

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

DATED THIS THE 18TH DAY OF AUGUST, 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) 03/2020
(RERA Appeal (old No.)90/2018)

C/w

APPEAL NO. (K-REAT) 159/2020
(RERA Appeal (old No.)230/2019)

BETWEEN:

In APPEAL NO. (K-REAT) 03/2020
(RERA Appeal (old No.) 90/2018)

1. MR. M Ramachandra
S/o Late K.V. Muniyappa
Aged about 71 years

1(a) Smt Susheela Devi S
W/o late M. Ramachandra
Aged about 69 years
(Amended V.C.O dated 08.09.2021)

2. Ms. Boomi Ramachandra,
D/o M Ramachandra
Aged about 34 years

Both residing at No.690,
'Sri Mahalakshmi', SVT Road,
Devasandra, K.R. Puram,
Bengaluru – 560 036.

...APPELLANTS

(By Sri.Vijay BNH for M/s Gerahalli Law Offices, Advocate)

AND

1. M/s. Westline Construction & Developments Pvt. Ltd.,
A Company registered under the Companies Act,
Office at 1st floor, Mangalore Gate Building,
Kankanady Circle,
Mangalore – 575 002,
Represented by its Managing Director,
Mr. Nasir Mohideen
2. Yamuna Homes & Infrastructures ®
A Partnership firm, having its
Office at 1st floor, Nalpad Building,
Mallikatta, Kadri,
Mangalore – 575 002,
Represented by its Managing Director,
Mr. Nasir Mohideen
3. The Karnataka Real Estate Regulatory Authority,
No.1/14, Silver Jubilee Block,
Unity Building, CSI compound,
Mission Road, Bengaluru-560 027.
Represented by its Secretary

...RESPONDENTS

(Smt Pavithra S Gowda Advocate for R-1 & R-2)
(R3-RERA served, unrepresented)

In APPEAL NO. (K-REAT) 159/2020
(RERA Appeal (old No.)230/2019)

1. Mr. M Ramachandra
S/o Late K.V. Muniyappa
Since dead by his LRS.,
- 1(a) Smt Susheela Devi S
W/o. Late M. Ramachandra
Aged about 69 years
(Amended V.C.O dated 08.09.2021)
2. Ms. Boomi Ramachandra,
D/o. Late M Ramachandra
Aged about 36 years,

Both residing at No.690,
'Sri Mahalakshmi', SVT Road,
Devasandra, K.R. Puram,
Bengaluru – 560 036.

...APPELLANTS

(By Sri.Vijay BNH for M/s Gerahalli Law Offices, Advocate)

AND

1. M/s. Westline Constructions & Developments Pvt. Ltd.,
A Company registered under the Companies Act,
Office at 1st floor, Mangalore Gate Building,
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2. Yamuna Homes & Infrastructures ®
A Partnership firm, having its
Office at 1st floor, Nalpad Building,
Mallikatta, Kadri,
Mangalore – 575 002
Represented by its Managing Partner,
Mr. Nasir Mohideen
3. The Karnataka Real Estate Regulation Authority,
Represented by its Secretary,
No.1/14, 2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
Mission Road, Bengaluru-560 027.

...RESPONDENTS

(Smt Pavithra S Gowda, Advocate for M/s KNS Legal for R1 & R2)
(R3-RERA served, unrepresented)

These appeals are filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, before the interim Tribunal (KAT) praying to set aside the order dated 3rd October, 2018 passed by the 3rd respondent-RERA, Bengaluru in Complaints Nos. CMP/180416/0000750 and CMP/180416/0000751. On establishment of this Tribunal from 2.1.2020, the appeals are renumbered as Appeal No.03/2020 and Appeal No.159/2020.

These appeals coming on for hearing this day, the Chairman, delivered the following:

J U D G M E N T

The appellants and respondents are common in both the appeals. Appellant Nos.1 and 2 in both the appeals are the complainants before the 3rd Respondent-RERA. During the pendency of these appeals, the 1st appellant expired on 03.01.2021 and his wife has been brought on record as Appellant No.1(a). His daughter has already been on record as Appellant No.2. It is stated that Appellant No.1 apart from his wife and daughter, had no other legal heirs.

2. The appellants had booked for residential flats in the project "WEST LINE SINGATURE" at Mangalore undertaken to be developed by Respondents 1 and 2- Promoters(hereinafter referred to as Promoters). They entered into an agreement with the promoters for Construction-cum-sale dated 09.08.2013. As there was inordinate delay in commencing the project and promoters failed to develop the project and deliver possession of the apartment to the appellants within the stipulated time as per the Construction-cum-sale agreement, the appellants filed two separate complaints before RERA, praying as under:

- "i) To repay the entire amount of Rs.5.00 crores (Rupees five crores only) which the responded No.1 had agreed and undertaken to pay the applicants way back on 21/10/2014 and 12/6/2015, plus interest at 18% p.a. calculated from the dates of making payments to Respondents i.e., August 2013 with compensation of Rs.2.00 crores (Rupees Two crores) as said below.
- ii) Or to refund sale consideration amount equal to the current value of property – e.g. 23,000 Sqft. Of super built up area i.e. $23,000 * 5,000/- =$ Rs. 11.50 crores with interest at 18% per annum on that amount, with compensation of

Rs.2 crores (Rupees Two Crores only) for causing losses, inconvenience, mental agony and harassment to the applicants because of the unlawful and malicious acts, defective services and unfair practices by the Respondents.

- iii) To award compensation for loss and/or injuries suffered by the applicants due to negligence, cheating, unlawful acts of the Respondents and also grant punitive damages.
- iv) To award mesne profit to applicants and to pay such sums as may be determined by the Hon'ble Authority with exemplary costs and expenses to meet the ends of justice,
- v) That the Respondents should be punished severely so that culprits of similar kind would be afraid to indulge in such unlawful and malicious activities.
- vi) And to grant such other reliefs in favour of the applicants as the Hon'ble Authority deems fit in the circumstances of the case, in the interest of justice and equity."

3. After registering the complaints, the RERA issued notice to the Respondent Nos.1 & 2- promoters, who appeared before the Authority through their counsel and filed their statement of objections. The learned Adjudicating officer of RERA to whom the complaints had been assigned for adjudication, by impugned order, holding that since the promoters had agreed to deliver proportionate land to the complainants in lieu of the flats allotted to them, closed the complaints. The operative portion of the impugned order passed by the learned Adjudicating officer order, reads as under:

"ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಡೆವಲಪರ್ ಇವರು ಫಿಯಾದುದಾರರಿಗೆ 2023 ರ ಸಾಲಿನಲ್ಲಿ ಪ್ರಾಜೆಕ್ಟ್ ಮುಕ್ತಾಯದ ಸಂದರ್ಭದಲ್ಲಿ ಫಿಯಾದುದಾರರಿಗೆ ಕೊಡಲು ಒಪ್ಪಿಕೊಂಡಿರುವ Proportionate Land ಅನ್ನು ಕೊಡಲು ಒಪ್ಪಿಕೊಂಡಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಫಿಯಾದುದಾರರು ಸಲ್ಲಿಸಿರುವ ಫಿಯಾದುದುಸಂಖ್ಯೆ: CMP/180416/0000750 ಮತ್ತು CMP/180416/0000751 ಅನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಲಾಗಿದೆ.

ಫಿಯಾದುದಾರರು ಡೆವಲಪರ್ಗೆ ಕೊಟ್ಟಿರುವ ಹಣವನ್ನು ವಾಪಸ್ ಕೊಡಿಸಿಕೊಡಬೇಕೆನ್ನುವ ಪ್ರಾರ್ಥನೆಯನ್ನು ತಿರಸ್ಕರಿಸಲಾಗಿದೆ."

4. Aggrieved by the said order, the appellants have preferred the above appeals praying to set aside the impugned order dated 03.10.2018 in complaint Nos. CMP/180416/0000750 and CMP/180416/0000751 passed by the learned Adjudicating Officer, RERA-3rd Respondent.

5. Sri. Vijay BNH for M/s Gerahalli Law Offices, learned counsel appears for appellants, Sri Manjunatha T.C for M/s KNS Legal learned counsel appears for Respondent No.1 & 2 and Respondent No.3 –RERA though served, remained absent.

6. Sri Vijay, Learned counsel for the appellants submits that the impugned order is liable to be set aside and matter is remitted back to RERA for reconsideration mainly on the ground that the learned Adjudicating Officer instead of directing the promoters to return the amount paid to them by the allottees along with interest and compensation, committed an error in closing the complaints stating that though the promoters have failed to complete the project and deliver possession, had offered to give proportionate land. The learned counsel further submits that in that event, the learned Adjudicating officer ought to have passed an executable order, but should not have closed the complaints as aforesaid.

7. The learned counsel further submits 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 with a direction to consider the I.As filed by the parties in the above appeals. The learned counsel further submits that the RERA may be directed to dispose of the complaints on time frame basis, as expeditiously as possible.

8. Whereas, learned counsel for Respondents 1 and 2 – promoters fairly submits that as per the decision of the Hon'ble Supreme court in NEWTECH case (*supra*), the impugned order passed by the learned Adjudicating Officer is without jurisdiction and therefore, the same may be set aside and the matter may be remitted to the RERA for fresh consideration, keeping open all contentions of the parties to be urged before RERA along with the I.A.s.

9. Heard the learned counsel for the parties and perused the impugned order and the records.

10. *Prima facie*, 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 (*supra*) the order passed by the learned Adjudicating is without authority and lacks jurisdiction. The Hon'ble Supreme court in the case of NEWTECH (*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 complaints.** 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".

10. Therefore, in view of the submissions made by the learned counsel for the appellants-allottees and the respondents-promoters 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 appeals, 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)***.

11. As could be seen from the reliefs sought in the complaints, the Complainants, have sought for composite reliefs of both refund of the amount with interest from the date of payment as well as compensation for loss and injuries suffered by the complainants due to negligence act of promoters and for punitive damages. In view of the Judgment of the Hon'ble Supreme court in NEWTECH case (supra) 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 complaints. At the same time, when it relates to 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. Therefore, the Authority is directed to treat the complaint as one filed under Form 'N' in respect of refund of amount with interest and forward a copy of the said complaint to the learned Adjudicating Officer for adjudicating the relief of compensation and punitive damages treating the same as one filed under Form 'O'.

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

ORDER

- (i) The appeals are allowed;
- (ii) The impugned order dated 3rd October, 2018 passed in CMP/180416/0000750 and CMP/180416/0000751 by respondent No.3 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) The Authority is directed to treat the complaint as one filed under Form 'N' in respect of refund of amount with interest and forward a copy of the said complaint to the learned Adjudicating Officer for adjudicating the relief of compensation and punitive damages treating the same as one filed under Form 'O';
- (iv) All the contentions of the parties are kept open to be urged before the Regulatory Authority;
- (v) In view of remanding the matter to the Authority, all I.As filed by the parties and pending before this Tribunal are rejected as they do not survive for consideration, reserving liberty to the parties to file appropriate applications , if necessary before the Authority and the Authority shall consider the same on merits and dispose of;
- (vi) Since the matter pertains to the year 2013, the Authority shall make an endeavor to dispose of the complaints as expeditiously as possible and at any rate within the outer limit of 45 days from the date of parties entering appearance;
- (vii) Since the appellants- allottees and respondents-promoters have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on **01.09.2022** without expecting further notice from RERA;

- (viii) In the event the Authority is not sitting in the said date the matter may be taken up on the next immediate sitting day;
- (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**

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