

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

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

**PRESENT**

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

**AND**

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

**AND**

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

**APPEAL (K-REAT) NO.351/2020**

**BETWEEN:**

M/s L & T Construction Equipment Limited  
Realty Division, Bellary Road,  
Byatarayanapura, Bengaluru-560 092.  
Represented by its Authorised Signatory  
Mr. Anil Kumar Arunachalam

**:APPELLANT**

(Sri. Sunil P. Prasad for M/s Sathya & Co., & M/s Tapasya Law  
Chambers, Advocates)

**AND**

1. The Real Estate Regulatory Authority,  
2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road, Bengaluru - 560 027.  
by its Secretary

2. Mr. Arun Kumar R,  
S/o Late N Ramsingh, Aged about 51 years,  
No.34, 3<sup>rd</sup> Main, Ganganagar Extension,  
R.T Nagar, Bengaluru-560 032.

**:RESPONDENTS**

(R1, RERA served and unrepresented  
R2 served unrepresented)

Notice to R-2 is held sufficient vide Court Order dated 10.12.2020)

This Appeal is filed under Section 44 of the Real Estate  
(Regulation and Development) Act, 2016, to set aside the impugned  
order dated 19<sup>th</sup> August 2020 passed by the 1<sup>st</sup> respondent-  
Authority, in CMP/191030/0004208.

This appeal having been heard and reserved, coming up for pronouncement of Judgment this day, the Hon'ble Chairman, pronounced the following:

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

This appeal is by a promoter of a real estate project praying to set aside the impugned order dated 19<sup>th</sup> August 2020 passed by the 1<sup>st</sup> respondent-Authority, in CMP/191030/0004208.

The appellant is hereinafter referred to as 'promoter' and the 2<sup>nd</sup> Respondent is hereinafter referred to as 'allottee' for short.

#### **Facts of the case in brief are:**

**2.** The appellant-promoter is a company incorporated under the Companies Act, 1956, engaged in the business of development of retail, commercial, education and hospitality sectors including residential apartment, building complex and one such real estate project developed by the promoter in the name and style "L & T Realty Raintree Boulevard" is situated on the portion of the land bearing survey No.88 (part), 89/1-2, 90, 91, 92/1, 93/1-2-3-4, etc., at Byatrayanapura, Bengaluru. The said project came to be registered with the RERA on 14<sup>th</sup> October, 2017 and 23<sup>rd</sup> September, 2017 vide registration Nos. PR/KN/170731/000125 and PR/KN/170731/000478 respectively.

**3.** The allottee had entered into a registered agreement for sale dated 26.02.2018 registered vide No.BYP-1-6281-2017-18 stored in

CD. No. BYPD-252, in the office of the Sub-Registrar, Byatarayanapura and had agreed to purchase a flat bearing No.RBT03F1403, 14<sup>th</sup> floor, Tower-T03 along with other common facilities to be developed in the said project for a total sale consideration amount of Rs.1,54,91,757/- (Rupees one crore fifty four lakhs ninety one thousand seven hundred fifty seven) exclusive of Registration fee, Stamp Duty and such other incidental expenses. Accordingly, the allottee had also paid a sum of Rs.14,21,238/- to the promoter towards initial advance at the time of entering into agreement for sale.

**4.** It is averred in the memorandum of appeal that as per clause-7 of the Agreement of Sale, the Appellant had undertaken to deliver possession of the unit on or before 31<sup>st</sup> December, 2020. The promoter has filed an application (IA-I) under Section 53 (4) of the RERA Act along with a copy of the occupancy certificate bearing No.BBMP/Addl Dir/JD North/0191/2015-16 issued by the Joint Director of Town Planning (North) BBMP, seeking permission of this Tribunal to place the said document on record. IA-I was allowed vide separate order passed today and the document was taken on record

**5.** According to the promoter, they had completed all the works and obtained Occupancy Certificate on 21.08.2019 itself and apartment was ready for occupation and they were ready to deliver possession of the flat to the allottees well before the due date.

**6.** The further grievance of the promoter is that as per clause 2.4 of the agreement, the allottee is required to make payments as per the payment plan made in Annexure-B to the said agreement. But, except paying a sum of Rs.14,21,238/- towards advance, the allottee has failed to pay the remaining amount and has not come forward to get the flat registered in his favour. Such being the case, in spite of written demands from time to time to the allottee for payment of sale consideration, the allottee failed to honour his commitment as agreed. It is further averred that since the allottee deliberately remained incommunicado and failed to fulfill his obligations as per the terms and conditions of the agreement for sale, the promoter had no option, but to issue a final notice calling upon the allottee to rectify the breach within a period of 15 days. As there was no compliance by the allottee, the promoter issued a termination notice dated 21.02.2019 to the allottee terminating the Agreement for sale and calling upon the allottee to complete the cancellation formalities.

**7.** It is urged in the appeal memo that as per Clause 9.2 (i) & 9.3 (iii) of the Agreement for sale entered into between the promoter and the allottee, the advance amount of Rs.14,21,238/- paid by the allottee has been forfeited due to non-fulfillment of obligations casted upon the allottee under the agreement for sale. Thereafter, the promoter is also stated to have issued a legal notice to the allottee calling upon him to execute cancellation of agreement of sale.

Despite service of such notice, the allottee failed to comply with the same. Ultimately, having no other alternative remedy, the promoter filed a complaint produced at Annexure-F before the 1<sup>st</sup> Respondent-RERA seeking the following reliefs:

- a. "Direct the Respondent to come forward and execute and register cancellation deed to the agreement for sale dated 26.02.2018 or
- b. Alternatively pass an order cancelling agreement for sale dated 26.02.2018 as null and void.
- c. Any such appropriate order that the authority deems fit in the interest of justice."

**8.** As could be seen from the order sheet maintained by the Authority, notice was issued to the promoter as well as the allottee for their appearance on 06.02.2020 and 20.02.2020. However, on both the occasions the promoter's representative was present, but the allottee did not appear either personally or through any authorized representative, despite service of notice.

**9.** After considering the facts of the case and the documents produced by the promoter, the Authority passed the impugned order.

The operative portion of the order reads as follows:

"The Complainant-Promoter is at liberty to act in accordance with the law and in terms of the Agreement of Sale. The Authority is not required to give any prior approval for any action contemplated by any Promoter against any allottee in accordance with the clauses of the

Sale agreement. Needless to say those Promoters of the Project as well as allottees are required to comply with the provisions of the Real estate (Regulation & Development) Act, 2016. Any aggrieved person may approach the authority in terms of the well defined provisions of the act, including Section-11(5) of the Act. Accordingly, the complaint filed by the Promoter of the project is not entertained by the Authority and treated as dismissed.”

**10.** We have heard Sri Sunil P Prasad, learned counsel appearing for the promoter on main appeal. Despite service of notice, the 1<sup>st</sup> respondent-RERA and 2<sup>nd</sup> respondent-allottee remained unrepresented. .

**11.** Learned counsel for the appellant-promoter contended that the Authority ought to have exercised its discretionary power as contemplated under Section-11 (5) of the RERA Act and granted the relief to the promoter and could not have dismissed the complaint. The learned counsel further contended that it is just and necessary to issue direction against the allottee for executing cancellation deed of agreement for sale in order to remove the encumbrance created on the said apartment in the records maintained in the office of the Sub-Registrar and this vital fact has been totally missed by the Authority which has resulted in severe hardship to the promoter. On these and other grounds, the learned counsel for the promoter prayed this Tribunal to set aside the impugned order.

**12.** In view of the submissions made by the learned counsel for the promoter and the materials placed on record, the points that arise for our consideration is:

“(i) Whether termination of the registered agreement for sale dated 26.02.2018 entered into between the appellant (promoter) and the 2<sup>nd</sup> respondent (allottee) is valid and in accordance with law?

(ii) Whether the promoter is entitled for and the Authority is empowered under Section-11 (5) of the RERA Act read with Section-31 of the Specific Relief Act, 1963 to issue appropriate direction to the concerned Sub-Registrar to make necessary entry in the relevant register maintained in their office?

(iii) Whether the Authority was justified in dismissing the complaint filed by the promoter and the impugned order calls for interference by this Tribunal?

(iv) What order?”

**13. Point No (i):** To consider this point, it is just and necessary to refer to the relevant clauses/terms and conditions contained in the Agreement of sale dated 26.02.2018 entered into between the parties which would be the basis for consideration of the reliefs sought for by the promoter-appellant.

**14.** Clause 7.4 of the agreement prescribes the procedure for taking possession of the flat by the allottee. The terms contained therein contemplates that two months from the date of issuance of occupancy certificate and two months from the date of receipt of written information from the promoter, the allottee is required to pay the outstanding installments, complete the registration and execution of the sale deed and take possession of the flat.

**15.** The terms contained in clause 7.7 of the agreement provides that the allottee shall have the right to withdraw from the project without any fault of the promoter, the promoter is entitled to forfeit the booking amount paid by the allottee subject to allottee executing cancellation deed with the jurisdictional Sub-Registrar.

**16.** At this stage, it is just and necessary for us to refer to clause-9 of the agreement relating to **"events of defaults and consequences"**. Clause 9.3 (i) & (iii) of the agreement are relevant which read thus:

"9.3 The allottee shall be considered under a condition of default on the occurrence of the following events:

(i) In case the Allottee fails to make payments within 15(fifteen) days from the date the demand note has been raised by Promoter, then the Promoter shall be entitled to recover from the Allottee and the Allottee shall be liable to pay interest prescribed in the Rules, from the respective Due Date as time being the essence. Any payments made after the Due Date shall be first adjusted towards taxes and



interest liabilities, if any and the balance (if any) shall be adjusted towards the due amount of the Consideration.

**(iii) In the event the Allottee defaults in making payment of any amounts under this agreement or any other agreements, for more than 30(Thirty) days from the Due date of defaults in making any payment on more than one occasion, the Promoter shall give the Allottee a written notice. Stating therein the default and calling upon the allottee to rectify/cure the default within a period of 15(Fifteen) days from the date of receipt of such notice of the promoter ("Cure Period"). If the Allottee fails to make the payments (with applicable interest) within the Cure Period. Then the Promoter may cancel the allotment of the Apartment in favour of the Allottee and upon handing over the original of this agreement duly cancelled and executing and registering the Cancellation deed with the jurisdictional Sub-Registrar, refund the money paid to him by the Allottee by deducting the booking amount, brokerage and the interest liabilities and this Agreement shall thereupon stand terminated.**

**Provided that the Promoter shall intimate the Allottee about such termination at least 30(thirty days) prior to such termination."**

**17.** Thus, as per the terms contained in clause 9.3 (iii) which is extracted above, in any of the contingencies arising as above, the promoter may cancel the allotment of the apartment made in favour of the allottee and upon handing over the original of this agreement duly cancelled and executing and registering the cancellation deed with the jurisdictional Sub-Registrar, refund the money paid to him by the allottee by deducting the booking amount, brokerage and the interest liabilities and this agreement shall thereupon stand terminated.

**18.** Further, as per clause (i) thereof, in case the allottee fails to make payments within 15 (fifteen) days from the date, the demand note has been raised by promoter, then the promoter at best shall be entitled to recover from the allottee and the allottee shall be liable to pay interest prescribed in the Rules.

**19.** The provisions of sub-Sections (6) and (10) of Section 19 of the RERA Act, contemplate that the allottee is bound to make necessary payments within the time as specified in the agreement for sale and take physical possession of the apartment within a period of two months of the occupancy certificate issued for the said apartment.

**20.** In the case on hand, we have to look into the question whether there was any default on the part of the allottee in fulfilling his obligations as per the terms of the agreement of sale. On careful perusal of the records it is seen that as per the terms of the agreement dated 26.02.2018 (Annexure-A), the time stipulated to deliver the possession of the flat was on or before 31<sup>st</sup> December, 2020.

**21.** According to the promoter, they completed the said project much prior to the time stipulated under the agreement for sale and had obtained the occupancy certificate from the competent authority on 21.08.2019 i.e., nearly 1½ year prior to the agreed date for

handing over possession. On perusal of the e-mail communications made by the promoter with the allottee dated 03.01.2019, 28.12.2018, 08.12.2018, 21.11.2018, 02.11.2018, 13.09.2018, 01.08.2018, 06.07.2018 which were collectively produced as Annexure-D clearly indicate that the promoter repeatedly requested the allottee to pay a sum of Rs.95,11,940/- towards unpaid remaining installments and take possession of the flat.

**22.** The allottee except paying a sum of Rs.14,21,238/- to the promoter towards initial advance at the time of entering into agreement for sale, failed to respond to the above communications of the promoter and thereby not only committed default, but also failed to come forward to get the sale deed registered in his favour by paying the remaining balance amount. Under such circumstances, finally, the promoter addressed a communication dated 21.02.2019 (Annexure-D) to the allottee stating that, as the allottee has violated the provisions of Section-19 (6) of the RERA Act and committed breach of conditions contained under clause 9.3 (ii) & (iii) of the agreement, the promoter terminated the said agreement dated 26.02.2018 and requested the allottee to visit the office of the promoter to complete the cancellation formalities. As there was no response from the allottee for the said termination of agreement for sale dated 26.02.2018, the promoter got issued the legal notice to the allottee dated 15.04.2019 calling upon the allottee to come

forward and execute and register cancellation deed. Since the allottee has failed to answer any of the communication referred to above, the promoter filed a complaint before the Authority.

**23.** The conduct of the allottee clearly indicates that the allottee neither answered to the various communications of the promoter nor paid the remaining sale consideration amount and thereby the allottee had committed the breach of agreement entered into with the promoter.

**24.** A perusal of the several email communications (Annexure-C), termination of agreement for sale dated 21.02.2019 (Annexure-D) and legal notice dated 15.04.2019 (Annexure-E) clearly indicate that cancellation/termination of agreement for sale by the promoter is on account of sufficient cause, as contemplated under proviso to sub-section (5) of Section-11 of the RERA Act and it was in accordance with the terms of the agreement for sale. Apart from that, it is pertinent to note that the allottee has not preferred any complaint before the Authority against the promoter either questioning the said termination of agreement or seeking refund of the advance amount paid by him. Accordingly, we answer the issue No (i) in the affirmative holding that the termination of agreement dated 26.02.2018 by the promoter is for sufficient cause and in accordance with law and there is a valid termination of registered agreement for sale entered into between the parties.

**25. Point No (ii):** Before advertng to this point, it is just and necessary for this Tribunal to refer to the provisions of Section-79 of the RERA Act which reads thus:

“79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

**26.** In view of the above provision, after coming into force of the provisions of the RERA Act, both allottee and promoter of a real estate project have no other option except to have recourse to the provisions of the RERA Act, to redress their grievances and there is a clear bar on the jurisdiction of Civil Court to entertain any suit or proceedings in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine.

**27.** Admittedly, the reliefs sought for by the promoter before the Authority was to direct the allottee to come forward and execute and register Cancelation Deed to the agreement for sale dated 26.02.2018 and alternatively pass an order cancelling Agreement for

sale dated 26.02.2018 as null and void. At this juncture, it is just and necessary for this Tribunal to refer to the provisions of sub-section (5) of Section-11 and sub-section- (6), (7) and (10) of Section-19 which are relevant to decide the issue No (ii) in the present appeal, which read thus:

**"11.(1)xxx**

(5) The promoter may cancel the allotment only in terms of the agreement for sale.

**Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause".**

**"19.(1) xxx**

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section(6).

(10) **Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be"**

**28.** As already discussed/observed in paragraphs-16 to 24 supra, though the time stipulated for completion of the project and delivery of possession was on or before 31<sup>st</sup> December, 2020, the promoter had completed the project and obtained the occupancy certificate on 21.08.2019 i.e., much prior to the time stipulated under the agreement for sale and thereafter addressed repeated written communications to the allottee requesting him to pay the remaining installments and get the sale deed executed in his favour. Further, the termination of agreement for sale by the promoter is not unilateral but it is with sufficient cause. Under such circumstance, the allottee has no other option but to get the sale deed executed and registered and take physical possession of the apartment within a period of two months of the occupancy certificate issued for the said project as contemplated under sub-section (10) of Section-19. Section-11 (5) of the Act begins with the words **“The promoter may cancel the allotment only in terms of the agreement of sale”**. It may be noticed that a proviso to Section-11 (5) enables the allottee to approach the Authority for the relief if he is aggrieved by such cancellation and if such cancellation is not in accordance with the terms of the agreement of sale, unilateral and without sufficient cause. In the instant case, the allottee has not preferred any complaint before the authority challenging the termination letter issued by the promoter invoking proviso to Section

11 (5) of the Act. However, there is no embargo under Section-11(5) of the RERA Act, for the promoter to approach the Authority seeking direction to the jurisdictional sub-registrar to make a note in the relevant register maintained in their office regarding cancellation of the registered agreement entered into between the parties, so that it discontinue to appear in the encumbrance register and the promoter can dispose of the flat to any other prospective buyer.

**29.** At this juncture, it is just and necessary for this Tribunal to refer to the provisions of Section-31 of the Specific Relief Act, 1963 which reads thus:

**“31. When cancellation may be ordered – (1)**

Any person against whom a written instrument is voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation”

**30.** It is not in dispute that the registered agreement of sale entered into between the parties dated 26.02.2018 does not confer



any right, title, or interest over an immoveable property on the allottee. As per section-25 of the Indian Contract Act, it is settled law that any registered agreement without consideration is void and as per Section-54 of the Transfer of Property Act, a person gets title and ownership in respect of immoveable property only on execution of a registered sale deed with delivery of possession of the property. In the present case, the allottee cannot be termed as an absolute owner of the flat allotted to him, inasmuch as, delivery of possession of the flat has not been handed over to him by the promoter by executing a registered sale deed in his favour. Since the agreement for sale dated 26.02.2018 is a registered agreement, and appears in the encumbrance register in respect of the flat in question and unless the same is removed from the concerned register, no prospective buyers would come forward to purchase the flat and the promoter will not be in a position to sell the said flat to any other interested buyer, without the cancellation deed being executed by the present allottee cancelling the registered agreement for sale deed dated 26.02.2018. Under such circumstances, the Authority, in exercise of its power under Section 11 (5) of the Act, ought to have declared that the termination of registered agreement for sale dated 26.02.2018 by the promoter by invoking contingency clauses, particularly, clause 9.3 (ii) and (iii) contained in the agreement for

sale, by issuing termination letter dated 21.02.2019 is valid and in accordance with law.

**31.** Accordingly, we answer the point No (ii) in the affirmative holding that the Authority, in exercise of its power under Section-11 (5) of the RERA Act, is and has been empowered to declare the termination of agreement of sale by the promoter is valid and lawful and therefore, the Authority ought to have directed the Sub-Registrar concerned to make necessary entry in their records for deletion of encumbrance on the property (subject matter of the complaint).

**32. Point No (iii):** Thus, it takes us to the next point as to whether the Authority was justified in dismissing the complaint filed by the promoter.

**33.** The Authority, while declining to entertain the complaint filed by the promoter, has failed to take note of the fact that the agreement dated 26.02.2018 entered into between the parties is a registered agreement and in view of the fact that the allottee has failed to fulfill his part of the obligations, the promoter, in exercise of contingency clause provided under the said agreement for sale, rightly got the said agreement for sale terminated/cancelled and in order to give effect to such termination, it is just and necessary to issue appropriate direction to the jurisdictional Sub-Registrar to make necessary entry in the relevant register so that henceforth it

would not reflect in the encumbrance certificate and would facilitate the promoter to sell the flat to a prospective buyer.

**34.** Under Section 107 (2) of the Code of Civil Procedure, 1908, the Appellate Court has the same power and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Court on Courts of original jurisdiction in respect of suits instituted therein. Therefore, this Tribunal, being first appellate Court, has same powers under Section 107 (2) of CPC as that of the Courts of original jurisdiction, can exercise such powers as that of the trial Court and grant the reliefs sought by the appellant.

**35.** On perusal of the impugned order it is found that while passing the impugned order, the Authority has failed to consider the above aspects and thereby committed an error in rejecting the complaint filed by the promoter without assigning any valid reasons and it is not a speaking order. Viewed from any angle, the impugned order passed by the RERA is not only erroneous but also against the provisions of the RERA Act. Accordingly, we answer the point no (iii) in the negative holding that the Authority was not justified in rejecting/dismissing the complaint filed by the promoter and the same calls for interference.

**36.** Accordingly, we pass the following:

**ORDER**

- i) The appeal is allowed;
- ii) The impugned order dated 19<sup>th</sup> August, 2020 passed by the Karnataka Real Estate Regulatory Authority in complaint no. CMP/UR/191030/0004208 is hereby set aside;
- iii) Termination of the registered agreement for sale dated 26.02.2018 entered into between the allottee and the promoter bearing registration No.BYP-1-6281-2017-18 stored in CD. No. BYPD-252 registered in the office of the Sub-Registrar, Byatarayanapura is valid and is in accordance with law and consequently declared as cancelled;
- iv) The jurisdictional Sub-Registrar is hereby directed to make an appropriate entry/note in the concerned register to the effect that the agreement for sale dated 26.02.2018 bearing registration No.BYP-1-6281-2017-18 stored in CD. No. BYPD-252 entered into between the allottee and the promoter stands terminated and cancelled;
- v) The 2<sup>nd</sup> respondent-allottee is at liberty to claim refund of the amount paid to the promoter towards advance at the time of entering into agreement for sale, in accordance with law;
- vi) The Registry is directed to send a copy of this Judgment to the jurisdictional Sub-Registrar along with a Xerox copy of the registered agreement for sale dated 26.02.2018 to enable the jurisdictional Sub-Registrar to take appropriate decision and thereafter report compliance to this Tribunal;

- vii) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- viii) 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 JUDICIAL MEMBER**

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

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