

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

DATED THIS THE 17th DAY OF FEBRUARY, 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

FR NO. (K-REAT) 10/2022

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 its
Authorized Signatory,
Gulam Mukthiar.

...APPELLANT

(By 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. Dr. Shobha G Hiremath,
W/o Late Dr. G. G Hiremath,
Aged about 62 years,
Residing at:Flat No. T-1-C301,
GM Infinite Silver Field Daffodils Apartment,
Hesaraghatta Main Road,
Near Bonemill stop,
Bengluru-560 057.

...RESPONDENTS

The appellant has preferred the above appeal under Section 44 of Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 23.11.2020 passed in CMP/191204/0004886 and allow this appeal.

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

JUDGMENT

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/191204/0004886. The relevant portion of the operative portion of the impugned order reads thus:

- "a) The complaint filed in CMP/191204/0004886 is hereby allowed in part;
- b) The developer is hereby directed to pay delay compensation on the amount paid by him as on May 2016 @ 9% per annum from June 2016 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.

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**