

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

DATED THIS THE 17TH DAY OF FEBRUARY, 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

FR NO. (K-REAT) 02/2022

BETWEEN:

M/s GM Infinite Dwelling (India) Private Limited
Having its Corporate office at #No-6,
GM Pearl, 1st Stage BTM Layout,
Bengaluru – 560 068.

Represented by the Authorized Signatory
Mr. Gulam Mukthiar

...APPELLANT

(M/s Ayana Legal, Advocates, Absent)

AND

1. The Secretary,
Real Estate Regulatory Authority Karnataka,
Having Office at:
2nd floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road
Bengaluru-560 027.
2. Mallikarjun Jabshetty
S/o Basvaraj Jabshetty
Aged about 36 years
Residing at Flat No.T-1-J-901,
GM Infinite Silver Spring Field,
Hesarghatta Main Road, Dasarahalli,
Bengaluru – 560 057.

3. Mamta Jabshetty
W/o Mallikarjun Jabshetty
Aged about 30 years
Residing at Flat No.T-1-J-901,
GM Infinite Silver Spring Field,
Hesarghatta Main Road, Dasarahalli,
Bengaluru – 560 057.

...RESPONDENTS

This Appeal is filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 23rd November, 2020 passed in CMP/191211/0004958 by respondent No.1 Adjudicating Officer, RERA.

This appeal, coming on for orders this day, the Hon'ble Chairman delivered the following:

J U D G M E N T

This is an appeal preferred by a promoter of a real estate project, challenging the impugned order dated 23rd November, 2020 passed by the learned Adjudicating Officer in complaint No. CMP/191211/0004958. The relevant portion of the operative portion of the impugned order reads thus:

- "a) The complaint filed in CMP/191211/0004958 is hereby allowed in part;
- b) The developer is hereby directed to pay delay compensation on the amount paid by him as on June 2015 @ 9% per annum from July 2015 till 30.04.2017 and @ 2% above the MCLR of SBI from May 2017 till the sale deed. Further the developer is to pay simple interest@ 2% above the MCLR of SBI on the principal

amount paid on the sale deed from the date of sale deed till the date of receipt of occupancy certificate;

- c) In case any delay compensation has been paid by the developer under the sale deed or before execution of sale deed the same may be deducted in the delay compensation as ordered”.

2. Since this is an appeal preferred by the promoter, in view of the recent Judgment of the 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)*** and as per the proviso to sub-section (5) of Section-43 of the RERA Act, without promoter first having deposited the entire amount payable to the allottee, as ordered by the learned Adjudicating Officer, the present appeal filed by the promoter cannot be entertained.

3. This appeal has been filed on 03.01.2022. The office has raised many objections including non-deposit of the statutory amount. Despite granting sufficient time, the appellant has neither complied with the office objections nor deposited the entire amount to maintain the appeal. When the matter is called today, there is no representation for the appellant. This would indicate that the appellant is not evincing interest in prosecuting the matter. Hence, the appeal is liable to be dismissed for non-prosecution and for non-deposit of the statutory amount.

4. Accordingly, the appeal is dismissed for non-prosecution and for non-deposit of the statutory amount.

**Sd/-
HON'BLE CHAIRMAN**

**Sd/
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**

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