

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

**FR No. (K-REAT) 43/2023**

**DATED THIS THE 30<sup>TH</sup> DAY OF MARCH 2023**

**BETWEEN**

Purvankara Limited  
A Company incorporated  
Under the provisions of the  
Companies Act, 1956  
Having registered office at  
No.130/1 Ulsoor Road,  
Yellappa Chetty Layout  
Yellappa Garden,  
Bengaluru Urban,  
Bengaluru – 560 042.

**... APPELLANT**

**AND**

1. The Karnataka Real Estate Regulatory Authority  
No.1/14, Ground Floor,  
Silver Jubli Block, Unity Building,  
CSI Compound, 3<sup>rd</sup> Cross,  
Mission Road,  
Bengaluru - 560 027.  
By its Secretary.
2. Mr. Adarsh Nahata,  
4033, Sobha Iris Condominium  
Bellandur (Near Sakra Hospital)  
Bengaluru – 560 103.

**...RESPONDENTS**

**Hon'ble Judges/Coram**

**HON'BLE SRI K P DINESH, JUDICIAL MEMBER  
AND  
HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**Counsel:**

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

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 25.08.2020 passed in Complaint No.CMP/190728/0003748 passed by respondent No-1 Adjudicating Officer.

This Appeal, coming on for orders this day, the Judicial Member, delivered the following:

**J U D G M E N T**

The appellant who is a promoter of a Real Estate project known as "Purva Westend" has preferred this Appeal on 16.02.2023 challenging the order dated 25.08.2020 passed in Complaint No. CMP/190728/0003748 by the learned Adjudicating Officer – 1<sup>st</sup> Respondent.

2. The complainant, who is an allottee of a flat in the said project, alleging that the promoter though in the sale deed dated 27.08.2019 has mentioned that the flat sold to the allottee measures

carpet area of 1280.16 sq.ft, but in fact the flat sold to the allottee was very much less than the agreed measurement, filed a complaint seeking the relief of return of amount collected towards excess carpet area.

3. The learned Adjudicating officer, after hearing the parties, holding that since the dispute between the parties is with regard to the factual aspect of measurement of carpet area of the flat sold to the allottee, appointed an Engineer attached to the Authority for submitting expert opinion. Accordingly, the Executive Engineer of the Authority, after visiting the spot and taking actual measurements of the flat in question in presence of the parties, submitted his report and opined that the net carpet area actually sold was 1216.92 sq.ft. and not 1280.16 Sq.ft. as mentioned in the sale deed and there is shortage of 63.24 sq.ft. Thus, based on the report of the Engineer, the learned Adjudicating officer passed the impugned order. The operative portion of the impugned order reads as under:

"a) The complaint filed by the complainant bearing no. CMP/190728/0003748 is hereby allowed in part.

b) The developer shall return the excess amount collected on the excess carpet area within 30 days from today. (i.e., the price fixed for per Sq. Ft., to the extent of 63.24 Sq. ft.) if not, it will carry the interest @ 2% above the MCLR of SBI from 31<sup>st</sup> day till the amount is paid".

4. This is a case of return of excess amount paid by the 2<sup>nd</sup> respondent-allottee. 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 heard.

5. This appeal was filed on 16.02.2023 and the registry has placed it before the bench on 27.2.2023 for orders regarding the non-compliance of office objections. There were four office objections and the office objection No.1 is regarding non-deposit of statutory amount as per the impugned order under Section 43(5) of the Act. The case was posted to 17.03.2023 granting time finally up to 14.03.2023 for appellant to comply office objection regarding pre-deposit and further time was also granted on 17.03.2023 up to 27.03.2023. The case is posted today for orders regarding dismissal of the appeal for default in compliance of the statutory deposit.

6. Today, Sri Rudhran, learned counsel appearing for appellant submitted that some more time may be granted to comply the office objections.

7. That proviso to sub-Section (5) of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (for short the Act) contemplates pre-deposit by a promoter while filing an appeal. On this aspect of the matter, the Hon'ble Supreme court of India 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)***, at paragraphs 136 & 137 has held as follows:

“136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfillment of precondition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.”

8. That in spite of granting sufficient opportunity, the appellant has not complied the office objections, particularly, the statutory deposit as mandated under proviso to Section 43(5) of the Act. In view judgment of the Hon'ble Supreme Court in NEWTECH case (supra) there is no scope for granting further time. Hence, we find no good ground to grant further time.

9. Accordingly, in view of the law laid down by the Hon'ble Apex court, we pass the following:

**ORDER**

- 1) Appeal is dismissed for non-compliance of office objections, particularly, non-depositing of the total amount payable to the allottee as per the impugned order as contemplated under proviso to Section 43(5) of the RERA Act and;
- 2) In view of dismissal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration.
- 3) The Registry is hereby directed to comply with Section 44(4) of the RERA Act and return the records of the RERA, if received.

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

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