

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

DATED THIS THE 21st DAY OF APRIL, 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

APPEAL NO. (K-REAT) 109/2022

BETWEEN:

Mr.Mahesh Sudhakaran,
S/o EK Sudhakaran,
Aged about 38 years,
R/at No. G-21, Sandeep Vihar
Army Housing Complex,
Kannamangala White filed,
Bangalore - 560 067

Represented by the GPA Holder,
E K Sudhakaran
R/at No.G-21, Sandeep Vihar
Army Housing Complex,
Kannamangala White filed,
Bangalore - 560 067

...APPELLANT

(By Sri Girish Kumar for Invicta Law Associates, Advocate)

AND

1. The Secretary,
The Karnataka Real Estate Regulatory Authority,
Second Floor, Silver Jubilee Block,
Unity Building, C.S.I Compound,
3rd Cross, Mission Road,
Bengaluru 560 027.
Represented by Secretary

2. Antevorta Developers Pvt Ltd.,
Represented by Ms. Kokila. R and
Mr. Anukool Jain,
House of Hiranandani, 757/B,
100 Feet Road, HAL 2nd Stage,
Indiranagar, Bangalore -560 038

#514, Dalamal Towers,
Nariman Point, Mumbai – 400 021

...**RESPONDENTS**

(Sri Gowthamdev C Ullal, Advocate for R1-RERA
Sri S C Venkatesh, Advocate for R2)

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 09th November, 2022 in CMP/201127/0007137 by RERA Authority, 1st Respondent.

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

J U D G M E N T

The 2nd Respondent-Promoter is engaged in the business of developing Real Estate Projects and one such project developed by the promoter is "**Glen Classic**" in the House of Hiranandani situated in Hebbal, Bangalore.

2. The Appellant-allottee booked an apartment bearing No. 1104, 11th Floor, C Block of the said project and entered into an agreement of sale and Construction Agreement both dated 31.1.2017 wherein the promoter had agreed to deliver possession of the apartment to the allottee within 46 months with a grace period

of six months. As the promoter did not complete the project and deliver possession of the apartment within the stipulated period as agreed between the parties in the agreement of sale, the allottee filed the complaint before the Authority for refund of the amount with interest.

3. The RERA Authority, after hearing the complainant and the learned counsel for the promoter, perusing the records and documents furnished in the case, passed the impugned order. The operative portion of the said order reads as under:

"In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/201125/0007124,CMP/201127/0007137 ,CMP/201127/0007138, CMP/210118/0007468, CMP/210118/0007469, CMP/210118/0007470, CMP/210203/0007565, CMP/210604/0007979, CMP/210626/0008061 & CMP/210107/0007412 are hereby dismissed.

No order as to costs".

4. The appellant-allottee being aggrieved by the said order, has preferred this appeal challenging the impugned order dated 09th November, 2022 in CMP/201127/0007137 by RERA Authority, 1st Respondent praying the Tribunal to refund the amount paid by the allottee towards sale consideration along with interest.

5. Sri Girish Kumar, learned counsel appeared for the appellant-promoter. Sri Gowthamdev C Ullal & Sri S C Venkatesh learned counsel appeared for the RERA and Respondent No.2 respectively.

6. That subsequent to filing of the appeal, appellant-allottee and Respondent No.2-promoter, after due deliberation and discussion of their dispute pertaining to the complaint in CMP/201127/0007137 and this appeal, have got the same settled amicably by reducing the terms and conditions of settlement into writing by way of filing a Joint Memo of Settlement. The Joint Memo of Settlement signed by the authorized signatory of the 2nd respondent-company, learned counsel for the 2nd respondent, and Sri E K Sudhakaran, GPA Holder of the appellant who has signed the appeal memo, Vakalath and Joint Memo of settlement, is taken on record.

7. Mr Rohit G, a colleague of Sri Girish Kumar, learned counsel for the appellant, submits that as his senior is out of station, he may be permitted to sign the Joint Memo of Settlement in the office. Learned counsel for the appellant is permitted to sign the Joint Memo of Settlement in the office.

8. The terms of Joint Memo of Settlement are read over to the parties in the language known to them and they have submitted that the settlement entered into between them is on their free will and volition and there is no force, misrepresentation, fraud, undue influence or coercion and that they have no claim of whatsoever nature against each other, except the claim made in the complaint and in this appeal and they submit that the appeal may be disposed of in terms of Joint Memo of Settlement.

9. In addition to this, learned counsel for the 2nd Respondent submits that the parties have signed the Joint Memo of settlement in his presence. The learned counsel further submits that in the joint memo of settlement as per the agreement of the parties, after deducting the statutory and applicable charges a sum of Rs.42,09,377.26/- (Rupees Forty Two Lakhs Nine thousand three hundred and seventy seven and twenty six paise only) is paid to the appellant by way of DD No. 540754 dated 20.04.2023 drawn on ICICI Bank, Indiranagar Branch, Bangalore, which will be in full and final settlement of the refund amount with interest as per the impugned order and Sri E K Sudhakaran, GPA Holder of the appellant who is none other than the father of the appellant and who has signed the appeal memo, Vakalath and Joint Memo of settlement, has received the said Demand Draft in the Court.

10. In the Joint Memo of Settlement, it is agreed that the appellant shall handover all the original documents in his possession in respect of the above flat to the 2nd Respondent and further undertakes to execute deed of cancellation.

11. In view of the above submissions, we pass the following:

ORDER

- i) Appeal is disposed of in terms of the Joint Memo of Settlement;
- ii) The Joint Memo of Settlement filed by the parties is ordered to be treated as part and parcel of this order;
- iii) Parties shall discharge their respective obligations enumerated in the Joint Memo of Settlement in order to give effect to the terms of compromise and to avoid unnecessary litigation in future;
- iv) In view of disposal of the appeal in terms of Joint Memo of Settlement, pending I.As, if any, stand disposed of as they do not survive for consideration;
- v) Office while issuing certified copy of the order, at the instance of any of the parties, shall issue the same along with copy of the Joint Memo of Settlement;

vi) 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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