

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

DATED THIS THE DAY OF 04TH NOVEMBER, 2022

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

APPEAL No. (K-REAT) 78/2022

BETWEEN

M/s Purvankara Limited
A Company incorporated under the
Provisions of the Companies Act, 1956
Having its registered office at:
No. 130/1, Ulsoor Road
Bangalore-560042
Represented by its Authorised Signatory
Jatin Ujjni C.S

... APPELLANT

(Sri Rudran for M/s JSM Law Partners, Advocate)

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. Mr. Niranjana Goyal,
S/o Late Mr. Banshidhar Goyal,
Aged about 44 years
Flat No. RBA 503, PurvaRiveria
Old Airport- Varthur Road
Marathalli Bridge
Bangalore-560037.

...RESPONDENTS

(R1-RERA served, unrepresented)
(Respondent No.2- party-in-person)

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 09.11.2021 passed in Complaint No. CMP/190525/0003132 passed by respondent No.1-Adjudicating Officer, RERA.

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

J U D G M E N T

The appellant who is a developer of a project has preferred this appeal challenging the order dated 09.11.2021 passed by the Adjudicating Officer RERA in complaint No. CMP/190525/0003132, directing payment of delay compensation by way of interest to the allottee-Respondent No.2.

2. The 2nd Respondent-allottee and his wife being desirous of purchasing of flats, entered into an Agreement of Sale and Construction Agreement dated 17th March, 2014 for purchase of two flats bearing Nos.E-1001 and E-1002 one three bedroom and one single bedroom respectively on the 10th floor, in E Block, of multi-storied residential apartment in the project known as "Purva Westend" undertaken to be developed by the appellant-promoter.

3. As per the said agreements, it was agreed between the parties that the possession of the apartments would be delivered to the 2nd respondent within 36 months from the date of the agreement to sell with a grace period of six months. As the promoter has failed to complete the project in time and was unable to deliver possession of the flats as agreed in the Agreements of sale, the 2nd Respondent-allotee has filed a complaint before RERA seeking for delay compensation with possession of the apartments.

4. The learned Adjudicating Officer by the impugned order dated 09.11.2021, partly allowed the complaint and directed the appellant-promoter to pay delay compensation on the respective amounts paid by the 2nd respondent towards purchase of two residential flats. The operative portion of the impugned order reads thus:

- "i) The complaint filed by the complainant bearing No. CMP/190525/0003132 is partly allowed against the respondent.
- ii) The respondent is hereby directed to pay delay compensation to the complainant by way of interest @2% per annum above the MCLR of SBI from 01.01.2019, on respective amounts from the dates of receipt of respective amounts till 17.02.2020.
- iii) The respondent is also 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."

5. Aggrieved by the impugned order dated 09.11.2021 passed by Adjudicating Officer, the promoter has preferred above appeal.

6. Learned counsel Sri Rudran for M/s JSM Law Partners appeared for appellant and 2nd Respondent-allottee appeared as party-in-person. R1-RERA though served remained unrepresented.

7. Today, the learned counsel for the appellant 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 U.P AND OTHERS reported in (2021 SCC ONLINE SC 1044)***, the appeal has to be allowed and Adjudicating Officer has no jurisdiction to pass the order and the matter has to be remanded to RERA for reconsideration in the light of the aforesaid Judgment. Further the appellant also prayed that the amount pre-deposited by the appellant with this Tribunal in compliance of Section 43(5) of the RERA Act, 2016 may be released in favour of the appellant.

8. The 2nd Respondent who appears as party-in-person does not dispute the position of law laid down by the Hon'ble Supreme Court but he only submits that in the event of this Tribunal setting aside the order and remitting the matter to the Authority, the Authority may be directed to dispose of the matter as expeditiously as possible. His submission is placed on record.

9. Heard arguments on both sides and perused the impugned order and in view of the same following points arise 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?

10. **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”.

11. As per the Judgment of the Hon'ble Apex Court referred to 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.

12. In view of the submissions made by the learned counsel for the appellant-promoter and the dictum of the Hon'ble Supreme Court in the case of NEWTECH referred to supra, we pass the following:

ORDER

- i) The appeal is partly allowed;
- ii) The impugned order dated 09.11.2021 passed by the Adjudicating Officer, RERA in the complaint No. CMP/190525/0003132 is hereby set aside;

- iii) The matter is remanded to the RERA for consideration of the complaint filed by the 2nd respondent-complainant 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 2014, the Authority shall make an endeavor to dispose of the complaint as expeditiously as possible and at any rate within the outer limit of 40 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 28.11.2022 as requested by the 2nd Respondent 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 immediate 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**

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