

**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

APPEAL No. (K-REAT) 40/2022

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. Mrs. Jyotika Tayal,
Wife of late Sanjay Kumar Tayal,
Aged about 52 years,
R/at, Raguvanshi Mills Compound,
Lower Parel (west),
Mumbai-400 013.

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/180724/0001068 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 challenging the order dated 14.02.2019 passed in Complaint No. CMP/180724/0001068 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.

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

5. Today, when the matter is listed for orders, 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 mandated under proviso to Section 43(5) of the RERA Act.

6. Whereas, learned counsel for Respondent No.2 submits that the allottee 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 Respondent 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.

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

8. 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”.

9. 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)*.

10. 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.

11. This Tribunal, in Appeal (K-REAT) No. 66 OF 2021 disposed of on 13th June, 2022 (PURVANKARA LIMITED Vs. SRI ANIRUDDH VARMA AND ANOTHER) has issued certain guidelines to the Authority and the Adjudicating Officer in the matter of awarding of interest, which may be followed strictly.

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

ORDER

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 14.02.2019 passed in CMP/180724/0001068 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 2015, 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 allottee-respondent have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on **04.07.2022** without expecting further notice from RERA. If the Authority is not sitting on the said date, 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 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**