

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

**DATED THIS THE 1<sup>ST</sup> 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 NO. (K-REAT) 57/2022**

**BETWEEN:**

Shriram Properties Limited,  
No.31, 2<sup>nd</sup> Main, T Chowdaiah Road,  
Sadasivnagar, Bengaluru – 560080.  
Formerly at 40/43 8<sup>th</sup> Main,  
4<sup>th</sup> Cross, Sadashivnagar,  
Bangalore – 560080.

A company incorporated under the  
Provisions of Act  
Represented by its authorized signatory  
Ramesh J.C.

**...APPELLANT**

(By Sri. Joseph Antony for M/s J.S.M Law Partners, Advocate)

**AND**

1. The Karnataka Real Estate Regulatory Authority,  
No.1/14, Ground Floor,  
Silver Jubilee Block,  
Unity Building, CSI compound,  
3<sup>rd</sup> Cross, Mission Road  
Bengaluru-560 027.  
Represented by its Secretary.

2. Sri. Muthanna Thammaiah Allaranda,  
Shriram Sameeksha,  
#16.1.7, Kuvempunagar,  
Abbigere, Bengaluru – 560013.

**...RESPONDENTS**

(Sri. Mohumed Sadiqh. B.A, Advocate (vakalath not filed))

The appellant has filed the above appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 09.04.2021 passed by the learned Adjudicating Officer, Bengaluru in complaint No. CMP/191230/0005092.

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

### **J U D G M E N T**

This appeal is by a promoter of a real estate development project known as "Shriram Sameeksha", being not satisfied with the impugned order dated 09.04.2021, passed by the learned Adjudicating Officer, Bengaluru in complaint No. CMP/191230/0005092 has preferred this appeal.

For the purpose of convenience, the appellant hereinabove will be referred to as "promoter" and the 2<sup>nd</sup> respondent will be referred to as "allottee" hereinafter.

**2.** The 1<sup>st</sup> respondent-RERA, though served with notice, remained un-represented.

**3.** A Perusal of the order sheet dated 23.06.2022 would reveal that after service of notice to respondent No.2, one Sri. Mohumed Sadiqh.B.A, learned counsel who undertakes to file vakalath on behalf of respondent No.2 is neither appeared nor filed vakalath.

4. By the impugned order, the learned Adjudicating Officer allowed the complaint filed by the respondent-allottee. The operative portion of the impugned order reads thus:

- “(i) The complaint filed by the complainant bearing No.CMP/191230/0005092 is partly allowed;
- (ii) The respondent is hereby directed to pay delay compensation to the complainant 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 October, 2017, until payment of entire amount;
- (iii) The respondent is directed to pay Rs.5,000/- as cost of this petition to the complainant;
- (iv) The complainant may file memo of calculation as per this Order after 60 days in case respondent failed to comply with this order to enforce the order;
- (v) Intimate the parties regarding this order.”

**Facts of the case:**

5. As could be seen from the impugned order, the allottee has entered into an agreement to sell and to build dated 06.11.2014 with the promoter to purchase a flat bearing No.16.1.7 in Block No.E-2 in Tower No.16. In terms of the agreement, the promoter was required to complete the project and deliver possession of the

flat before March, 2016. However, the promoter handed over the possession of the flat by the end of October, 2017 without obtaining Occupancy Certificate. Further, as noted in paragraph-2 of the impugned order, the allottee, by memo dated 07.10.2020 restricted his claim only to the extent of delay compensation. Therefore, the allottee filed a complaint before the Authority seeking delay compensation.

6. As could be seen from the impugned order, the learned Adjudicating Officer directed the promoter to pay delay compensation to the allottee by way of interest at the rate of 9% per annum for the period of delay in delivering possession of the flat.

7. Sri. Joseph Antony, learned counsel appearing for the appellant has filed a memo dated 01.07.2022 stating that in view of the law laid down by the Hon'ble Supreme Court in the case of **M/S Newtech Promoters and Developers Pvt Ltd -vs- State of UP**, reported in **2021 SCC OnLine SC-1044**, the impugned order passed by the learned Adjudicating Officer is without jurisdiction and hence, the same is liable to be set aside and the matter requires to be remitted to the Authority for fresh consideration.

The memo is placed on record.

**8.** In view of the above submissions made by the learned counsel for the appellant and on perusal of the memo and the records, the following points that arise for our consideration:

- i) Whether the impugned order passed by the learned Adjudicating Officer is sustainable in law?
- ii) What order?

**9. Point No. (i):** Before advertent to this issue, it is just and necessary for this Tribunal to refer to the dictum laid down by the Hon'ble Apex Court in the case of ***M/S Newtech Promoters and Developers Pvt Ltd -vs- State of UP and others (2021 SCC OnLine SC-1044)***. In the said case, the Apex Court, while considering the issue as to 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, was pleased to hold that "**refund and compensation**" are two distinct rights under the Act and they cannot be conflated/clubbed together and the manner in which the two are to be determined would require a different process and involve different consideration. The law laid down by the Hon'ble Supreme Court in paragraph-86 is relevant for the purpose of deciding the above issue which read thus:

"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"

*(emphasis supplied)*

**10.** In the instant case, admittedly, the learned Adjudicating Officer directed the promoter to pay delay compensation to the allottee by way of interest for the period of delay in delivering the possession. In view of the law laid down by the Hon'ble Supreme Court in the case of **Newtech Promoters (supra)**, this Tribunal is of the considered view that the learned Adjudicating Officer has no jurisdiction to entertain the complaint filed by an allottee seeking interest for the period of delay in delivering possession of the flat. It is 1<sup>st</sup> respondent-RERA alone has jurisdiction to adjudicate the complaint filed by the 2<sup>nd</sup> respondent-allottee for delay compensation by way of interest for the period of delay in handing over possession of the flat. Hence, without expressing any opinion on merit of the case, this Tribunal is of the considered view that the impugned order is liable to be set aside solely on the ground of lack of jurisdiction for the learned Adjudicating Officer to pass the impugned order and the matter requires to be remitted to the Authority for fresh adjudication. Hence, we answer the point No. (i) in the negative holding that the impugned order passed by the learned Adjudicating Officer is not sustainable in law, inasmuch as he has no jurisdiction to entertain the complaint filed by the respondent-allottee as it relates to awarding interest for the period of delay in delivering possession of the flat. Accordingly we proceed to pas the following:

**ORDER**

- i) The appeal is allowed in part;
- ii) The impugned order dated 09.04.2021 passed by the learned Adjudicating Officer, Bengaluru in complaint No. CMP/191230/0005092 is hereby set aside;
- iii) The matter is remitted to the RERA for fresh adjudication in accordance with law, after affording reasonable opportunity to both the parties;
- iv) All the contentions of the parties urged in this appeal are kept open to be urged before RERA while considering the complaint afresh;
- v) The amount deposited by the appellant-promoter before this Tribunal, in compliance of the proviso to Section-43 (5) of the Act, is ordered to be returned to the appellant and the Registry is hereby directed to return the amount by issuing a bankers cheque/DD in the name of the appellant company and shall hand over the same to the authorized signatory of the appellant after following due procedure;
- vi) Keeping in mind that the matter relates to the year 2014, the Authority shall make an endeavor to dispose of the matter on merit, as expeditiously as possible, but not later than the outer limit of forty five (45) days from the date of parties entering appearance;
- vii) Since the appellant-promoter had entered appearance through counsel in this appeal, he is directed to appear



before the RERA on 11.07.2022, without expecting further notice from the RERA and if the Authority is not sitting on that day, it shall take up the matter on the immediate next sitting day and shall issue notice to 2<sup>nd</sup> respondent-allottee and after service of notice on respondent, the Authority shall consider the matter and decide in accordance with law;

- viii) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- ix) The Registry to comply with the provisions of Section-44 (4) of the RERA Act and to return the records to RERA if any;

No order as to the costs.

**Sd/-  
HON'BLE CHAIRMAN**

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

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