

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

DATED THIS THE 31ST MAY, 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 (K-REAT) NO.49/2022

BETWEEN:

M/s GM Infinite Dwelling (India) Private Limited
Having its Corporate office at #No-6,
GM Pearl, 1st Stage BTM Layout,
Bengaluru – 560 068.
Represented by
Gulam Mustafa
Jawid Hussain

...APPELLANT

(Sri. J P Darshan for M/s Ayana Legal, Advocate for Appellant)

AND

1. The Secretary,
Real Estate Regulatory Authority Karnataka,
Having office at:
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru- 560 027.
2. Swapan Kumar Samanta
S/o Nagendranath Samanta
Aged about 43 years
Residing at T3 - T1803,
GM Infinite, Silver Spring,
Bengaluru- 560 090.

3. Supriya Samanta
W/o Swapan Kumar Samanta,
Aged about 30 years
Residing at T3 - T1803,
GM Infinite, Silver Spring,
Bengaluru- 560 090.

..RESPONDENTS

(R-1 RERA – Served unrepresented)
(Sri. Suhail Ahmed for M/s Trial Base, Advocate for R2 & R3)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), before this Tribunal praying to set aside the impugned order dated 23.11.2020 passed in CMP/191205/0004897 by respondent No.1 Adjudicating Officer, RERA.

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

J U D G M E N T

The appellant who is a promoter of a Real Estate project known as "GM Infinite Silver Spring Field" has preferred this Appeal challenging the order dated 23.11.2020 passed in CMP/191205/0004897 by the learned Adjudicating Officer – 1st Respondent.

2. The facts of the case in brief are:

The appellant is a promoter of real estate projects and one such project undertaken to be developed by the appellant under the name and style " GM Infinite Silver Spring Field" is situated at Sy No. 83/1 and 83/2 (Old Sy. No.83) in Jodi Mallasandra Village, Yeshwanthapura Hobli, Bangalore North Taluk. Respondents 2 & 3-allottees herein, who are husband and wife, desirous of purchasing a residential unit, booked an

apartment proposed to be constructed in the said project and entered into an Agreement of sale and Construction Agreement both dated 25.09.2017.

3. It is stated that as per the terms of agreement of sale, the possession of the said flat was to be handed over to the allottees on or before 30.06.2018. However, the developer failed to complete the project within the time stipulated in the agreement. It is also stated that since the promoter pressurized the allottees to get the sale deed executed, they had no option but to take the sale deed even without the promoter obtaining Occupancy certificate and they were also not handed over possession of the flat. Hence, the allottees were constrained to file a complaint before RERA alleging that the promoter has failed to deliver possession of the flat to the allottees within the stipulated date as agreed between them in the agreement of sale and sought for delay compensation and other incidental reliefs.

4. The learned Adjudicating officer, after hearing the allottees and the learned counsel for the promoter, by the impugned order directed the promoter to pay delay compensation to the allottees by way of interest.

The operative portion of the impugned order reads thus:

"a. The complaint filed in CMP/191205/0004897 is hereby allowed in part.

b. The developer is hereby directed to pay delay compensation on the principal amount paid by complainant as on the sale deed @ 2% above the MCLR of

SBI form July 2018 till the date of receipt of occupancy certificate.

c. In case any delay compensation has been paid by the developer under the sale deed or before execution of sale deed the same may be deducted in the delay compensation as ordered.

d. The developer is also hereby directed to pay Rs. 5,000/- as cost of the petition.

e. The complainant may file memo of calculation after 60 days in case the order is not complied by the developer has to comply with the same to enforce the order”.

5. The promoter being aggrieved by the impugned order has preferred this appeal.

6. Today, when the matter is listed for hearing, learned counsel appearing for the appellant orally 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 & ORS. ETC. in Civil Appeal No(s).6745 - 6749 of 2021 **reported in 2021 SCC ONLINE SC 1044**, the impugned order passed by the learned Adjudicating officer lacks jurisdiction and is liable to be set aside and the matter requires to be remitted to RERA for fresh consideration. The learned counsel also further submitted that a direction may be issued to the Registry to return the entire money paid towards 100% pre deposit as per the provision of Section 43(5) of the RERA Act.

7. Whereas, learned counsel for Respondent Nos.2 and 3-allottees submits that the allottees cannot have any objections for remanding the matter to RERA in view of the aforesaid Judgment of the Supreme Court. However he submits that in the event of remitting the matter to the Regulatory Authority, the contesting Respondents may be given opportunity to put forth their case before RERA and all their contentions may be kept open to be urged before RERA while considering the matter.

8. Respondent No.1- RERA though served remained unrepresented.

9. 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 of the said Judgment 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”.

10. 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, without expressing any opinion on the merits of the matter, we deem it appropriate to dispose of the above appeal, set aside the 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)*.

11. Since the appeal is by a promoter, the appellant while preferring this appeal has deposited the total amount with this Tribunal, payable to the allottees, as per the impugned order in compliance of

proviso to Section 43(5) of the RERA Act. Accordingly, the appeal has been entertained and now that is ordered to be returned to the appellant.

12. In the circumstance of the case, we pass the following:

ORDER

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 23.11.2020 passed in CMP/191205/0004897 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 the parties are kept open to be urged before the Regulatory Authority;
- (iv) Since the matter pertains to the year 2017, the Authority shall make an endeavor to dispose of the complaint as expeditiously as possible and at any rate within the outer limit of 45 days from the date of parties entering appearance;
- (v) Since the appellant-promoter and allottees-respondents have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on **13.06.2022** without expecting further notice from RERA;
- (vi) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in compliance of proviso to Section 43(5) of the Act, along with interest, if any, accrued thereon, by issuing either a cheque or DD in the name of the appellant-company and shall hand over the cheque or DD to the Authorised signatory of the appellant-company who has signed the vakalath and appeal memo, on furnishing necessary documents and by following due procedure.

- (vii) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (viii) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

**Sd/-
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**

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