

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

DATED THIS THE 21ST DAY OF APRIL, 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) 229/2020
{RERA Appeal (Old) No.300/2019}

BETWEEN:

Kalluri Sudhamathi,
Aged about 55 years,
Wife of G.Venkatesan,
Residing at No.C2-001,
Unitech-The Residences,
Sector-33, Gurugram-122004,
State of Haryana, represented by her husband and
General Power of Attorney Holder:
G.Venkatesan, aged about 55 years,
Son of Late G. Anandam,
Residing at No.C2-001,
Unitech-The Residences,
Sector-33, Gurugram-122004,
State of Haryana

...APPELLANT

(By Sri. Mohan Kumar, Advocate for M/s Lawman & Associates)

AND

1. Chowriappa Constructions Private Limited,
A company incorporated and registered under
Companies Act 1956, Having its Corporate Office at:
6th Floor, Cristu Complex,
No.41, Lavelle Road,
Bengaluru-560 001.
Represented by its Managing Director

2. Cherian A. Paul
S/o. Late Paul Cherian,
Age: Major, Residing at Villa No.90,
No.10, Downing, Sai Baba Ashram Road,
Kannamangala, Whitefield,
Bengaluru-560 067.
3. Saramma Cherian Paul,
W/o. Cherian A. Paul,
Age: Major, Residing at Villa No.90,
No.10, Downing, Sai Baba Ashram Road,
Kannamangala, Whitefield,
Bengaluru-560 067.
4. The Adjudicating Officer,
The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee park,
Unity Building, CSI Compound, 3rd Cross,
Mission Road, Bengaluru-560 027. **...RESPONDENTS**

{R.2 and 3 impleaded vco dated 17.6.2021}

(Sri SPS Khadri & Smt Pooja V, Advocates for R1)

(Sri Gautham Nettar, Advocate for R2 & R3)

(R4-RERA served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) praying to modify the order dated 1.8.2019 in Complaint No.CMP/181207/0001731 passed by the Adjudicating Officer, RERA-Respondent No.4 etc., On establishment of this Tribunal with effect from 2.1.2020, the appeal was transferred and re-numbered as APPEAL NO. (K-REAT) 229/2020

This appeal coming on for further arguments, 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 1.8.2019 in Complaint No.CMP/181207/0001731 passed by the learned Adjudicating

officer, has preferred this appeal seeking modification of the impugned order, enhancement of compensation and for other reliefs.

Brief facts leading to this appeal are:

2. The appellant is a purchaser of an apartment bearing No.602 in Tower No.2, 6th floor, of a project known as "CHOWRIAPPA CONSTELLATION" undertaken to be constructed on Bruhat Bangalore Mahanagara Palike Katha bearing No.5, in converted land bearing Survey No. 34/1, measuring 1 acre 20 guntas, situated at Geddalahalli Villag, Horamavu Ward, Bangalore East Taluk, Bangalore, for a total sale consideration of Rs.59,06,000/- as mutually agreed.

3. As per the terms of agreement of sale and construction agreement dated 25.5.2013 and Tripartite agreement dated 5.7.2013 between the Developer and allottee, it was agreed that the project was to be completed and handed over within 26 months from the date of Agreement and in all probabilities the project was to be completed by 25.7.2015. However, the project could not be completed and possession of the flat was not handed over to the allottee within the specified date.

4. The complainant, alleging that the Developer 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 Developer, filed a complaint with the RERA under Section 31 of the Act for delivery of possession of the apartment and for compensation for the delay.

5. The Developer who was arrayed as respondent in the complaint before RERA appeared through their counsel and resisted the complaint by filing statement of objections. It was contended on behalf of the Developer that they have applied for occupancy certificate and the authorities are yet to issue the same, and the delay, if any, is not on the part of the developer.

6. The learned Adjudicating officer, after hearing the learned counsel for the allottee and the developer and perusing the documents produced on both sides, held that the developer has not completed the project within the date specified in the agreement for sale and except stating that they have applied for Occupancy certificate, has not produced any document in that regard. Thus holding, the learned Adjudicating officer allowed the complaint and granted the reliefs as under:

“ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ: CMP/181207/0001731 ಅನ್ನು ಮಂಜೂರು ಮಾಡಲಾಗಿದೆ.

- a. ಫಿರ್ಯಾದುದಾರರಿಗೆ ಡೆವಲಪರ್ ಇವರು ದಿನಾಂಕ:25.07.2015ರಿಂದ ದಿನಾಂಕ: 30/04/2017ರ ವರೆಗೆ ಡೆವಲಪರ್ ಗೆ ಕೊಟ್ಟಿರುವ ಆಯಾಯ ಮೊತ್ತದ ಮೇಲೆ ಮಾಸಿಕವಾಗಿ Karnataka apartment ownership Act, 1972 ಪ್ರಕಾರ ವಾರ್ಷಿಕವಾಗಿ 9% ರಂತೆ ಬಡ್ಡಿಯನ್ನು ಕೊಡತಕ್ಕದ್ದು.

- b. ಫಿಯಾದುದಾರರು ಡೆವಲಪರ್ಗೆ ಕೂಟ್ಟಿರುವ ಒಟ್ಟು ಮೂತ್ತದ ಮೇಲೆ ದಿನಾಂಕ: 01/05/2017 ರಿಂದ ಅನ್ವಯವಾಗುವಂತೆ 10.75% ರಂತೆ ವಾರ್ಷಿಕ ಬಡ್ಡಿಯನ್ನು ಕೂಡತಕ್ಕದ್ದು. ಸದರಿ ಪರಿಹಾರವನ್ನು ಡೆವಲಪರ್ ಇವರು ತಮ್ಮ ಪ್ರಾಜೆಕ್ಟ್ ಅನ್ನು ಮುಕ್ತಾಯಗೂಳಿಸಿದ್ದರ ಬಗ್ಗೆ Occupancy Certificate ಪಡೆದುಕೂಂಡು ಅಧಿಕೃತವಾಗಿ ಕ್ರಯ ಪತ್ರ ಬರೆದುಕೂಡುವ ದಿನದವರೆಗೆ ಬರೆದುಕೂಡತಕ್ಕದ್ದು.
- c. ವ್ಯಾಜ್ಯದ ಖರ್ಚು ಅಂತ ಫಿಯಾದುದಾರರಿಗೆ ಡೆವಲಪರ್‌ರವರು ರೂ.5,000/- ಗಳನ್ನು ಕೂಡತಕ್ಕದ್ದು.”

7. The allottee being not fully satisfied with the impugned order passed by the learned Adjudicating officer, has preferred this appeal, praying to allow the appeal and modify the impugned order and further for a direction to the developer to complete the project and hand over possession without demanding any further amount from the appellant and for payment delay compensation awarded by Adjudicating Officer as per the impugned order and for various other reliefs.

8. Sri Mohan Kumar M, learned counsel appeared for the Appellant-allottee. Sri S.P.S. Khadri and Smt Pooja V, learned counsel appeared for respondent No.1 and Sri Gautham Nettar, learned counsel appeared for respondents 2 & 3. Respondent No.4-RERA though served, remained unrepresented.

9. Today, when the matter is listed for further arguments, learned counsel appearing for the appellant-allottee filed a memo and submitted 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 DEVELOPERS 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.** The memo and submission are placed on record.

10. The Hon'ble Supreme court in the case of M/s. NEWTECH DEVELOPERS 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 , 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. Whereas, Sri Gautham Nettar learned counsel appeared for respondent R2 & R3 opposed the Memo for remanding the matter and submitted that the Judgment of the Hon’ble Supreme Court in Newtech case cannot be made applicable to the present case and prayed for dismissing the appeal.

12. The submission of the learned counsel for respondents 2 and 3 that the said judgment cannot be made applicable to the present case which is pending, is not tenable. In applying the above decision of the Hon’ble Supreme court to the present case, we are supported by a Judgment of a Division Bench of our High court in the case of SURESH BABU Vs. SMT. S. SUSHEELA THIMMEGOWDA reported in 1999(2) Kar.L.J, 580, wherein following the ruling of the Hon’ble Supreme Court in the case of MAJOR GENERAL GAURAYA Vs. S. N. THAKUR (AIR 1986 SC 1440), in paragraphs 13 to 15, has categorically held as under:

"13. In Major General A.S. Gauraya v S.N. Thakur, the Supreme Court held that "there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by this (Supreme) Court applies to all pending proceedings".

14. One of us had occasion to consider the effect of the decisions of the Supreme Court on pending proceedings in Brindavan Roller Flour Mills Private Limited v Joint Commissioner of Commercial Taxes (Appeals), Mysore Division, Mysore, and held as follows.- "A decision of the Supreme Court, being a declaration of the true and correct position of law becomes applicable to all transactions and proceedings which have not become final and concluded. The common use of the words 'prospective operation' and 'retrospective operation' with reference to a decision of the Supreme Court is misleading. The use of the words 'prospective' and 'retrospective' are more appropriate while referring to statutes. Rendering of a judgment by the Supreme Court is not the same as enactment of a statute. A decision of Supreme Court does not make the law, but merely explains and puts in proper perspective the true position and effect of law by declaring the law. The true position of law so declared exists from the very date of making the law and not from the date of declaration by the Supreme Court When a legislature enacts a statute, it creates rights or obligations and therefore, its operation can be prospective or retrospective, depending on the provisions of the statute. But when the Supreme Court gives a decision declaring the law, it does not create rights/obligations but merely identifies and declares the pre-existing rights/obligations and declares the true position of law. Consequently, the terms 'prospective' and 'retrospective' strictly do not apply to decisions of the Supreme Court, as all decisions are 'retrospective'. It is thus a cardinal principle of construction that every Statute is presumed to be prospective unless it is expressly or by necessary implication made retrospective in operation; and 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. This of course is subject to the rule of finality of proceedings; that is, the law declared by the decision cannot

be used to reopen concluded decisions which have become final; it will apply to all pending transactions and proceedings. A proceedings in regard to which there is a provision for appeal, revision, review or rectification and the time prescribed for such remedy, has not expired, then such a proceeding cannot be said to have become final or concluded. It is no doubt true that where injustice and oppression will be caused by applying the decision to past transactions/proceedings, the Court while giving the decision, may stipulate that it will not affect past transactions. When and where the line should be drawn, restricting the application of the decision, are to be decided by the Court rendering the decision.. When the Supreme Court while rendering a decision, does not choose to restrict its operation, it will not be proper for the High Court to read such a restriction into the decision of the Supreme Court.

In *Golak Nath v State of Punjab* (AIR 1967 SC 1643) and *Managing Director, ECIL, Hyderabad v B. Karunakaran* (AIR 1994 SC 1074) the Supreme Court has made it clear that the discretion to restrict the operation of a decision prospectively, vests only with the Supreme Court. The High Court cannot, therefore, entertain or consider any contention or prayer for holding that the decision of the Supreme Court in any matter is only prospective in its operation or that it does not apply to pending cases”.

13. 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, 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 DEVELOPERS AND DEVELOPERS PVT LTD.,(supra)*.

14. Accordingly, we pass the following:

ORDER

- i) The appeal is allowed in part;
- ii) The impugned order dated 1.8.2019 in Complaint No.CMP/181207/0001731 by respondent No.4-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 DEVELOPERS 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) Keeping in mind that the matter relates to the year 2013, 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 have entered appearance through counsel in this appeal, they are directed to appear before the RERA on 17.05.2022, 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/-
(JUSTICE B SREENIVASE GOWDA)
CHAIRMAN

Sd/-
(K P DINESH)
JUDICIAL MEMBER

Sd/-
(P.S SOMASHEKAR)
ADMINISTRATIVE MEMBER

NOT AN OFFICIAL COPY