

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

DATED THIS THE 9th 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

APPEAL NO. (K-REAT) 53/2021

BETWEEN:

Smt. Karishma P. Shah,
D/o Paresh S. Shah
Aged about 28 years,
R/at No.29, Sharda Colony,
7th 'B' Main, 3rd Stage, 4th Block,
Basaveshwaranagar,
Bengaluru-560 079.

...APPELLANT

(By Sri. S. Nagaraj, Advocate)

AND

1. M/s Bindu Ventures,
Partnerships Firm having its
Office at 4th Floor, Bindu Galaxy,
No.2, 1st Main, Industrial Town,
Rajajinagar, WOC Road,
Bangalore – 560 010.
Represented by its Managing Partner
Sri. Jayesh Z. Shah.
2. Karnataka Real Estate Regulatory Authority,
No.1/74, 2nd Floor, Silver Jubilee Park,
Unity Building Backside, CSI compound,

3rd Cross, Mission Road,
Bengaluru-560 027
Represented by its Secretary.

..RESPONDENTS

(R-1 Notice held sufficient V.C.O. dated 16.12.2021
R-2-RERA –served and Unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to allow this appeal and set aside the impugned order dated 24.04.2021 in complaint no. CMP/UR/190604/0003176 passed by RERA, Bangalore.

This appeal, having been heard and reserved for judgment coming on this day for pronouncement of judgment, the Hon'ble Chairman delivered the following:

J U D G M E N T

An allottee of a commercial flat in a real estate project developed by the 1st respondent-promoter has preferred this appeal challenging the order passed by the 2nd respondent-the Karnataka Real Estate Regulatory Authority dated 24th April, 2021 in CMP/UR/190604/0003176, praying to set the impugned order and grant the reliefs sought for in the complaint filed before the Authority.

Brief facts leading to this appeal are:

2. The appellant, (hereinafter referred to as an 'allottee' for short) filed a complaint against the 1st Respondent (hereinafter referred to

as 'Promoter' for short) before the 2nd respondent-RERA. As averred in the complaint and as noted at page-3 of the impugned order, the allottee sought for the following reliefs:

“Direction to the 1st respondent-promoter to register his project, to pay penalty, to provide khatas and occupancy certificate and also to pay the compensation as requested”.

The appellant-allottee has purchased a flat-office unit bearing No.303 which has been described as schedule-C in the sale deed situated in the third floor of commercial complex known as **“Bindu Galaxy”** constructed by the 1st respondent-developer on the “A- Schedule” property vide sale deed bearing registration No.NGB-1-07886-2017-18, CD NO.NGBD-324 dated 20.12.2017. As stated in clause XVII of the said sale deed, the allottee had also purchased 167 square feet of undivided share in the land from out of 13,850 square feet comprised in the 'A' schedule property. As could be seen from clause 1.2 at page-6 of the sale deed, the total value of the 'B' and 'C' schedule apartment, as shown in the sale deed was Rs.41,00,000/- (Rupees forty one lakhs). According to the allottee, as the promoter had executed the sale deed dated 20.12.2017 in respect of said office unit bearing No.303 without obtaining completion and occupancy certificates, the allottee has

filed a complaint before the RERA on 12.06.2019 seeking the reliefs referred supra.

3. As could be seen from the order sheet maintained by the Authority dated 27.12.2019, the promoter entered appearance through an Advocate and filed written statement on 13.02.2020 *inter alia* contending that in view of the pendency of civil as well as criminal proceedings between the allottee and the promoter before various civil Courts, the complaint filed by the allottee before the Authority is not maintainable. It was further contended that the promoter has completed the construction of the building much prior to commencement of the Real Estate (Regulation and Development) Act, 2016 ('RERA Act' for short) and, hence, the provisions of the RERA Act are not applicable.

4. After considering the contentions urged by the allottee as well as the promoter, the Authority passed the impugned order dismissing the complaint as not maintainable. The operative portion of the impugned order reads thus:

"The complaint bearing No.CMP/UR/190604/0003176, filed under Section-31 of the Real Estate (Regulation and Development) Act, 2016 is hereby dismissed as not maintainable."

5. Being aggrieved by the impugned order, the present appeal is filed by the allottee praying to set aside the same and grant appropriate reliefs sought for in the appeal.

6. We have heard Sri. S. Nagaraj, learned counsel appearing for the appeal-allottee.

7. Learned counsel for the appellant-allottee has made three fold submissions. Firstly, he submitted that in view of the fact that the promoter had executed the sale deed on 20.12.2017 without obtaining completion as well as occupancy certificate from the competent authority, the project in question is to be treated as ongoing project. Secondly, he contended that pendency of civil as well as criminal proceedings before various courts are nothing to do with the claims made by the allottee before RERA. Lastly, he contended that the civil suit filed by the promoter in O.S. No. 3531/2019 for cancellation of sale deed dated 20.12.2017 has been dismissed by order dated 17.08.2021 and C.C No. 11251/2018 filed by the promoter against the allottee and another person under Section 138 of NI Act would not come in the way of the allottee to have recourse to the provisions of the RERA Act. On the above grounds he prays for allowing the appeal by setting aside the impugned order.

8. The 1st respondent-promoter and 2nd Respondent–RERA though served with the notice of this appeal remained unrepresented.

9. In view of the above, the only point that arises for consideration is:

- i) Whether, the Authority was justified in dismissing the complaint filed by the allottee as not maintainable?
- ii) What Order?

10. It is just and necessary for us to refer to the civil and criminal litigations between the parties. The allottee has preferred a suit in O.S. No. 1318/2018 against promoter for permanent injunction which came to be dismissed as not pressed by order dated 27.04.2018. The allottee filed a suit before the Small Cause Court, Bangalore in SC No.782/2018 seeking direction to promoter to restore electricity and water connection to the flat allotted to her, which came to be dismissed on 10.12.2018 against which, the allottee preferred CRP No. 08/2019 before the High Court of Karnataka which is pending adjudication. These are the civil cases filed by the allottee against the promoter.

11. On the other hand, the promoter has filed a civil suit O.S. No. 3531/2019 for cancellation of the sale deed dated 20.12.2017 and other reliefs on the ground that though in fact the agreed sale consideration was Rs.86,25,000/- but in good faith and with a view

to accommodate the desire of the allottee, the total sale consideration shown in the sale deed was Rs.41,00,000/-. It was further alleged in the said suit that after execution of sale deed, the father of the allottee paid a sum of Rs.16,25,000/- and the cheque issued for another sum of Rs.25,00,000/- was dishonored on 06.03.2018. The said suit came to be dismissed on 17.08.2021 by the civil Court by allowing IA. No. V filed by the allottee under order VII Rule 11(a) and (d) r/w section 151 of CPC. Further, as averred in paragraph-7 of the statement of objections filed by the promoter before the RERA, the promoter has filed a complaint against the allottee and her father under Section-200 of the Code of Criminal Procedure for the offence under section 138 of NI Act which is numbered as CC No. 11251/2018 against which the allottee and her father filed Crl. P. No 5142/2018 before the High Court of Karnataka which is pending adjudication.

12. It is not in dispute that the sale deed was executed by the promoter in favor of allottee on 20.12.2017. The provision of the RERA Act came into force with effect from 1st May, 2017 and the civil and criminal proceedings which are narrated in paragraphs 10 and 11 above are all subsequent to coming into force of the RERA Act. As per the provisions of Section-79 of the RERA Act, the civil Court has no jurisdiction to entertain any suit or proceedings in respect of any matter which the Authority or the Adjudicating officer

or the Appellate Tribunal are empowered to deal with issues under the provisions of the RERA Act.

13. On careful perusal of the impugned order particularly at page-04, the reason assigned by the Authority to dismiss the complaint filed by the allottee as not maintainable is as under:

“When the very sale deed under which the complainant is claiming rights of a homebuyer is under scrutiny of a Civil Court, the question of maintainability of a complaint by such homebuyer is doubtful and it is proper not to grant any relief to the said complainant and such a complaint cannot be entertained”.

14. At this juncture, it is just and necessary to refer to the findings recorded by the LVIII Additional Civil and Sessions Judge, Bengaluru (CCH No.59) in O.S.No.3531/2019 filed by the promoter against the allottee seeking cancellation of sale deed dated 20.12.2017 executed in favour of the allottee. In the said suit, while passing the order dated 17.08.2021 on IA-V filed by the defendant (allottee) under Order-VII Rule 11 (a) and (d) of CPC, the Civil Court has recorded categorical findings that the suit filed by the promoter is not maintainable. Paragraphs-16, 17 & 18 which are relevant read thus:

“16.The registered sale deed dated 20.12.2017 and
plaint averments and without any ambiguity establish

passing of title on execution of the sale deed. It is not the plea of the plaintiff that the title was not passed on the registration of the sale deed. Therefore, the sale deed not being dependent on the passing of consideration cannot be invalidated for non payment of consideration in terms of Section-54 of the Transfer of Property Act. Plaintiff does not disclose any legal grounds to grant the relief of declaration or possession. There is no provision in law to declare a valid sale deed void under which transfer of title and possession is admittedly completed.

17. It is settled law that when the recitals of the documents are clear and unambiguous on the point of passing of title on execution of the deed and not dependent upon passing of consideration, sale transaction cannot be invalidated for non payment of consideration. Payment of whole price at the time of execution of sale deed is not sine qua non to completion of sale. Under these circumstances, there is no cause of action for filing the suit and the suit is barred by section 54 of the Transfer of Property Act.

18. The plaintiff filed the suit without any cause of action. Simply plaintiff stated that the cause of action arose for the suit on 20.12.2017. What prevented the plaintiff to file the suit immediately after execution of sale deed. The sale deed is registered on 20.12.2017 and the plaintiff filed the suit on 14.05.2019. After lapse of two years of the registration of the sale deed, the suit filed by the plaintiff is not maintainable in law and there is no cause of action to file the suit. Hence, I answer the point No.1 in the affirmative”.

15. It is relevant to note that the reliefs sought for both by the promoter and the allottee in the litigations referred to supra, are entirely different from the reliefs sought for by the complainant before the RERA.

16. At this stage, it is apt to refer to the provisions 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.”

Thus, mere pendency of the civil disputes between the allottee and the promoter would not take away the rights conferred on the allottee under the provisions of the RERA Act. Therefore, while passing the impugned order, the RERA has failed to consider the above vital aspects of the matter.

17. Viewed from any angle, the impugned order passed by the RERA is not only contrary to the provisions of the RERA Act but also an error apparent on the face of the record. Accordingly, we answer the point for determination in the negative holding that the civil litigations between the allottee and promoter pending before the Civil Court would not take away the rights conferred on an allottee under the provisions of the RERA Act and that the complaint filed by her before the RERA is maintainable.

18. In view of the above, we pass the following:

ORDER

- i) The appeal is allowed;
- ii) The impugned order dated 24th April, 2021 passed by the Karnataka Real Estate Regulatory Authority in complaint no. CMP/UR/190604/0003176 is hereby set aside;

- iii) The matter is remanded to the RERA for fresh consideration in accordance with law, after affording opportunity to both the parties to put-forth their case;
- iv) The contentions of the parties are kept open to be urged before the Authority;
- v) Keeping in mind that the matter relates to the year 2017, 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) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- vii) 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**