

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

**DATED THIS THE 16<sup>th</sup> DAY OF FEBRUARY, 2022**

**PRESENT**

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

**AND**

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

**APPEAL NO. (K-REAT) 238/2020**

**(OLD NO. 309/2019)**

**BETWEEN:**

Kumar A. V,  
13(28), Flat No. 212,  
2<sup>nd</sup> Floor, Building No.6,  
Kamat Harmony, Saint Inez Taleigo,  
By-Pass Road, Panaji,  
Goa-40300.

Also at Shobha Nilaya,  
Sri. Rama Mandira Road,  
Jayanagar, 2<sup>nd</sup> Cross,  
Shivamogga-577 201.

**...APPELLANT**

(By Sri. Nishanth.A.V for R. Girish Kumar, Advocate)

**AND**

1. The Adjudicating Officer,  
The Karnataka Real Estate Regulatory Authority,  
Second Floor, Silver Jubilee Block,  
Unity Building, CSI compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027  
Represented by its Secretary.
2. M/S. Antevorta Developers Pvt Ltd.,  
House of Hiranandani,  
757/B, 100 Feet Road,  
HAL 2<sup>nd</sup> Stage, Indiranagar,

Bengaluru-560 038.  
Represented by  
Sri. Kumar Jaisom.

**..RESPONDENTS**

(R-1-RERA –served and un-represented  
Sri. S.C. Venkatesh, Advocate for R-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 30<sup>th</sup> October, 2019, passed by the learned Adjudicating Officer in complaint No. **CMP/190319/0002454**, by allowing the appeal.

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

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

An allottee of a flat in a real estate project, having not fully satisfied with the order dated 30<sup>th</sup> October, 2019, passed by the learned Adjudicating Officer in complaint No. CMP/190319/0002454, has preferred this appeal praying to modify the impugned order and grant the reliefs sought for in the complaint.

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

2. The appellant, (hereinafter referred to as 'allottee' for short) filed a complaint against the 2<sup>nd</sup> Respondent (hereinafter referred to as 'Promoter' for short) before the 1<sup>st</sup> respondent-RERA seeking the relief "Refund of complete amount paid to the developer along with applicable interest and compensation" on the ground that promoter has failed to disclose the pending litigations as regards defective

title and for violation of condition No.15 contained in the agreement for sale and thereby committed breach of agreement.

**3.** According to the allottee, he agreed to purchase a flat bearing C-604, 6<sup>th</sup> floor, Block-C, in a real estate project known as "Glen Gate" developed by the 2<sup>nd</sup> respondent and entered into an agreement to sell as well as construction agreement dated 26.09.2014.

**4.** As averred in the memorandum of appeal, the appellant paid a total sum of Rs.87,24,378/- till 13.05.2016. As per clause-7 of the construction agreement, the project was required to be completed and possession of the flat was required to be delivered within 46 months from the date of agreement with six months grace period, which comes to an end on 26.01.2019. As the promoter has failed to fulfill his part of the obligation by handing over the possession of the flat within the stipulated time and for violation of the terms of agreement, the allottee filed a complaint before the RERA seeking refund of the consideration amount paid by him along with interest from respective dates of payments and for compensation.

**5.** The promoter arrayed as respondent in the complaint before RERA was represented through its representative Sri. Chethan and contested the case before the RERA.

**6.** The learned Adjudicating officer, after hearing the complainant, the representative of the promoter and after perusing the complaint and the documents produced by them, allowed the complaint. Though the reliefs sought for by the allottee is for refund of amount along with interest and compensation, the learned Adjudicating Officer, contrary to the reliefs sought in the complaint, directed the promoter to deliver physical possession of the flat by receiving the balance amount. The operative portion of the impugned order reads thus:

- a. The complaint No. CMP/190319/0002454 is allowed in part.
- b. The parties are hereby directed to comply section 19 (10) of the Act.
- c. The complainant is hereby directed to tender the amount payable to the developer within a month from today.
- d. The developer is directed to deliver the physical possession by receiving the amount from the complainant including the amenities within a month from today.
- e. The developer is also directed to pay Rs.5,000/- as cost.

**7.** The complainant (allottee) being dissatisfied with the impugned order passed by the learned Adjudicating officer has

preferred this appeal praying to modify the impugned order dated 30.10.2019 passed in complaint No.CMP/190319/0002454.

**8.** As recorded in the order sheet dated 25.01.2022, this Tribunal expressed its opinion as regards maintainability of the appeal, 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)*** and the judgment of the division bench of the High Court of the Karnataka in the case of ***Suresh Babu –vs- Smt. S. Susheela Thimmegowda (1999 (2) Kar.L.J.580.***

**9.** On 04.02.2021, learned counsel for the appellant filed a memo stating that the allottee has already filed a fresh complaint on 14.12.2019 before the RERA which is numbered as CMP/UR/191226/0004984 for the relief of refund of amount and compensation with interest and the same is pending adjudication before RERA and hence, prays the Tribunal to permit him to withdraw the earlier complaint bearing No. CMP/190319/0002454 and consequently dismiss the appeal also as withdrawn.

**10.** When the matter is called today, Sri. A.V. Nishanth, learned counsel appearing for the appellant fairly submitted 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 refund of the amount.

**11.** That as per the provisions of sub-section (2) of Section-107 of the Code of Civil Procedure, 1908, this Tribunal being first appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. Added to this, as per the provisions of Order XXIII Rule-1 and 3, there is no legal impediment for this Tribunal to permit the complainant to withdraw the original complaint filed before the learned Adjudicating Officer, and file a fresh complaint. Therefore, he prays that the earlier complaint filed by the allottee in CMP/190319/0002454 may be dismissed as withdrawn by allowing the appeal and by setting aside the impugned order and the appellant may be granted liberty to pursue the present complaint bearing No. CMP/UR/191226/0004984 pending adjudication before the learned Adjudicating Officer and file a fresh complaint in form-O before the Adjudicating Officer seeking compensation. Further, he submits that since the matter is of the year 2014, the RERA may be directed to dispose of the matter expeditiously. The submission made by the learned counsel is placed on record.

**12.** On the other hand, Sri. S. C. Venkatesh, learned counsel appearing for 2<sup>nd</sup> respondent-promoter fairly submits that the prayer made by the complainant in his complaint was for refund of amount with interest. He further submits that in view of the latest Judgment of the Hon'ble Apex Court in the case of **M/S Newtech Promoters** (supra), the promoter 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-allottee, during pendency of the appeal, has filed another complaint in CMP/UR/191226/0004984 for the same reliefs which is against the provisions of the RERA Act, inasmuch as, the allottee cannot maintain two complaints for the same reliefs.

**13.** In view of the above submissions made across the bar and after hearing the learned counsel for the parties and on perusal of the records, the following point arise for our consideration:

- i) Whether the learned Adjudicating Officer had jurisdiction to entertain the complaint filed by the allottee for refund of the amount and pass the impugned order?
- ii) What order?

**14. Re issue (i):** Before adverting this issue, it is just and necessary for this Tribunal to refer 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)***. In the said case, 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)*

**15.** 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 refund of the amount invested by him with the promoter for purchase of a flat. It is the 1<sup>st</sup> respondent-RERA alone has jurisdiction to adjudicate the complaint filed by the appellant-allottee for return/refund of sale consideration.

**16.** 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)**.

**17.** In view of the foregoing paragraphs, the first complaint bearing No. CMP/190319/0002454 filed by the appellant-allottee is liable to be dismissed as withdrawn by setting aside the impugned order. Accordingly, we answer the issue No (i) in the negative holding that the learned Adjudicating Officer has no jurisdiction to entertain the complaint filed by the appellant-allottee as it relates to refund of the amount.

**18.** Admittedly, as averred in paragraph-1 of the memo dated 04.02.2022, the appellant-allottee has preferred another complaint bearing No.CMP/UR/191226/0004984 seeking same reliefs sought for in the earlier complaint bearing No.CMP/190319/0002454. The provisions of the RERA Act, do not permit for filing two complaints

for the same reliefs, that too during pendency of the present appeal. However, in view of our finding on issue No. (i), dismissing the first complaint bearing No.CMP/190319/0002454 as withdrawn, liberty is accorded to the appellant-allottee to pursue the second complaint bearing No. CMP/UR/191226/0004984 which is pending adjudication before the Authority from the stage where it is set down. Accordingly, we proceed to pass the following:

**ORDER**

- i) The appeal is allowed in part;
- ii) The first complaint bearing No. CMP/190319/0002454 filed by the appellant-allottee is hereby dismissed as withdrawn. Consequently, the impugned order dated 30<sup>th</sup> October, 2019, passed by the learned Adjudicating Officer in the above complaint is set aside;
- iii) The appellant-allottee is at liberty to prosecute second complaint filed by him bearing No.CMP/UR/191226/0004984 before the Authority from the stage where it is set down and file fresh complaint in form-O only in respect of his claim relating to compensation which is to be considered by the learned Adjudicating Officer;
- iv) All the contentions of both the parties are kept open to be urged before RERA while considering the complaint afresh;
- v) Keeping in mind that the matter relates to the year 2014, the Authority shall make an endeavor to dispose of the matter

(CMP/UR/191226/0004984) 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 1<sup>st</sup> 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 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**