

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

DATED THIS THE 16TH DAY OF FEBRUARY 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

APPEAL (K-REAT) NO. 323/2020

BETWEEN:

Dr. Venkatesh A M,
S/o Sri Muniswamappa,
Aged about 54 years,
R/at no. 106, Kalathur Layout,
Gangamma Circle,
Jalahalli
Bengaluru – 560 013.

...APPELLANT

(By Sri Girish Kumar R, for M/s Invicta Law Associates for Advocate)

AND:

1. The Adjudicating Officer,
The Karnataka Real Estate Regulatory Authority,
Second Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru - 560 027.
2. Antevorta Developers Pvt Ltd
Represented by Ms. Kokila R and Mr. Anukool Jain,
House of Hiranandani, 757/B,
100 Feet Road, HAL 2nd Stage
Indiranagar, Bangalore – 560 038

...RESPONDENTS

(R1-RERA served, unrepresented)
Sri. S C Venkatesh, Advocate for R2)

This Appeal is filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), praying to set aside the impugned order dated 27.05.2020 passed in

CMP/190923/0004265 by respondent No.1 Adjudicating Officer, RERA.

This appeal, coming for further arguments this day, Hon'ble Chairman delivered the following:

JUDGMENT

An allottee of a flat in a real estate project, being not fully satisfied with the order passed by the learned Adjudicating officer dated 27.05.2020 in CMP/190923/0004265, has preferred this appeal praying to direct the 2nd respondent to refund the amount of Rs.80,34,852.80 along with interest at the rate of 10.75% P.A from the respective dates of payment and also for compensation and exemplary costs.

Brief facts leading to this appeal are:

2. The appellant on coming to know of the real estate project "GLENGATE" undertaken to be developed by M/s Antevorta Developers Private Limited (hereinafter referred to as 'Promoter') – 2nd respondent herein through an advertisement, jointly booked a flat bearing No.A-1005 in wing-9 of the said project along with his wife Mrs. Shashikala S as co-applicant and paid advance amount to the promoter on the assurance that the flat will be handed over in the month of June, 2017.

3. It is stated in the appeal memo that they entered into an Agreement of sale and construction agreement dated 08.12.2014 with the promoter and paid a sum of Rs.80,28,232.18 towards total sale

consideration and that as per the Agreement of sale, the promoter ought to have completed the construction and delivered possession of the said apartment to the allottee on or before 31.05.2018 including the grace period of six months. However, the project could not be completed within the specified date and the Occupancy certificate was obtained only in the month of April, 2019.

4. The complainant, alleging that the promoter has failed to keep up his promise in handing over possession of the apartment within the specified date and there is deliberate delay on the part of the promoter, filed a complaint with RERA under Section 31 of the Act for cancellation of Agreement and refund of his money with interest and compensation.

5. The promoter who was arrayed as respondent in the complaint before RERA appeared through their representative and resisted the complaint by filing statement of objections. It was contended that on behalf of the promoter that the schedule for completion of the building was April, 2019 and of course the promoter had given the date of completion as 31.5.2018 to RERA with a fond hope of completion of the same but unfortunately, it was not possible. However, OC has been received in the month of April 2019 and the allottee has failed to take physical possession of the apartment within a period of two months from the date of receipt of occupancy

certificate and therefore the complainant-allottee is not entitled for refund of the amount with interest.

6. The learned Adjudicating officer, after hearing the learned counsel for the allottee, the representative of the promoter and perusing the documents produced on both sides, allowed the complaint in part and granted the reliefs as under:

- a. "The complaint No. CMP/190923/00004265 is allowed in part.
- b. The developer is directed to give physical possession of the flat bearing No. 1005 on the 10th floor in the project Glen Gate in Block A within 30 days from today in compliance of S.19(10) of the Act.
- c. The complainant is directed to pay the actual amount of due to the developer within the above said period in compliance of S. 19(6) to make it possible to get deed as per S. 17 r/w 19(10) of the Act.
- d. The developer is also directed to pay Rs. 5,000/- as cost."

7. The allottee being aggrieved by the impugned order passed by the learned Adjudicating officer, has preferred this appeal, praying to allow the appeal and direct the promoter to refund the amount of Rs. Rs.80,28,232.18/- along with interest at the rate of 10.75% P.A. from the respective dates of payment and also for compensation and exemplary costs.

8. Sri R. Girish Kumar, learned counsel appeared for the Appellant-allottee. Sri S.C.Venkatesh, learned counsel appeared for the 2nd respondent-promoter. Respondent No.1-RERA though served, remained unrepresented.

9. Today, when the matter is listed for further arguments, learned counsel appearing for the appellant-allottee and the 2nd respondent-promoter orally prayed to dispose of the appeal by remanding the matter to the RERA with a direction to consider the complaint in the light 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. in Civil Appeal No(s).6745 - 6749 of 2021 **reported in 2021 SCC ONLINE SC 1044.** Their submission is placed on record.

10. The Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD (*supra*) while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provision 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?"

After elaborate discussion, the Hon'ble Apex court at paragraph 86 held

that:

“ 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”.

11. At the stage, it is relevant to note that it is a cardinal principle of construction that 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, as held by the

Division Bench of the Hon'ble High Court of Karnataka in the case of ***Suresh Babu -vs- Smt. S. Susheela Thimmegowda (1998 SCC OnLine Kar 691=(1999)2 Kant LJ 580(DB).***

12. Therefore, in view of the submissions made by the learned counsel for the parties and 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 holding that the decision of the supreme court in any matter will apply to all pending transactions and proceedings and submission made by the learned counsel for the parties, without expressing any opinion on the merits of the matter, we deem it appropriate to dispose of the above appeal, set aside the impugned 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)*.

13. Accordingly, we pass the following:

ORDER

- i) The appeal is allowed in part;
- ii) The impugned order dated 27.05.2020 passed in CMP/190923/0004265 by respondent No.1- Adjudicating Officer, RERA, is 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;

- iii) All the contentions of both the parties are kept open to be urged before RERA while considering the complaint afresh;
- iv) The appellant shall implead his wife Smt. Shashikala S who is a co-applicant along with him as 2nd complainant in the complaint in order to avoid unnecessary legal hurdles in future;
- v) Keeping in mind that the matter relates to the year 2014, the Authority shall make an endeavor to dispose of the matter on merit, as expeditiously as possible, but not later than the outer limit of forty days from the date of parties entering appearance;
- vi) Since the appellant-allottee as well as contesting respondent-promoter had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 25.02.2022, without expecting further notice from the RERA;
- vii) In the event of the Authority not sitting on the said date, the matter may be taken up on the immediate next sitting day;
- viii) Parties are directed to extend their co-operation with the Authority for disposal of the complaint expeditiously;
- ix) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- x) 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**

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