

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

**DATED THIS THE 15TH DAY OF JULY, 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. 16/2022

BETWEEN:

M/s Prestige Estates Projects Ltd.,
A Company Incorporated under the
Company Act, 1956, having registered
Presently Office at No.19, 2nd floor,
Prestige Falcon Tower,
Brunton Road, Criaig Park Layout, Ashok Nagar,
Bangalore – 560 025.
Represented by its
Authorized Signatory
Mr. Veerendra Kumar

The appellant earlier had office at
Falcon House No.1 Main Guard Cross Road,
Bengaluru Urban – 560 001

...APPELLANT

(By Sri Mohumed Sadiqh B.A for K V Legal, Advocates)

AND

1. Mr. Promod S M
Aged about 41 years
S/o Malikarjuna S
R/at No. 19, Salonee,
Behind Christ King School,
Ramamurthy Nagar,
Bengaluru Urban – 560 016

2. Karnataka Real Estate Regulatory Authority Bangalore
Office at Ground Floor, No.1/14,
Silver Jubilee Block, Unity Building,
CSI Compound, 3rd Cross, Mission Road,
Bengaluru-560 027.
Represented by the Secretary

:RESPONDENTS

(Smt Shilpa Rani, Advocate for R-1-absent)
(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 this Tribunal praying to set aside the impugned order dated 02.11.2021 passed in CMP/201006/0006775 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 a Real Estate project known as "Prestige Temple Bells Project" has preferred this Appeal challenging the order dated 02.11.2021 passed in CMP/201006/0006775 by the learned Adjudicating Officer – Respondent No-2.

2. The facts of the case in brief are:

The appellant is a promoter of real estate projects and one such project developed by the appellant under the name and style "Prestige Temple Bells" is situated at Sy Nos. 54, 55, 56/1, 56/2, 56/3, 56/4, 57/2 in Hosakerehalli Village, Uttarahalli Hobli, Bangalore South Taluk. Respondent No.1-allottee herein, who was desirous of purchasing a

residential unit, booked an apartment bearing No.7046 proposed to be constructed in the said project and entered into an Agreement of sale and Construction Agreement both dated 05.01.2015.

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 allottee 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 handed over possession of the flat. Hence, the allottee was 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 allottee herein and other allottees similarly situate and the learned counsel for the promoter, by common impugned order dated 02.11.2021 while allowing the complaints in part, directed the promoter to pay delay compensation to the allottees by way of interest at 2% p.a above the MCLR of SBI, on the respective amounts from the dated of receipts of respective amounts from 01.05.2019 to 29.06.2019 etc.

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 refund the entire money deposited with the Tribunal towards 100% pre deposit as per the provision of Section 43(5) of the RERA Act, in favour of the appellant.

7. Learned counsel for Respondent No.1 remained absent and Respondent No. 2 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 appellant 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 allottee, 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. In the circumstance of the case, we pass the following:

ORDER

- (i) The appeal is allowed;
- (ii) The impugned order dated 02.11.2021 passed in CMP/201006/0006775 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 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 **25.07.2022** without expecting further notice from RERA;
- (vi) In the event the Authority is not sitting in the said date the matter may be taken up on the next immediate sitting day;
- (vii) 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.
- (viii) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (ix) 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