

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

DATED THIS THE 30th DAY OF JANUARY, 2023

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

FR NO. (K-REAT) 99/2022

BETWEEN:

Air Force Naval Housing Board,
Air Force Station, Race Course,
New-Delhi-110003,
represented by its Assistant Manager Legal &
Authorized Signatory,
Mr. Bhupinder Kumar.

...APPELLANT

(Sri Ramachandar Desu, Advocate)

AND

1. Karnataka Real Estate Regulatory Authority,
1/14, Second Floor,
Silver Jubilee Block,
Unity Building Backside, CSI Compound,
3rd Cross, Mission Road,
Bengaluru 560 027,
Represented by its Secretary.

2. Dr. G Suri Babu,
Residing at No.11 & 11A,
Shabhari Layout,
Opp SGT, Sadaramangala,
Kadugodi PO,
Bangalore - 560067.

...RESPONDENTS

(R1-RERA served, remained absent
Sri Nagesha Poojari Y, Advocate for R.2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal praying to call for the records and set aside the order dated 05.08.2022 passed in CMP/201127/0007033 by respondent No.1- RERA Authority.

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

J U D G M E N T

The Promoter of a real estate project has preferred this appeal challenging the impugned order passed by the Authority dated 5th August, 2022 in CMP/201127/0007033.

2. The appellant- promoter is engaged in the business of developing real estate projects and one such project developed by the promoter is "JAL VAYU TOWERS". The 2nd respondent-allottee booked an apartment in the said project during 2018 and paid certain amounts towards advance. However, as the promoter did not execute any agreement of sale after receipt of advance amount, the allottee was forced to withdraw from the project and applied for cancellation of allotment, which was duly accepted by the promoter. The allottee, alleging that in spite of withdrawing from the project, the promoter did not refund the amount to him, filed a complaint before RERA seeking refund of the amount, by exiting from the project.

3. The Authority, after hearing the complainant and the learned counsel for the promoter, perusing the records and documents produced in

the case, passed the impugned order. The operative portion of the said order reads as under:

i) "In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/201127/0007033 and CMP/201127/0007034 are allowed.

ii) Complaint in CMP. No., 7033 is entitled for refund of Rs.24,34,000/- with prescribed interest at the rate of SBI MCLR+2%.

iii) Complaint in CMP. No. 7034 is entitled for refund of Rs.22,31,600/- with prescribed interest at the rate of SBI MCLR + 2%.

iv) The respondent is directed to refund the amount received by both the complaints herein with prescribed interest from the date of payment made by the complainants till the repayment of amount to the complainants."

4. Aggrieved by the said order, the appellant-promoter had preferred this appeal on 03.11.2022.

5. This is a case of return of amount paid by the 2nd respondent-allottee along with interest as awarded by the Authority. In view of mandatory requirement of proviso to Section 43(5) of the Act, the appellant is required to deposit the total amount payable to the allottee as per the impugned order before the appeal is entertained. Accordingly, the office, along with other objections had raised an objection with regard to non-deposit of the total amount payable to the allottee as per the impugned order.

6. That on 09.11.2022 and 24.11.2022, time was granted to the appellant to comply with the office objections. On 28.11.2022, the appellant has deposited only part amount payable to the allottee as per the impugned order. However, at the request of learned counsel for the appellant, further time was granted to the appellant for compliance of office objections including deposit of the balance amount payable to the allottee as per the impugned order. That on 11.1.2023, the learned counsel for the appellant submitted that the parties have settled the matter and sought time to file settlement Memo.

7. The appeal is still at FR stage. When the matter is listed for orders today regarding non-deposit of balance amount payable to the allottee as per the impugned order, Sri Ramachandar Desu, learned counsel for the appellant/promoter and Sri Nagesha Poojari Y learned counsel appearing for 2nd Respondent jointly submitted that the appellant-promoter and the 2nd respondent-allottee have got the dispute settled between them amicably out of court and hence the Tribunal may be pleased to dispose of the appeal as settled out of court. A memo along with the Memorandum of Settlement dated 20.1.2023 signed by the appellant, Respondent No.2 and their respective counsel is filed.

8. In the Joint Memo of Settlement it is stated as under:

“The above case has been settled out of court for an amount of Rs.30,09,363/- (Rupees Thirty Lakhs Nine Thousand Three

Hundred and Sixty Three) only. Hence this amount of Rs.30,09,363/- may be pleased to released to the Respondent No.2 and balance amount may be released to the Appellant. The total deposited amount of Rs.35,31,891/-."

9. In view of the above submissions, the following:

ORDER

- i) Appeal is dismissed as settled out of court;
- ii) In view of dismissal of the appeal, pending I.As, if any, stand disposed of as they do not survive for consideration;
- iii) That as per the Joint Memo of settlement entered between the appellant and the 2nd Respondent, out of the amount of Rs.35,31,891/-(Rupees Thirty Five Lakhs Thirty One Thousand Eight Hundred and Ninety One Only) deposited by the appellant with this Tribunal while preferring the Appeal in part compliance of proviso to Section 43(5) of the Act, the Registry is hereby directed to release a sum of Rs.30,09,363.00 (Rupees Thirty Lakhs Nine Thousand Three Hundred and Sixty Three Only) in favour of the 2nd respondent by issuing either a cheque or DD in his favour and release the balance amount along with interest, if any, accrued thereon, in favour of the appellant-promoter by issuing either a cheque or DD in the name of the appellant-company and shall hand over the cheque or DD to the Assistant Manager Legal & Authorised Signatory of the appellant-company who has signed the appeal Memo and vakalath, on furnishing necessary documents and by following due procedure;

- iv) Registry is directed to comply with provision of Section 44(4) of the Act and to return the records 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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