

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

DATED THIS THE 10TH DAY OF APRIL 2023

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

FR No. (K-REAT) 53/2023

BETWEEN

M/s. Shivparvathi Constructions,
#24, HMT Factory Main Road,
Opp: HMT Factory
Bangalore-560013
Represented by authorized signatory
Mandar Mohan Mungale

... APPELLANT

(By Mr. Mandar Mohan Mungale, Authorised Representative-Absent)

AND

1. The Karnataka Real Estate Regulatory Authority
#1/14, 2nd Floor,
Silver Jubilee Block, Unity Building,
Backside CSI Compound, 3rd Cross,
Mission Road,
Bengaluru - 560 027.
Represented by its Secretary.

2. D S Rudramuni

3. Geetha M

Both 2 & 3 are residents of
SJM Badavane Layout,
Baramasagara
Chitradurga-577519

...RESPONDENTS

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 29.12.2022 passed in Complaint No.CMP/200130/0004909 passed by respondent No-1 Authority.

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

J U D G M E N T

The appellant who is a promoter of a Real Estate project known as "The Orchard" has preferred this Appeal on 03.03.2023 challenging the order dated 29.12.2022 passed in Complaint No. CMP/200130/0004909 by the Authority – 1st Respondent.

2. The 2nd and 3rd respondents –allottees who intended to purchase a flat in the said project, entered into an agreement of sale dated 16.04.2015 with the promoter in respect of Flat bearing No. 203 in Farkleberry block, second floor of the said project. That the approximate date for completion of the project and delivery of possession of the flat to the allottees as agreed by the promoter including the grace period of six months was on or before 16.04.2017.

3. The allottees alleging that as the promoter failed to complete the project and deliver possession of the flat as stipulated in the agreement of sale, filed a complaint before RERA seeking delay compensation.

4. That pursuant to the notice issued to the promoter, they appeared before the Authority and denied the allegations made by the complainant and contended that there is no delay in delivering possession of the flat as alleged by the allottee.

5. The Authority after considering the complaint, statement of objections and hearing the parties, passed the impugned order, the operative portion of which 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/200130/0004909** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay interest on delay period on the amount of **Rs.50,11,552/-** calculated at the rate of 9% per cent from **16.04.2017 to 30.04.2017**. Further, at the rate of SBI MCLR + 2 per cent from **01.05.2017** till **21.11.2019**.

2. The respondent is hereby directed to register the residential apartment bearing No.**203 in the project "The Orchard"** to the complainants immediately upon receiving the balance amount, if any. The net balance amount, if any, shall be after deduction of delay period interest. After registration of sale deed, the respondent shall hand over the possession of the same to the complainant.

3. The respondent is directed to register and hand over possession and pay interest on delay period to the complainant within 60 days from the date of this order. The complainants are at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs."

6. This is a case of payment of interest for delay in delivering the possession of the flat to the allottees. 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.

7. This appeal was filed on 03.03.2023 and the registry has placed it before the bench on 08.03.2023 for orders regarding the non-compliance of office objections. Although there was no representation for the appellant on the said date, in order to give an opportunity to the appellant, the matter was adjourned to 27.03.2023 for compliance of office objections, specially objection relating to pre-deposit of statutory amount as mandated under proviso to Section 43(5) of the Act, failing which, as to why appeal should not be dismissed for non-deposit of statutory amount and for non-compliance of other office objections and matter was directed to be listed on 27.03.2023.

8. Once again on 27.03.2023 at the request of the appellant time was granted up to 10.04.2023 for compliance of office objections and deposit of statutory amount.

9. Today, the matter is called out neither the appellant is present nor office objections are complied with.

10. 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 of statutory amount 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.”

11. That in spite of granting sufficient opportunity, the appellant has not complied the office objections, specially, objection relating to pre-deposit of statutory amount as mandated under proviso to Section 43(5) of the Act. 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, specially for non-depositing of the total amount payable to the allottees as per the impugned order as mandated 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 CHAIRMAN**

**Sd/-
HON’BLE JUDICIAL MEMBER**