

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

DATED THIS THE 19TH DAY OF APRIL 2021

PRESENT

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 350/2020

BETWEEN

M/s. Shrivision Towers Private Limited,
No. 40/43, 8th Main, 4th Cross,
RMV Extension, Sadashiva Nagar,
Bengaluru-560 080,
Represented by its
Authorised Signatory, Mr. Naveen Kumar J,
S/o. Late Janardhan Rao. L

:Appellant

(By Sri Sameer Sharma for M/s JSM Law Partners)

AND:

1. The Adjudicating Officer,
The Karnataka Real Estate
Regulatory Authority,
Second Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
2. Anurag Sharma,
S/o. R.K Sharma,
Age about 46 years,
R/at. FC-107, Hal FC/FD Quarters,
CV Raman Nagar,
Bengaluru- 560 093

:Respondents

(R-1 served, un-represented)

(Rep. by M/s Amrit Lal Saha & Associates for R2)

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 order dated 19.08.2019 in Complaint No.CMP/190420/0002699 passed by the Respondent No.1-Adjudicating Officer, RERA.

This Appeal, coming on for argument this day, the Hon'ble Judicial Member, delivered the following:

JUDGMENT

The appellant, Promoter of a Real Estate Project, has preferred this Appeal on 07.01.2020 before this Tribunal challenging the order dated 19.08.2019 passed in Complaint No. CMP/190420/0002699 by learned Adjudicating Officer, partly allowing the complaint and directing the promoter to pay delay compensation to the allottee by way of interest on the amount paid by the allottee towards sale consideration of the flat allotted to him.

2. After filing the appeal the appellant has deposited 30% of the amount as per the impugned order with this Tribunal.

3. The Appeal was admitted on 11.01.2021,.

4. This Tribunal, while passing orders on Interlocutory Applications filed in Appeal No.113/2020 and connected Appeal No.350/2020, relying upon a judgment of Allahabad High Court in 1) RADICON INFRASTRUCTURE AND HOUSING PRIVATE LIMITED vs. KARAN DHYANI (2019 SCC All 4454) and the same High Court of

Lucknow Bench in 2) AIR FORCE NAVAL HOUSING BOARD, AIR FORCE STATION RACE COURSE vs. UNION OF INDIA, MINISTRY OF HOUSING & URBAN POVERTY AND ORS (Second Appeal No.122/2019 DD 15.11.2019) and the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of 3) EXPERION DEVELOPERS PVT. LTD. vs. STATE OF HARYANA AND OTHERS (CWP No.38144/2018) and connected cases, has held that in an Appeal by a promoter challenging the order of the learned Adjudicating Officer directing the promoter to return the amount of the allottee or to pay compensation for the delay in delivering possession of an apartment, without the promoter depositing the total amount payable to the allottee, as per the impugned order, such Appeal cannot be heard.

5. In view of the same, this Tribunal, by order dated 1.3.2021 and 31.03.2021, granted time to the appellant, finally, upto 19.04.2021 to deposit the total amount payable to the allottee, as per the impugned order, by deducting the amount already deposited and in the event of depositing the total amount, as stated above, Office was directed to list the Appeal for arguments, or else for dismissal.

6. Today, learned Counsel appearing for the appellant/promoter expressed inability of the appellant to deposit the balance amount.

7. For the reasons stated above, the following order is passed:

ORDER

- 1) Appeal is dismissed for non-depositing the total amount payable to the allottee as per the impugned order.
- 2) The Registry of this Tribunal is hereby directed to release the amount deposited by the appellant while preferring the above Appeal with this Tribunal in part compliance of proviso to Section 43(5) of the RERA Act, along with interest, if any, accrued thereon, by deducting TDS, in favour of the allottee-2nd respondent by way of cheque/DD after obtaining necessary documents, but that shall be done only after the expiry of the Appeal period, but within next two weeks thereafter.
- 3) In view of dismissal of the Appeal, all pending I.As., stand rejected, as they do not survive for consideration.
- 4) In view of dismissal of the Appeal, it is open for the 2nd Respondent-allottee to recover the balance amount by initiating appropriate proceedings against the promoter.
- 5) The Registry is hereby directed to comply 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