

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

DATED THIS THE DAY OF 15th JUNE, 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

FR No. (K-REAT) 25/2022

BETWEEN

Unicca Emporis Pvt. Ltd.,
Represented by its
Managing Director,
Sanjay Kumar Choudhary,
Presently having office at
Sy No. 55/P-23,
Thanisandra Main Road,
Bellahalli Cross.
Bangalore – 560 064.

Old Adress:-
1st floor, No.15, Sankey Main Road,
10th Main, 6th 'A' Cross,
Lower Palace orhard,
Sadashivanagar,
Bangalore – 560 080.

APPELLANT

(Sri. Akash V.T a/w Nishanth A.V for M/s Invicta Law Associates, Advocates)

AND:

1. The Secretary
The Karnataka Real Estate Regulatory Authority
Second Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.

2. Sri Saurabh Kumar Tayal,
No.19th, 6th floor Pankaj Mahal,
JTS Malani Marg Church No.2 Gate,
Opposite KC College,
Maharashtra – 400 020.

RESPONDENTS

(R1-RERA served, unrepresented)
(Sri. M V Prashanth for M/s India Law Practice-ILP, Advocate for R-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the impugned order dated 14.02.2019 passed in Complaint No.CMP/180725/0001078 and connected matters passed by respondent No-1 Adjudicating Officer.

This Appeal, coming on for orders this day, the 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 "Unicca Emporis" has preferred this Appeal on 01.02.2022 challenging the order dated 14.02.2019 passed in Complaint No. CMP/180725/0001078 by the learned Adjudicating Officer – 1st Respondent. The operative portion of the impugned order reads thus:

"The complaint No. CMP/180724/0001068 and other 12 complainants have been allowed by directing the developer to return Rs.3,94,42,500/- along with interest @ 9% P.A on the respective amount received on respective date prior to 30.04.2017 as per KOFA and @10.75%PA commencing from 01.05.2017 till the realization of full amount.

The developer is directed to deduct the GST amount in case the same is paid to the department and necessary documents shall be provided to the

complainants to enable them to recover the same from the concerned department.

The developer is also directed to pay Rs.5,000/- each as cost of each case”.

2. That in view of delay on the part of the promoter in delivering possession of the flat to the allottee in the present appeal and 12 other allottees in the same project, in accordance with the terms of the agreement entered into between them, the promoter was directed to return a sum Rs.3,94,42,500/- along with interest @ the rate of 9% P.A. on the respective date of payments up to 30.04.2017 and @ rate of 10.75% P.A. from 01.05.2017 till realization of the amount to the allottees.

3. This is a case of return of amount paid by the 2nd respondent-allottee. In view of mandatory requirement of proviso to Section 43(5) of the Act, the appellant is required to deposit the total amount payable to the allottee as per the impugned order before the appeal is heard.

4. That on 14.03.2022, on the submission made by the learned counsel for the appellant that out of the total amount of Rs.2,00,00,000/- deposited by the promoter, after adjusting the requisite pre-deposits in other connected appeals, to treat the balance amount as partial deposit in this appeal, the Registry was

directed to treat a sum of Rs.19,45,032/- as part deposit in this appeal and, at the request of learned counsel for the appellant, this Tribunal granted time to the appellant up to 30.03.2022 to deposit the total amount payable to the allottee as per the impugned order by deducting the amount already deposited and in the event of appellant failing to deposit the total amount, the appeal will be dismissed for non-deposit of the amount.

5. That even on 30.3.2022, there was no compliance of proviso to Section 43(5) of the Act. However, on the request of the learned counsel for the appellant, further time was granted and matter was adjourned from time to time.

6. When the matter is called today, Sri. Nishanth A V, learned counsel appearing for appellant submits that due to financial constraints, the appellant is unable to deposit the amount as contemplated under proviso to Section 43(5) of the Act and requested the Tribunal to release the amount deposited in this appeal in favour of the Appellant, so that the said amount would be utilized for depositing the requisite amount in the connected appeals.

7. Sri. M.V Prashanth, learned counsel for the 2nd respondent-allottee prayed for dismissal of the appeal for non-deposit of the total amount payable to the allottee as per the impugned order, 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 U.P AND OTHERS reported in (2021 SCC ONLINE SC 1044).

8. The learned counsel for the Respondent no.2 has not made any submission with regard to release of the amount deposited by the appellant in this appeal.

9. That proviso to sub-Section (5) of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (for short the Act) contemplates pre-deposit by a promoter while filing an appeal. In this regard, we deem it just and proper to refer to the latest decision of the Hon'ble Supreme court of India on this aspect of the matter in the case of **M/s NEWTECH** (supra), wherein, in paragraphs 136 & 137, has held as follows:

"136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfillment of precondition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.”

10. In view of the law laid down by the Hon'ble Apex court and in view of the submission made by the learned counsel for the appellant that due to financial constraints, the appellant is unable to deposit the total amount as ordered by the learned Adjudicating Officer in compliance of proviso to Section 43(5) of the Act, we pass the following:

ORDER

- 1) Appeal is dismissed for non-depositing of the total amount payable to the allottee as per the impugned order as contemplated under proviso to Section 43(5) of the RERA Act;
- 2) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in part 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 favour of the

Appellant-company and handover the cheque/DD to the Authorised signatory of the appellant-company who has signed the vakalath and appeal memo, after furnishing necessary documents and by following due procedure.

- 3) In view of dismissal of the Appeal, the 2nd respondent-allottee is at liberty to recover the amount awarded to him in the impugned order by initiating appropriate proceedings against the appellant-promoter.
- 4) In view of dismissal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration.
- 5) The Registry is hereby directed to comply with Section 44(4) of the RERA Act and return the records of the RERA, if received.

There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER