

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

DATED THIS THE DAY OF 17TH OCTOBER, 2022

PRESENT

HON'BLE JUSTICE 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) 58/2022

BETWEEN

Shrivation Towers Private Limited,
No.31, 2nd Main, T. Chowdaiah Road,
Near Bashyam Circle, Sadshivnagar,
Bengaluru-560 080.
Represented by its Authorized Signatory
Ramesh JC
Formerly at no./43, 4th Cross,
8th main, Sadashivnagar, B-10.

... APPELLANT

(Sri Joseph Anthony for M/s JSM Law Partners, Advocates)

AND

1. The Karnataka Real Estate Regulatory Authority
No.1/14, Ground floor,
Silver Jubli Block,
Unity Building, C.S.I Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
2. Mrs. Minakshi Ghosh,
Aged about 51 years,
D/o. R.K. Ghosh,

R/at. No.D-1212, Brigade Gardenia,
7th Cross, 9th Main, J.P. Nagar,
Bengaluru-560 078.

And also At
Omax Palm Green, Flat No. PPD 1104,
Sector MU, Greater Noida,
Uttar Pradesh-201 301.

...RESPONDENTS

(R1-RERA served, unrepresented)
(Sri. Vishwanath H, 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 03.08.2020 passed in Complaint No. CMP/191002/0004312 passed by respondent No-1 Adjudicating Officer, RERA.

This Appeal, coming on for pronouncement of judgment this day, the Hon'ble Administrative Member, delivered the following:

J U D G M E N T

The appellant who is a developer of a project by name "Sriram Green Field Phase-1" has undertaken the same for constructing residential apartments in the property bearing Survey Nos. 73/1, 73/2A, 74 & 81 situated at Bommanahalli Village, Bidarahalli Hobli, earlier Hoskote Taluk, presently Bangalore East Taluk has preferred this appeal challenging the order dated 03.08.2020 passed by the Adjudicating Officer RERA in complaint No. CMP/191002/0004312.

2. The 2nd Respondent Mrs. Minakshi Ghosh, has filed a complaint before RERA contending that she booked a flat bearing No.E-303, 3rd floor Tower E of building 1, in the project known as

"Sriram Green Field Phase-1" developed by the appellant-Shrivation Towers Private Limited. The 2nd Respondent entered into an agreement of sale and construction agreement on 08.07.2015, with the promoter for a sale consideration of Rs.15,09,000/-. In the sale agreement it is further mentioned that the sale consideration for schedule 'B' property will be arrived by mutual negotiation between the parties. Whereas in the complaint filed before RERA, the 2nd respondent mentioned an amount of Rs.43,43,129/- as total sale consideration. However the allottee/2nd respondent has paid Rs.20,08,185/- till the date of occupancy certificate as per the memo of calculation filed by the learned counsel for the appellant on 30.05.2022.

3. As per the construction agreement, the appellant-promoter has agreed to deliver possession on or before December, 2017 including the six month grace period. As the developer has failed to complete the project in time and deliver possession of the flat, the 2nd Respondent-allottee has filed a complaint before RERA seeking for delay compensation with possession of the apartment.

4. The learned Adjudicating Officer by the impugned order dated 03.08.2020 allowed the complaint and directed the appellant promoter to pay delay compensation on the total amount paid by the

2nd respondent towards purchase of a residential flat. The operative portion of the impugned order reads thus:

- "a) The complaint filed in CMP/191002/0004312 is hereby allowed.
- b) The developer is hereby directed to pay delay compensation on the total amount by the complainants towards purchase of flat @ 2% above the MCLR of SBI commencing from July 2018 till the date of possession is delivered. (MCLR to be calculated @ which is prevailing as on today)
- c) The developer is also directed to pay Rs.5,000/- as cost of this case."

5. Aggrieved by the impugned order dated 03.08.2020 passed by Adjudicating Officer, the appellant preferred above appeal.

6. Learned counsel Sri Joseph Anthony appeared for appellant and learned counsel Sri Vishwanath H appeared for 2nd Respondent-allottee. R1-RERA though served remained unrepresented.

7. The learned counsel for appellant submitted that Section 71 of the Act requires judicial approach to be adopted while adjudicating the dispute between the parties in the complaint. However, the order passed by the Adjudicating Officer is neither the result of judicious appreciation nor is a result of consideration of factors stipulated in Section 72 of the Act. Hence, the impugned order is illegal arbitrary and not in accordance with law and the same is liable to be set aside.

8. Learned counsel for Appellant further submitted that though the occupancy certificate was received in the month of August, 2019, the 2nd respondent-allottee failed to come forward to make payments and take possession of the apartment allotted to her.

9. The learned counsel for appellant further stated that the order passed by the Adjudicating Officer is the one passed without jurisdiction as held by the Hon'ble Supreme Court in its recent decision. As per Section 18 of the Real Estate (Regulation & Development) Act, 2016 (for short, the Act) learned Adjudicating Officer had no jurisdiction to adjudicate on the issues pertaining to the delay compensation. Hence, the appellant has preferred this appeal before this Tribunal.

10. When the matter was called on 29.09.2022, the learned counsel for the appellant filed a memo in the court stating 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 U.P AND OTHERS reported in (2021 SCC ONLINE SC 1044)***, the appeal has to be allowed and the matter has to be remanded to RERA for reconsideration in the light of the aforesaid Judgment. Further in the said memo, the appellant also prayed that the amount deposited by the appellant in accordance with Section

43(5) of the RERA Act, 2016 may be released in favour of the appellant.

11. Heard arguments. Perused the appeal memo, impugned order and the documents produced, and in view of the same following points raised for our consideration.

Point No. 1 : Whether the impugned order passed by Adjudicating Officer lacks jurisdiction over the subject matter of the appeal?

Point No. 2 : Whether the interference of the tribunal is warranted?

Point No. 3 : What Order?

12. **Point No. 1 & 2** : In view of the above submission of the learned counsel for the appellant, we deem it just and proper to refer to the relevant para of the decision 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 (2021 SCC OnLine SC-1044)*** wherein, in paragraph 86, it is held as follows:

"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”.

13. As per the Judgment of the Hon'ble Apex Court referred supra, the claim for delay compensation in delivering possession of the flat falls within the jurisdiction of the Authority and the claim for compensation with or without interest falls within the jurisdiction of the Adjudicating Officer. Accordingly point No. 1 & 2 are answered in the affirmative.

14. In view of the memo filed by the learned counsel for the appellant-developer and the dictum of the Hon'ble Supreme Court referred to Supra, we pass the following:

ORDER

- i) The appeal is allowed in part;

- ii) The impugned order dated 03.08.2020 passed by the Adjudicating Officer, RERA in the complaint No. CMP/191002/0004312 is hereby set aside;
- iii) The matter is remanded to the RERA for consideration of the complaint filed by the complainant-2nd respondent afresh treating the same as one filed in form No. 'N' in the light of the observations made in paragraph-86 of the Judgment of the Supreme Court rendered in the case of **M/S Newtech Promoters and Developers Pvt Ltd., -vs- State of U.P and others (2021 SCC OnLine SC-1044)**;
- 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 after parties entering appearance.
- v) As the appellant and 2nd Respondent have already entered appearance through their counsel, they shall appear before the RERA on 02.11.2022 without expecting further notice from RERA and extend co-operation with RERA so as to enable the authority to dispose of the appeal in time.
- vi) In the event the Authority is not sitting on the said date, the matter may be taken up on the next date of sitting.
- vii) In view of disposal of the Appeal, pending I.As, if any, do not survive for consideration and shall stand disposed of;
- viii) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in compliance of the proviso to Section 43(5) of the RERA Act, along with interest, if any, accrued thereon, by issuing either a cheque or DD in the name of appellant-company and shall hand over the cheque or DD to the authorized signatory of the appellant-company who has signed the vakalath and appeal

memo, on furnishing necessary documents and by following due procedure

- ix) Registry is hereby directed to comply with the provision of Section 44(4) of the Act and to return the record to RERA, if received.

No order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

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

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

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