

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

**DATED THIS THE 13TH DAY OF JUNE, 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. 66/2021

BETWEEN:

Purvankara Limited
No.130/1, Ulsoor Road,
Bengaluru – 560042
Represented by it's
Authorised Signatory Ms. Sonali Sylvia

...APPELLANT

(By Sri Anandarama K, Advocate for Appellant)

AND

1. Sri. Aniruddh Varma
ITC Mud Front,
Flat B-401,
8, Jeevanhalli Main Road,
MSO Colony, Maruthi Sevanagar,
Cox Town, Bangaluru- 560 005.
2. Karnataka Real Estate Regulatory Authority,
#1/14, Ground Floor, Silver Jubilee Block,
Unity Building Backside, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
Represented by its Secretary

...RESPONDENTS

(Smt. H H Sujatha, Advocate for R.1)
(R.2 RERA-served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), before the Tribunal praying to set aside the impugned order dated 11.08.2021 passed in CMP/200331/0005816 by respondent No.2 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 Real Estate project has preferred this Appeal challenging the order dated 11.08.2021 passed in CMP/200331/0005816 by respondent No.2 Adjudicating Officer, RERA.

2. The facts of the case in brief are:

The appellant is the promoter of a real estate project known as "PURVA PALM BEACH". The 1ST respondent had booked Unit No. B-302 in Block-B, third floor of the said project for a total consideration of Rs.84,83,760/-. It is stated that as per the terms of the Agreement of sale and Construction agreement dated 20.05.2014, the possession of the said flat was supposed to have been handed over to the allottee by March, 2019 including the grace period. It is urged in the appeal memo that the appellant after obtaining Occupancy certificate dated 26.03.2019 had taken all necessary steps and ready to give possession of the unit to the 1st respondent-allottee and as the allottee failed to discharge his duty and avoided taking physical possession of the apartment on frivolous and baseless disputes, the possession was not delivered.

3. The allottee, complaining that the developer has failed to complete the project within the time stipulated in the agreement i.e., on or before March, 2019 including the grace period, filed a complaint before RERA seeking delay compensation and other reliefs.

4. The learned Adjudicating officer, after hearing the learned counsel for the allottee and the promoter, by the impugned order directed the promoter to pay delay compensation to the allottee by way of interest. The operative portion of the impugned order reads thus:

- "i) The complaint filed by the complainant bearing no. CMP/200331/0005816 is partly allowed.
- ii) The respondent is hereby directed to pay delay compensation to the complainant on the amount of Rs.90,88,877/- by way of interest @ 9% per annum on respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the handing over of the possession of the flat with occupancy certificate.
- iii) The counter claim of the respondent is hereby dismissed as not maintainable.
- iv) The respondent is at liberty to approach the Hon'ble K-RERA Authority for the relief sought in-respect of difference amount of infrastructure charges etc., claimed in the counter claim in accordance with law, if permissible.
- v) The respondent is directed to pay Rs.5,000/- as cost of this petition to the complainant".

5. The promoter being aggrieved by the impugned order has preferred this appeal, on various grounds.

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 the 1st Respondent -allottee submits that the allottee cannot have any objection for remanding the matter to RERA in view of the aforesaid Judgment of the Supreme Court. However she submits that in the event of remitting the matter to the Regulatory Authority, all contentions may be kept open to be urged before RERA while considering the matter.

8. Further, with regard to the amount pre-deposited with this Tribunal at the time of filing the appeal, the appellant-promoter submits that the same may be released in their favour. Whereas, the learned

counsel for the allottee opposed for refunding the amount deposited with this Tribunal in compliance of proviso to Section 43(5) of the Act in favour of the promoter contending that it would be difficult for the allottee to secure it again and deposit may be continued with the Tribunal only till disposal of the complaint by RERA and thereafter, it may be disbursed as per the outcome of the order.

9. In response to this submission, the learned counsel for the promoter submits that after disposal of the appeal, the deposit cannot be continued with the Tribunal and, therefore, it has to be refunded to the appellant, and the appellant would invest the said amount in a fixed deposit and produce a copy of the FD Receipt with this Tribunal as well as before the Authority and it may be disbursed as per the outcome of the result of the complaint before the Authority. The learned counsel further submits that the appellant is willing to file an undertaking to that effect before release of the said amount by the Registry in his favour. There is some force and meaning in the submission of the learned counsel for the promoter.

10. Respondent No.2- RERA though served, remained unrepresented.

11. 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".

12. 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)*.

13. 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.

14. At this stage, we wish to add that this Tribunal, after repeatedly noticing that both the Authority as well as Adjudicating officer are committing mistakes in awarding interest while ordering refund of the amount of the allottee with or without interest and compensation and awarding interest for delay in delivering possession of the apartment as could be seen from the impugned order as well, it deems fit and necessary to issue certain guidelines to the Authority and the Adjudicating officer in the matter of awarding of interest, which may be followed strictly:

(i) In the event of the Authority ordering for refund of the amount to the allottee, if the date due for delivery of possession under the agreement is prior to 1.5.2017, interest has to be awarded at 9% per annum from the respective dates of payment till 30.04.2017 {As per Section 8 of the Karnataka Ownership Flats (Regulation of the promotion of construction, sale, Management and Transfer) Act, 1972} and with interest at 2% above SBI highest marginal cost of lending rate from 1.5.2017 till the date of payment {as per Rule 16 of the RERA Rules};

In the event of awarding interest for delayed period:

(i) if the date due for delivery of possession under the agreement is prior to 1.5.2017, the authority has to award interest for every month's delay on the sale consideration amount received with interest at 9% per annum from the date due for delivery of possession till 30.04.2017 and with interest at 2% above the SBI highest marginal cost of lending rate from 1.5.2017 till the date of payment;

(ii) If the date due for delivery of possession under the agreement is on or after 1.5.2017, then the authority has to award interest on the sale consideration at 2% above the SBI highest marginal cost of lending rate from the date due for delivery of possession till date of payment.

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

ORDER

(i) The appeal is allowed in part;

(ii) The impugned order dated 11.08.2021 passed in CMP/200331/0005816 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 are kept open to be urged before the Regulatory Authority;
- (iv) Since the matter pertains to the year 2019, 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 1st Respondent-allottee have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on **27.06.2022** without expecting further notice from RERA. If the Authority is not sitting on 27.06.2022, it shall take up the matter on the immediate next sitting day;
- (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 filing an undertaking to the effect that the appellant would deposit the said amount in a fixed deposit till the disposal of the complaint and agreeing for disbursement of the same as per the decision of the Authority in the matter, 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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