decision to past transactions/proceedings, the Court while giving the decision, may stipulate that it will not affect past transactions. When and where the line should be drawn, restricting the application of the decision, are to be decided by the Court rendering the decision.. When the Supreme Court while rendering a decision, does not choose to restrict its operation, it will not be proper for the High Court to read such a restriction into the decision of the Supreme Court.

In Golak Nath v State of Punjab (AIR 1967 SC 1643) and Managing Director, ECIL, Hyderabad v B. Karunakaran (AIR 1994 SC 1074) the Supreme Court has made it clear that the discretion to restrict the operation of a decision prospectively, vests only with the Supreme Court. The High Court cannot, therefore, entertain or consider any contention or prayer for holding that the decision of the Supreme Court in any matter is only prospective in its operation or that it does not apply to pending cases".

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13. 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 in view of the judgment rendered by

the division bench of the Hon'ble High Court of Karnataka in the case of ***SURESH BABU (***supra), holding that the decision of the supreme court in any matter will apply to all pending transactions and proceedings, we deem it appropriate to dispose of the above appeal by setting 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).*

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14. The Judgment of the Hon'ble Supreme Court in the case of ***Baburam (Supra),*** relied on by the learned counsel for the allottee cannot be made applicable to the facts of the present case, inasmuch as, that was a case wherein the question involved was the service law, wherein the Hon'ble Supreme Court specifically held the said Judgment was applicable prospectively. However, in **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT LTD., (supra)***,* the Supreme Court has not declared that by necessary implication and expressly the said judgment rendered in ***Newtech*** would be made applicable either retrospectively or prospectively. Under such circumstances, this Tribunal has no other option except to follow the dictum of the division Bench of the Hon'ble High Court in the case of ***SURESH BABU*** (supra).

15. The learned counsel for the allottee contended that the promoter, pursuant to the impugned order directing him to return the amount of Rs.1,08,81,590/- had issued a demand draft for the said sum and asked the allottee to accept the same as full and final settlement of the claim. However, the allottee refused to receive the said demand draft and returned the same to the promoter and has preferred this appeal. Therefore, an inference should be drawn that the matter has attained finality, inasmuch as, the promoter had accepted the impugned order by issuing a demand draft in favour of the allottee. Be that as it may, since both the allottee as well as the promoter having preferred appeals challenging the impugned order, the contention of the allottee that the matter has attained finality cannot be accepted.

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

O R D E R

(i) The appeal Nos.226/2020 and 01/2021 are allowed in part;

(ii) The impugned order dated 10th October, 2019 passed by the learned Adjudicating officer in complaint No. CMP/190131/0002029 is hereby 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***

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DEVELOPERS PVT. LTD Vs. STATE OF UP & ORS. ETC. (supra) and in accordance with law, after affording opportunity to both the parties to adduce additional evidence, if any, in addition to the documents sought to be produced under IA-I and IA-II which are transmitted to the authority along with IA Nos. I and II for the convenience of the both the parties;

(iii) Since the matter pertains to the year 2016, 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 after 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 08.04.2022 without expecting further notice from RERA;

(v) The Registry is hereby directed to return the entire amount deposited by the appellant with this Tribunal while preferring Appeal No. (K-REAT) 01/2021 in compliance of proviso to Section 43(5) of the Act, along with interest, if any, accrued thereon, by issuing either a bankers cheque or DD in favour of the appellant and hand over the same to the authorized signatory who has signed the appeal memo and vakalath after the appeal period is over, after following the due procedure;

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(vi) In view of disposal of the Appeals, all pending I.As. if any, stands 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.

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Sd/-
HON'BLE CHAIRMAN

Sd/
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER