

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

DATED THIS THE 27th DAY OF AUGUST 2020

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) F.R.NO.22/2020

BETWEEN:

M/s Trishul Developers,
Mittal Towers, No. 109 "B" Wing,
1st Floor, No. 6, M G Road,
Bengaluru – 560 001
Represented by Authorised partner of the
Appellant Mr Niraj Mittal,

: APPELLANT

(By Smt. Chitra for M/s Dhananjay Joshi Associates, Advocate)

AND

1. Mrs Asha Jhunjunwala
W/o Sri Sajjan Jhunjunwala
Residing at No. 1189, 4th Cross,
13th Main Road, HAL 2nd stage,
Indiranagar,
Bengaluru – 560 038

2. The Karnataka Real
Estate Authority
2nd floor, sliver Jubilee Block ,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027

:RESPONDENTS

(Sri Basavaraj V Sabarad, Advocate for Respondent-2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before this Tribunal, to set aside the order dated 14.5.2019 in CMP/181222/0001788 passed by the Adjudicating Officer, RERA Respondent-2.

This appeal coming on for orders this day, the Chairman, made the following:

JUDGMENT

1. The above appeal is preferred by the developer against the order dated 14.5.2019 in CMP/181222/0001788 passed by the Adjudicating Officer, Respondent 2, ordering refund of the amount to the 1st Respondent, for having failed to allot the flat in his favour within the stipulated time.

2. Along with the appeal, the appellant had filed I.A.I under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) praying the Tribunal to waive deposit of 30% of the amount ordered to be refunded to the 1st respondent by the learned Adjudicating Officer under the impugned order.

3. The office of this Tribunal while scrutinizing the appeal papers has raised several objections. The appellant has complied with all the office objections, except the mandatory requirement of deposit of 30% of the amount ordered to be refunded to the 1st Respondent.

4. On 10.3.2020, Smt. Chitra, for M/s Dhanajay Joshi Associates, learned counsel for the appellant sought two week's time to find out from the appellant whether they can deposit 30% of the amount towards statutory deposit in order to maintain the appeal and at the request of the learned counsel for the appellant, the matter was adjourned from time to time and on 28.7.2020, time was granted finally till 27.8.2020 for compliance of Section 43(5) of the Act.

5. Today, though this court was inclined to grant some more time to the appellant to deposit 30% of the amount towards statutory deposit, Smt. Chitra, learned counsel appearing for appellant fairly submits that her client has expressed his financial constraint to deposit even 30% of the amount ordered to be refunded in favour 1st Respondent.

6. Her submission is placed on record.

7. In the backdrop of the above facts, we deem it necessary to extract relevant portion of Section 43(5) of the Act:

“Section 43(5) - Any person aggrieved by any direction or decision or order made by the Authority or by an Adjudicating Officer under this Act, may prefer an

appeal before the Appellate Tribunal having jurisdiction over the matter.

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty percent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

8. The above statutory provision of the Act clearly mandates that when an appeal is filed by the promoter/developer, the Appellate Tribunal cannot entertain the appeal without the appellant first having deposited with the Appellate Tribunal at least thirty percent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

9. In the present case, the appellant has expressed his financial constraint to deposit even 30% of the amount ordered to be refunded to the 1st Respondent by the learned Adjudicating Officer under the impugned order.

10. For the foregoing reasons, I.A.I filed by the appellant to waive deposit of 30% of the amount ordered to be refunded to the 1st Respondent under the impugned order is rejected.

11. In view of rejection of I.A.I, I.A.II for condonation of delay and the appeal do not survive for consideration and are, accordingly, rejected.

12. There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE ADMINISTRATIVE MEMBER