

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

**DATED THIS THE 16<sup>TH</sup> DAY OF MARCH, 2021**

**PRESENT**

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

**AND**

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

**APPEAL (K-REAT) NO.237/2020**

**(OLD RERA. APL No. 308 of 2019)**

**BETWEEN:**

Mr R Venkata Krishna,  
S/o Mr G Roddeppa,  
Aged about 54 years,  
Residing at Villa No.003,  
Prestige Ozone,  
Near Forum Value Mall,  
Whitefield Main Road, Whitefield,  
Bengaluru – 560 034.

**:APPELLANT**

(By Sri Rohan Kothari, Advocate)

**AND**

1. LGCL Properties Private Limited  
A Company Incorporated under the  
Companies Act, 1956,  
Having its registered office at:  
No.12/1, Rest House Road,  
Bengaluru – 560 001.  
Represented by its authorized signatory,
2. The Real Estate Regulatory Authority,  
No.1/14, 2<sup>nd</sup> Floor, Silver Jubilee Block,  
Unity Building, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru, Karnataka-560027

**:RESPONDENTS**

(Sri R Krishna Murthy, Advocate for R1)

(R2- RERA, served-unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 18<sup>th</sup> May, 2019 in CMP/181006/0001368 passed by the Authority, RERA Respondent. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 237/2020.

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

### **JUDGMENT**

The appellant who is one of the owners of the land in which the 1<sup>st</sup> respondent has taken up construction of a real estate project has preferred this Appeal challenging the impugned order dated 18.05.2019 passed by RERA, which reads as under:

“In exercise of the powers conferred u/s 31 of the Real Estate (Regulation and Development) Act, the complaint dated 06.10.2018 is hereby rejected as not maintainable before this Authority.

However the respondent is at liberty to seek relief in the appropriate forum.”

2. The RERA, by the impugned order, rejected the Complaint filed by the appellant as not maintainable before them, with liberty to the appellant to seek relief in an appropriate forum.

3. On 23.12.2020, operative portion of the order was dictated in the open court allowing the appeal and remanding the matter to the 2<sup>nd</sup> respondent/RERA for fresh consideration. However, while finalizing the Judgment, it was noticed that having regard to the relief sought before

RERA, it was not a case for remand. Hence, the appeal was ordered to be listed before court for clarification/‘for being spoken to’ and as to why the Judgment dated 23.12.2020 should not be recalled and the matter be heard afresh and an appropriate order be passed after giving an opportunity of hearing to the parties.

4. The learned counsel for the appellant submits that the appellant in the previous complaint, in addition to the prayer for initiation of action against Respondent No.1 for violation of the provisions of the RERA Act and the Rules, by mistake, had also asked for compensation and therefore he prays for dismissing the earlier complaint as withdrawn with liberty to file a fresh complaint restricting the prayer only for violation of the provisions of the RERA Act and the Rules by Respondent No.1. The said submission is placed on record.

5. Thereafter, on 01.02.2021, the appellant filed a Memorandum seeking permission of this Tribunal to withdraw the Complaint dated 06.10.2018 filed in Complaint No.CMP/181006/0001346, with liberty to file a fresh Complaint before RERA against respondent No.1 for violation of the provisions of the Act.

6. That on 25.02.2021, Respondent No.1 has filed reply statement stating that he has no objection for granting the prayer made by the appellant in the memo filed by him on 01.02.2021, whereby he has sought permission of the Hon’ble Tribunal to withdraw the Complaint dated

06.10.2018 filed by him before the Real Estate Regulatory Authority and to file a fresh Complaint on the lines stated in the said memo.

7. The Memorandum filed by the appellant and the reply statement filed by Respondent No.1 are placed on record.

8. Further, learned Counsel for the appellant submits that the Tribunal while granting liberty to the appellant to file a fresh Complaint, a direction may be issued to RERA to dispose of the said Complaint, expeditiously.

9. Considering the Memorandum dated 1.2.2021 filed by the appellant, reply statement filed by the 1<sup>st</sup> respondent-promoter on 25.2.2021 and the submission made by the learned counsel for the appellant, we pass the following:

**ORDER**

- (1) Appeal is allowed;
- (2) The order passed by the RERA-2<sup>nd</sup> respondent on 18.5.2019 in Complaint No. CMP/181006/0001346 is set aside with liberty to withdraw the earlier complaint and to file a fresh complaint on the lines stated in his Memorandum dated 01.02.2021.
- (3) The Memorandum filed by the appellant on 01.02.2021 and reply statement filed by the 1<sup>st</sup> respondent on 25.02.2021 forms part and parcel of this order.

- (4) In the event of appellant filing a fresh Complaint, the same shall be disposed of, on merits and in accordance with law in the light of the observations made hereinabove, as expeditiously as possible, at any rate within two months from the date of service of notice on the respondents in the said Complaint, by affording an opportunity of hearing to both the parties.
- (5) All contentions of the parties are kept open.
- (6) The Registry, while issuing copy of this order, shall also issue copies of the Memorandum filed by the appellant on 01.02.2021 and reply statement filed by the 1<sup>st</sup> respondent on 25.02.2021.
- (7) In view of disposal of appeal, pending I.As if any stand disposed of as they do not survive for consideration.
- (8) Registry is directed to comply with the provisions of Section 44(4) of the RERA Act and return the records of RERA, if received.

**Sd/-**  
**HON'BLE CHAIRMAN**

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