

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

**DATED THIS THE 18<sup>th</sup> DAY OF MARCH, 2022**

**PRESENT**

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

**AND**

**HON'BLE SRI K P DINESH, JUDICIAL MEMBER**

**AND**

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

**APPEAL NO. (K-REAT) 14/2020**

**(Old No.03/2019)**

**BETWEEN:**

1. Mrs. Archana Patil,  
Aged about 39 years,  
W/o Arahant Yalagudri  
Occupation: service  
R/o #318, 18<sup>th</sup> Main,  
6<sup>th</sup> Block, Koramangala,  
Bengaluru - 560 095.

Represented in these proceeding by her  
Power of Attorney Holder  
Ms.Kanchana Patil,  
Aged 37 years,  
D/o Ramgouda Patil,  
R/o LR 37, LIG Row houses, Nandini Layout,  
Bangaluru-560096  
Email ID: [kanchanapatil@gamil.com](mailto:kanchanapatil@gamil.com)

**...APPELLANT**

(By Sri Dattatraya M Joshi and  
Sri. Vijayendra D Joshi Advocates for Appellant)

**AND**

1. M/s S.J.R. Prime Corporation Pvt. Ltd,  
7<sup>th</sup> floor, #1 Industrial Layout,  
Koramangala 7<sup>th</sup> Block, Bengaluru-560095  
Part of Hamilton Homes Project LLP  
Represented by Managing Director  
Email ID: customercare@primecorp.co
2. The Presiding Officer  
Real Estate Regulatory Authority, Karnataka  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI compound,  
3<sup>rd</sup> Cross, Mission Road  
Bengaluru-560 027. Karnataka  
Email ID: [info.rera@karnataka.gov.in](mailto:info.rera@karnataka.gov.in) ...**RESPONDENTS**

(By Sri. Vasu Sena for Ms. Shetty & Hedge Associates,  
Advocates for R-1  
R-2 –RERA-Served unrepresented)

This Appeal is filed under Section 44 (2) of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal praying to set aside the order dated 07<sup>th</sup> November, 2018 passed by the Adjudicating Officer, in CMP/180703/0000996.

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

**J U D G M E N T**

This appeal is by an allottee of a flat bearing No.404, Unit-C in Block Albany of a real estate project known as 'Hamilton Homes by SJR Prime Corp' undertaken to be developed by the 1<sup>st</sup> respondent-promoter, being not fully satisfied with the impugned order dated

07<sup>th</sup> November, 2018 passed by the learned Adjudicating Officer, in CMP/180703/0000996.

For the purpose of convenience, the appellant hereinabove will be referred to as "allottee" and the 1<sup>st</sup> respondent will be referred to as "promoter".

**2.** As could be seen from the averments made in the complaint, though the reliefs sought for by the allottee was for refund of money with interest and for compensation, while passing the impugned order, the learned Adjudicating Officer allowed the complaint filed by the allottee and directed the promoter to return the entire amount paid by the allottee with interest at the rate of 10.25% p.a with effect from 01.05.2017 and has not dealt with the prayer of the allottee for compensation. Being not satisfied in not awarding interest from the respective date of payments on respective amount and for not considering the prayer for compensation, the allottee has preferred this appeal seeking modification of the impugned order. However, the promoter has not filed any appeal challenging the impugned order.

**Facts of the case:**

**3.** As averred in the memorandum of appeal and the complaint, the allottee had entered into an agreement to sell and construction

agreement with the promoter on 6<sup>th</sup> September, 2014 in respect of a flat bearing No. C-404, Block Albany and in all, paid a sum of Rs.43,59,034/-. In terms of clause 6.1 of the construction agreement, the promoter was required to complete the project and deliver possession of the flat on or before July 2016 with grace period of six months which comes to an end on January 2017. As, the promoter has failed to fulfill their obligation and hand over possession of the flat within the time stipulated, the allottee has filed a complaint before the RERA seeking refund of the entire invested amount with interest and also for compensation.

**4.** Sri. Vijayendra D Joshi, learned counsel appearing for the appellant submits that though the complaint filed before the Authority was for refund of amount invested with the promoter with interest and also for compensation, the learned Adjudicating Officer has committed an error in directing the 1<sup>st</sup> respondent-promoter to refund the amount of the allottee with interest at the rate of 10.25% p.a with effect from 01.05.2017 and erred in not awarding interest from the date of respective payments. Further, he submits that the learned Adjudicating Officer ought to have awarded interest at the rate of 9% p.a upto 31.04.2017 and prayer of the allottee for compensation was not at all considered.

**5.** After arguing the matter for some time, he submits that in view of the latest 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 has no jurisdiction to entertain the complaint relating to refund of the amount and hence, he has filed a memo dated 18.03.2022 and prays that the impugned order may be set aside and the matter be remitted to the RERA for fresh adjudication of the complaint.

**6.** On the other hand, Sri. Vasusena for Shetty & Hegde Associates, learned counsel appearing for 1<sup>st</sup> respondent-promoter strongly opposed the memo stating that since the complaint filed by the allottee was in Form-O, the Adjudicating Officer alone has jurisdiction to entertain the complaint. However, he submits that in the event this Tribunal proceed to set aside the impugned order and to remit the matter to the Authority for fresh consideration, 1<sup>st</sup> respondent-promoter may be given an opportunity to put-forth his case before the Authority and their contentions may be kept open to be urged before RERA.

**7.** At this stage, it is just and necessary for this Tribunal to refer the dictum laid down by the Hon'ble Apex Court in the case of

***Newtech Promoters (Supra)***. In the said case, the Apex Court, 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.

**8.** 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?”

**9.** After elaborate discussion, the Hon’ble Apex court while distinguishing the powers of Authority and Adjudicating Officer to deal 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 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 aforesaid judgment of the Hon’ble supreme court in the case of **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 passed 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.

**11.** At this juncture, it is just an necessary for this Court to refer to the decision of the Division Bench of High court of Karnataka in the case of **SURESH BABU Vs. 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



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**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 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”.

**12.** Therefore, in view of the law laid down by the Hon’ble Supreme Court in ***Newtech (Supra)*** 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)*. 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). It is needless to say that the appeal before this Tribunal is a continuation of the proceedings before the Authority and the matter has not at all attained finality.

**13.** At this juncture, it is just and necessary for this Tribunal to consider the provisions of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to 'the KRERA Rules') which came into force on 10.07.2017. After coming into

force of the 'the KRERA Rules', sub-rule (1) of Rule-29 provides for filing of complaint in Form-N before the Authority for any violation of the provisions of the KRERA Act, While filing complaint under Section-31 of the Act. Sub-rule (1) of Rule-30 provides for filing a complaint in Form-O before the learned Adjudicating Officer claiming compensation under Sections-12, 14, 18 and 19 of the RERA Act. Prior to coming into force of the 'the KRERA Rules', the allottees used to file a common complaint claiming refund/return of amount with interest as well as seeking compensation with interest and such claims are being adjudicated by the learned Adjudicating Officer. Be that as it may, in the light of the judgment of the Supreme Court in *Newtech*, the adjudicating power in relation to refund, delay compensation has been delegated to Authority alone and adjudicating power in relation to complaint pertaining to compensation is vested with the Adjudicating Officer. If the complainants in pending cases are directed to file fresh/separate complaints in Form-N and O on this technical ground, the allottees/complainants will be put to greater hardship resulting in multiplicity of proceedings. Under such circumstances, this Tribunal is of the considered view that to mitigate the hardship that may be caused to the complainants/homebuyers, instead of directing the complainant-allottees to file two separate complaints in Form-N and O respectively, before the Authority and Adjudicating Officer,

interest of justice would be met by directing the Authority to retain a copy of the complaint already filed by the appellant treating the same as the one filed in Form-N and transmit the copy of the complaint after obtaining signature of the complainant to the learned Adjudicating Officer who in turn shall treat the same as the complaint filed in Form-O for adjudication to consider the prayer pertaining to payment of compensation, without insisting the complainants for filing fresh/separate complaint in Form-O, inasmuch as, such prayer is already made by the complainant-allottee in his complaint filed earlier.

**14.** Insofar as awarding rate of interest and specifying the date from which interest is to be reckoned, this Tribunal noticed that unfortunately, both the learned Authority as well as the learned Adjudicating Officer are not following the provisions of the Act and Rules and thereby committing an error in awarding interest, while directing refund/return of the amount and awarding interest for delayed delivery of possession. While directing the refund/return of the amount to the allottees/homebuyers, the allottees/homebuyers are entitled for interest at the rate of 9% p.a as per Section 8 of the Karnataka Ownership Flats (Regulation of the promotion of construction, sale, Management and Transfer) Act, 1972 from the respective dates of payments till 30.04.2017 (prior to coming into force of the KRERA Act and Rules) and the allottees/homebuyers

are entitled for interest 2% above the State Bank of India highest marginal cost of lending rate as contemplated under Rule-16 of the KRERA Rules, with effect from 01.05.2017 till the date of payment.

**15.** Where by an order of Authority, the promoter was directed to pay interest for delayed delivery of possession, the promoter is required to pay delay compensation on the actual amount paid by the allottees/homebuyers or on the sale consideration amount shown in the sale deed with effect from the date due for delivery of possession as mentioned in the 'agreement for sale' or 'agreement for construction' till the date of delivery of possession. Here also, if the date due for delivery of possession is prior to coming into force Act, (30.04.2017) the applicable rate of interest would be 9% p.a from respective date of payment up to 30.04.2017 and it would be 2% above the State Bank of India highest marginal cost of lending rate with effect from 01.05.2017 till the date of payment.

**15.** In the circumstance of the case, we pass the following:

**ORDER**

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 07<sup>th</sup> November, 2018 passed by the Adjudicating Officer, in CMP/180703/0000996 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 DEVELOPERS PVT. LTD Vs. STATE OF UP & ORS. ETC. (supra)*** and in accordance with law, after affording an opportunity to both the parties to adduce additional evidence (oral and documentary), if any;

- (iii) All the contentions urged in this appeal are kept open to be urged before the learned Authority and the learned Adjudication Officer.
- (iv) 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 after parties entering appearance;
- (v) The Authority is directed to transmit the issue relating to 'compensation' to the learned Adjudicating Officer along with a copy of the complaint for adjudication, without insisting the complainant to file fresh complaint in Form-O;
- (vi) Since the appellant as well as the respondents have already entered appearance through their respective counsel, they shall appear before the RERA on 28.03.2022 without expecting further notice from RERA;

- (vii) In view of disposal of the Appeals, all pending I.As. if any, stands rejected, as they do not survive for consideration;
- (viii) 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**

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