

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

**DATED THIS THE 23<sup>rd</sup> DAY OF MAY, 2023**

**PRESENT**

**HON'BLE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

**HON'BLE K P DINESH, JUDICIAL MEMBER**

**AND**

**HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL No.(K-REAT)- 44/2023**

**BETWEEN:**

C Sasikala  
Aged 58 years,  
Residing at MIG 39,  
3<sup>rd</sup> Floor, TNHB Flats,  
4<sup>th</sup> Avenue, Indiranagar,  
Chennai – 600 020,  
Tamil Nadu.

**....APPELLANT**

(By Sri. Vikram Unni Rajagopal, Advocate)

**AND**

1. Rishi Kumar  
No.400/1, 14<sup>th</sup> cross,  
2<sup>nd</sup> Block, RT Nagar,  
Bengaluru – 560 032

2. HVS Construction  
Eden Au Lac Apartments,  
Old Madras Road,  
Bengaluru – 560 038,  
Represented by H.S.Gopal

3. Karnataka Real Estate Regulatory Authority,  
Having office at: 2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru- 560 027.  
Represented by its Secretary

**....RESPONDENTS**

(Sri Arnav Bagalwadi for Kuppot Legal Firm, Advocate for R1  
R2- Notice Served, unrepresented  
Sri Gavin Ponnanna K.B. for Sri I.S.Devaiah, Advocate for R-3)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Karnataka Real Estate Appellate Tribunal, Bengaluru, to set aside the impugned order dated 21.12.2022, in Complaint No.CMP/UR/221006/0010051 passed by the K-RERA, Respondent No.3.

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

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

This appeal is by an allottee of a flat bearing No. 25, in the II floor of Block-D in a real estate Project known as 'KRISHNA LEGACY" (formerly known as HVS Park View Apartments) undertaken to be developed by the promoter, situated at Sy. No.27, Matadahalli, Corporation Khatha No.400/1, Division No.82, 14<sup>th</sup> cross, 3<sup>rd</sup> Main, 2<sup>nd</sup> Phase RT Nagar, Bengaluru, challenging the impugned order dated 21<sup>st</sup> December, 2022 passed by the Karnataka Real Estate Regulatory Authority, Bengaluru (for short 'RERA') in Complaint No. CMP/UR/221006/0010051 rejecting the Complaint filed by the appellant for return of the amount and compensation or possession of the flat.

#### **Facts of the case:**

2. The appellant who is an allottee of a flat in the aforesaid real estate project has preferred this appeal contending that the land owner- late K.Suresh, predecessor of Respondent No.1, had entered into a Development Agreement with Respondent No.2- promoter, who is engaged in the business of developing real estate projects, for development of the aforesaid project. That on coming to know of the project, the allottee booked a three bed-room flat as stated supra and entered into an Agreement of sale and Construction Agreement dated 30.07.1999 with the predecessor of Respondent Nos. 1 and 2. In the said agreements, it was agreed between the parties that the possession of the flat would be delivered to the allottee on 31.12.1998. That after entering into Agreement of sale with the promoter, the allottee claims to have paid a total sum of Rs.5,50,000/- towards sale consideration.

3. It is the case of the appellant that in spite of paying the amount as above and the promoter having agreed to deliver possession of the flat before 31.12.1998, has failed to complete the project and hand over possession of the flat. It is also contended that the project is almost abandoned. However, it is stated that during 2021 the 1<sup>st</sup> respondent having taken over the project has completed the same by engaging external subcontractors and is advertising the flats for sale without mandatorily registering the project with the RERA under the provisions of RERA Act, 2016.

Hence, she was constrained to file a complaint before RERA, praying for return of the amount and compensation or possession of the flat.

4. The Authority, after issuing notice to the respondents, by order dated 21.12.2022 closed the case on point of jurisdiction. The operative portion of the order of the Authority reads thus:

“R-1 Land owner present

The case is of 1995 vintage. RERA jurisdiction does not apply.

Case is closed on the point of jurisdiction”

5. We have heard Sri Vikram Unni Rajagopal, learned counsel appearing for the appellant, Sri Arnav Bagalwadi for Respondent No.1 and learned counsel appearing for RERA and perused the documents produced along with the memorandum of appeal.

6. The learned counsel for the appellant, apart from reiterating the grounds urged in the memorandum of appeal submits that admittedly, the project in question was not completed prior to the coming into force of the Act and Rules inasmuch as in the year 2021 the 1<sup>st</sup> respondent had issued advertisement for sale of the flats in the project without registering the said project with the RERA. However, the Authority without properly considering the averments of the complaint and the submissions of the allottee, passed the impugned order which is not a speaking order as no reasons are

assigned to close the complaint on the point of jurisdiction. Learned counsel contends that in the first instance, the Authority without deciding the issue as to whether the project is liable to be registered or not, ought not to have rejected the complaint.

7. Learned counsel for the appellant pointing out to the provisions of Section 38(2) of the Act and Rule 29(2)(i)(b) of the Karnataka Real Estate (Regulation & Development) Rules, 2017 (for short, the Rules) submits that the Authority without affording an opportunity to the appellant as mandated under Section 38 (2) of the Act and without following the procedure prescribed under Rule 29 (2)(i)(b) of the Rules has rejected the complaint, without assigning any cogent reasons.

8. In support of the submissions, the learned counsel for the appellant relying on a ruling of the Hon'ble Supreme court in the case of SECRETARY AND CURATOR, VICTORIA MEMORIAL HALL Vs. HOWRAH GANATANTRIK NAGRIK SAMITY AND OTHERS – reported in **(2010) 3 Supreme court cases 732**- paras 40, 41 and 42, submits that the impugned order passed by the Authority is not a speaking order and is non-est in the eye of law and is liable to be set aside.

9. On these grounds, the learned counsel submits that the impugned order is liable to be set aside and the matter be remanded

to the Authority to consider the complaint of the appellant afresh, in accordance with law.

10. On the other hand, learned counsel appearing for respondent No.1 submits that in the facts and circumstances of the case, the impugned order passed by the Authority holding that it is a case of 1995 vintage and the provisions of the RERA Act and Rules do not apply to the case, is just and proper. But, however, he fairly admits that the order does not contain the reasons and therefore submits that in the event of the Tribunal allowing the appeal, setting aside the impugned order and remitting the matter to the Authority on the ground that it is a non-reasoned order, the Authority may be directed to reconsider the matter afresh after affording an opportunity to the 1<sup>st</sup> respondent and to dispose of the complaint within a time frame.

11. Whereas Sri Gavin Ponnanna for Sri I.S Devaiah, learned counsel appearing for Respondent No.3-RERA though tried to defend the order, but was unable to substantiate it.

12. In view of the above, the Point that arises for our consideration is:

"I) Whether the impugned order dated 21.12.2022 passed by the Karnataka Real Estate Regulatory Authority is sustainable in law?"

II) What order?"

13. At this stage, at the cost of repetition, it is just and necessary to refer to the impugned order passed by the RERA which reads as under:

"R1- Land owner present.

The case is of 1995 vintage. RERA jurisdiction does not apply.

Case is closed on the point of jurisdiction"

14. Further, to adjudicate the point raised by us, it is also necessary for us to extract the relevant portions of Section 38(2) of the Act and Rule 29(2)(i)(b) of the Rules which read:

" 38. (1)xx xx xx.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure."

Rule 29(2)(i)(b) of the Rules:

**"29. Filing of complaint and manner of holding an inquiry by Regulatory Authority.-** (1) Any aggrieved person may file a complaint with the

Regulatory Authority for any violation under the Act or the rules and regulations made there under xxxx xx

(2) The regulatory authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner, namely:-

(a) xx xx

(b) xx xx

(i) on the date so fixed, the regulatory authority upon consideration of the evidence produced before it and other records and submissions is satisfied that -

(a) the respondent is in contravention of the provisions of the Act or the rules and regulations made there under it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made there under; and

(b) the respondent is not in contravention of the provisions of the Act or the rules and regulations made there under the regulatory authority may, **by order in writing, dismiss the complaint, with reasons to be recorded in writing.**

*{emphasis supplied}*

15. Further, in the case of SECRETARY AND CURATOR, VICTORIA MEMORIAL HALL (*supra*) in paragraphs 40, 41 and 42 the Hon'ble Supreme court has held as follows:

"40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its



reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [*Vide State of Orissa Vs. Dhaniram Luhar AIR 2004 SC 1794; and State of Rajasthan Vs. Sohan Lal & Ors. (2004) 5 SCC 573*].

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [*Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Fajj Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422*].

42. Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

16. A careful perusal of the impugned order would reveal that the Authority has not at all assigned any reason much less valid reason for rejection of the complaint filed by the appellant. RERA being a quasi judicial Authority is expected to assign reasons while

passing the impugned order rejecting the complaint filed by the appellant.

17. Therefore, in view the provisions contained in Section 38(2) of the Act and Rule 29(2)(i)(b) of the Rules and the dictum of the Hon'ble Supreme court in the case of SECRETARY AND CURATOR, VICTORIA MEMORIAL HALL(supra), we are of the considered view that the impugned order passed by the RERA is not a speaking order and non-est in the eye of law, inasmuch as, no reasons are assigned in the impugned order. Accordingly, we answer Point No. (I) in the negative and hold that the Authority was not justified in rejecting the complaint filed by the appellant for return of the amount and compensation or possession of the flat.

18. Consequently, keeping open all the contentions of the parties to be urged before the Authority, we are of the opinion that the impugned order is liable to be set aside and the matter is to be remanded to the Authority for reconsideration. Hence, we pass the following:

**ORDER**

- (i) Appeal is allowed;
- (ii) The impugned order dated 21.12.2022 passed by the Karnataka Real Estate Regulatory Authority in CMP/UR/221006/0010051 is set aside and the matter is remanded to the RERA for fresh

consideration on merits in accordance with law and in the light of the observations made hereinabove, after affording an opportunity to both sides;

- (iii) Since the parties are represented through their counsel before this Tribunal, they shall appear before the RERA on **05.06.2023** without expecting further notice from the RERA;
- (iv) In the event of the Authority is not sitting on that day, the matter may be taken up on the very next sitting day;
- (v) All the contentions of the parties are left open to be urged before the Authority;
- (vi) In view of disposal of the Appeals, pending I.As, if any, do not survive for consideration and shall stand disposed of;
- (vii) Registry is directed to comply with the provision of Section 44 (4) of the Act and to return the records to RERA, if received.

There is no order as to costs.

**Sd/-  
HON'BLE CHAIRMAN**

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

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