

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

**DATED THIS THE 03<sup>rd</sup> DAY OF FEBRUARY, 2022**

**PRESENT**

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

**AND**

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

**APPEAL NO. (K-REAT) 384/2020**

**BETWEEN:**

B. Chittaranjan Shetty,  
S/o B. Seetharam Shetty,  
Aged about 57 years,  
Residing at 'Vishranthi',  
Uaayanagar Extention Post,  
Srinivasnagar – 575 025,  
Mangaluru Taluk, D.K. Dist,  
Karnataka.

**...APPELLANT**

(By Sri. Shrihari for M/S Lex Justicia, Advocate)

**AND**

1. Sri Kateeshwari Innovative Projects,  
No. F.27, First Floor Empire Mall,  
Ballalbagh, Mangaluru-575 003,  
Dakshina Kannada,  
Represented by its erstwhile proprietor  
Prashanth S.M.  
S/o Kamala Mohandas  
Aged about 34 years.
2. Karnataka Real Estate Regulatory Authority,  
# 1/14, Ground Floor,  
Silver Jubilee Block, Unity Building,  
CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru- 560 027.

3. Sri Vijaya Kumar,  
S/o late T Gopalakrishna Karanth,  
R/at. Raksha, No.3-56/1 (3),  
Vishnu Nagar, Kulai,  
Mangalore- 575 019.

4. Sri Rohan D'souza,  
S/o late Antony D'souza,  
Door No.3-7-2, Padupadv,  
Madya Post, Via Katipalla,  
Mangalore-575 030.

5. Dr. Anilkumar Inna,  
S/o Anand Rao,  
"Shakti Prasad",  
Udaya Nagar Post,  
Srinivasanagar,  
Mangalore-575 025.

6. Sri Rajendra Subbayya Shetty,  
S/o late Subbayya Shetty,  
Srinidhi Nilaya,  
Pilar Post, Udupi Taluk

7. Sri Nagesh,  
S/o Dombayya Poojary,  
"Jayashree Nivas",  
Iddya, Surathkal-575 014.

8. Dr. Pradeep Kumar. J,  
S/o E.J. Jhon,  
(Since dead by LR's).

8(a). Mrs. Susan Mani. T.  
W/o late Dr. Pradeep Kumar. J.

8(b). Miss Karunya Pradeep Jhon,  
D/o late Dr. Pradeep Kumar. J.

Both are R/at,  
16/100, "Preethi",  
Udayanagar,  
Srinivasanagar Post,  
Mangalore-575 025.

9. Sri Ashok B Shetty,  
S/o late Boja Shetty,  
"Matha Shree",  
HPC1 Colony, Jokatte Post,  
Mangalore Taluk.
10. Sri Shodhan R Sanil,  
Door No.6-98/8,  
"Sanil Mahal",  
Iddya Surathkal,  
Mangalore-575 014.

**...RESPONDENTS**

{R-3 to R-10 impleaded VCO Dt. 03.02.2022}

(Sri Hitendra V Hiremath, for M/s Fox Mandal & Associates for R-1;  
RERA –served and Unrepresented  
Smt. Sohani Holla, Advocate for R-3 & 5,  
Sri Suresha.C, Advocate for R.4;  
Respondents 6 to 10 served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to direct the respondents herein to execute the Deed of Conveyance in favour of the appellant as per the Agreement dated 31.08.2016 along with the present stake holders in respect of the land and building etc.,

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

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

The appellant who is a purchaser of a commercial shop in a real estate project, having not fully satisfied with the order passed by the learned Adjudicating Officer dated 6<sup>th</sup> August, 2020 in CMP/191223/0005028, has preferred this appeal praying to modify the impugned order and grant the reliefs as sought in the appeal.

**Brief facts leading to this appeal are:**

2. The appellant is a purchaser of a commercial premises/shop bearing No.4-75/8 measuring 280 sq.ft. in a real estate project known as 'ATHIKARI COMPLEX" from the 1<sup>st</sup> respondent vide registered sale deed dated 16.10.1987. According to the appellant, there was a vacant land behind the said complex bearing Sy. No. 120-1A (P1) in Idya Village, Surathkal, Mangaluru Taluk and the 1<sup>st</sup> respondent along with the appellant and other purchasers of the commercial shop premises in "Athikari Complex" agreed to demolish the said complex and construct a new complex known as 'ATHIKARI ACROPOLIS' comprising of larger area and the appellant was allocated Shop No.S-01, measuring 575 Sq.ft in the proposed project. It was agreed between the appellant and 1<sup>st</sup> respondent that construction of the proposed complex was to be completed within 24 months from the date of Agreement.

3. It is averred in the appeal memo that often there were certain changes in the constitution of the promoter-company and finally the 1<sup>st</sup> respondent-Sri Kateeshwari Innovative projects was formed and the said company ultimately, took up the project. It is further stated that even then, the promoter failed to execute any deed of conveyance of the shop allocated to the appellant. It is stated that the earlier agreement entered into between the appellant and 1<sup>st</sup> respondent was only in their individual capacity

and not in the capacity of a legal person ie., partnership firm newly constituted by the 1<sup>st</sup> respondent. It is the apprehension of the appellant that without proper deed of conveyance or sale in his favour, he could not get a valid and marketable title. It is urged by the appellant that in spite of several requests, the 1<sup>st</sup> respondent has not executed any deed of conveyance. As such, he had no option but to file a complaint against Respondent No. 1 for a direction to the 1<sup>st</sup> respondent to execute and register a proper deed of conveyance in respect of the shop premises immediately as per law.

4. The 1<sup>st</sup> respondent herein was arrayed as respondent in the complaint before RERA. The Promoter appeared before the learned Adjudicating Officer and filed objection statement which reads as follows:

“This respondent is ready to execute proper document for the conveyance of the shop premises agreed to be given to him provided he should join other shop owners also so that a single document can be drafted and registered. Hence, the complainant may be advised to join the partition deed to be executed in respect of the premises situated in the “ATHIKARI ACROPOLIS” project and provide this respondent all the documents in original pertaining to this old exchanged shop.”

5. The learned Adjudicating officer, after hearing the parties, perusing the statement of objections filed by the 1<sup>st</sup> respondent herein and the documents produced by the parties, by order dated 6<sup>th</sup> August, 2020 allowed the complaint. The operative portion of the impugned order reads thus:

- a. The complaint filed by the complainant bearing No. CMP/191223/0005028 is hereby allowed in part.
- b. The developer is hereby directed to execute the necessary document and put him in possession of agreed shop premises as per agreement dated 31.08.2016 within 60 days from today.
- c. The complainant is directed to do his part of performance if any to enable the developer to comply with the direction of this authority”.

6. The complainant (allottee) being fully not satisfied with the impugned order passed by learned Adjudicating officer has preferred this appeal praying to modify the impugned order.

7. During pendency of the appeal, the appellant had filed I.A.No.II for impleading all the other owners of the land as Respondents 3 to 10 on the ground that as the land owners also had undivided interest in the property, the sale deed cannot be executed by the 1<sup>st</sup> respondent-promoter alone. Accordingly, after hearing the parties, the said I.A. was allowed and proposed respondents were ordered to be Impleaded as respondents 3 to 10 in the appeal.

8. When the matter is called today, the learned counsel for respondents 3 & 5 and 4 filed memos stating that in view 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 and others (2021 SCC OnLine SC-1044)**, the impugned order passed by the learned Adjudicating Officer is not sustainable, inasmuch as, he had no jurisdiction to entertain the complaint relating to issue of direction for execution of a conveyance deed and hence, prayed that the impugned order may be set aside and the matter may be remitted to the RERA for fresh adjudication of the complaint. Further, it is submitted that the RERA may be directed to dispose of the matter expeditiously. The Memos filed by the learned counsel are placed on record.

9. On the other hand, Sri.Hitendra V Hiremath, learned counsel appearing for the appellant fairly submitted that in view of the latest Judgment of the Hon'ble Apex Court in the case of **M/S Newtech Promoters** (supra), the appellant cannot have any objection for allowing the appeal, setting aside the impugned order and remitting the matter to the Authority for fresh consideration. However, he submits that the appellant may be given an opportunity to put forth his case and all the contentions of the appellant may be kept open to be urged before the Authority and also for a direction to RERA for disposal of the complaint expeditiously.

10. In view of the above submissions made by the learned counsel appearing for the parties and having regard to the dictum laid down by the Hon'ble 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)*** wherein 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. The findings recorded by the Hon'ble Supreme Court in paragraph-86 is relevant for the purpose of deciding the above issue which reads thus:

"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)*

11. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Newtech Promoters (supra)***, this Tribunal is of the considered view that the learned Adjudicating Officer had no jurisdiction to entertain the complaint filed by an allottee seeking for a direction to respondents to execute and register a proper sale deed of conveyance in respect of the premises in question. Except with regard to adjudicating the compensation to be awarded to an allottee under the Act, it is the Authority which has jurisdiction in all other matters. Hence, it has to be held that the learned Adjudicating officer had no jurisdiction whatsoever to entertain the complaint.

12. At this stage, it is relevant to note that it is a cardinal principle of construction that every decision of the Supreme Court

declaring the law in 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 the 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)**.

13. In view of the foregoing paragraphs, without expressing any opinion on merit of the case in one way or other, this Tribunal is of the considered view that the impugned order is liable to be set aside and the matter requires to be remitted to the Authority for fresh adjudication.

14. Accordingly, we pass the following:

#### **ORDER**

- i) The appeal is allowed in part;
- ii) The impugned order dated 06<sup>th</sup> August 2020 passed in CMP/191223/0005028 by respondent No.2 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 the parties urged in this appeal are kept open to be urged before RERA while considering the complaint afresh;
- iv) Keeping in mind that the matter relates to the year 2016, 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;
- v) Since the appellant-allottee as well as contesting respondents had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 21.02.2022, without expecting further notice from the RERA;
- vi) In the event of the Authority not sitting on the said date, the matter may be taken up on the immediate next sitting day;
- vii) Parties are directed to extend their co-operation with the Authority for disposal of the complaint expeditiously;
- viii) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- ix) 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 ADMINISTRATIVE MEMBER**