

IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL,
BENGALURU

DATED THIS THE 30TH DAY OF MARCH 2021

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL (K-REAT) NO. 04/2020

(OLD RERA APPEAL No.94/2018)

BETWEEN

D. Amarnatharao Bhonsley,
S/o late M.D. Bhonsley,
Age: 69 years,
Residing at No.17, 7th Main,
16th Cross, AECS Layout,
2nd Stage, Sanjay Nagar,
Bengaluru-560 094.

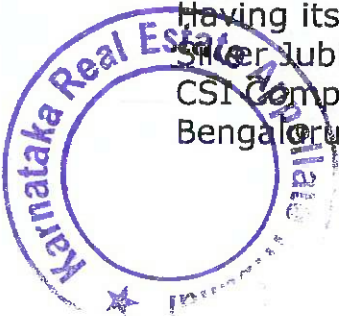
: Appellant

(By M/s. Lex Justicia, Adv., for appellant)

AND

1. Ozone Developers,
Bengaluru Private Limited,
Ozone Urbana Pavilion,
No.38, Ulsoor Road,
Bengaluru-560 042.
Represented by its Managing Director.

2. The Real Estate Regulatory Authority,
Constituted under the Real Estate
(Regulation & Development) Act,
Having its Office at No.1/14, Ground Floor,
5th Floor Jubilee Block, Unity Building,
CSI Compound, 3rd Cross, Mission Road,
Bengaluru-560 027.



RERA-1256

Represented by its Secretary.

: Respondents

(By M/s. Deepak Bhaskar & Associates, Adv, for R-1)

(R-2/RERA is served, but unrepresented)

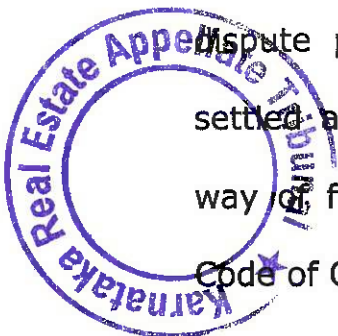
This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) praying to modify the order dated 04.10.2018 passed in Complaint No.CMP/180608/0000904 by respondent No.2 -Adjudicating Officer and later transferred to this Tribunal on 02.01.2020 and re-numbered as Appeal (K-REAT) No.04/2020.

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

JUDGMENT

The appellant, who is an allottee, of a Flat in a Real Estate Project viz., Ozone Urbana Pavilion, undertaken by the 1st respondent/promoter, has preferred this Appeal, challenging the order dated 04.10.2018 passed in Complaint No.CMP/180608/ 0000904 by learned Adjudicating Officer, whereunder the promoter was directed to pay delay compensation at the rate of Rs.13/- per sq. ft., till he issues notice for delivering possession of the Flat.

2. Subsequent to filing of the Appeal, the appellant/allottee and 1st respondent/promoter, after due deliberation and discussion of their dispute pertaining to the Complaint and this Appeal, got the same settled amicably, by reducing the terms of settlement into writing by way of filing a Compromise Petition under Order XXIII Rule 3 of the Code of Civil Procedure.



3. The Compromise Petition signed by the appellant/allottee, authorized signatory of 1st respondent/promoter and learned Counsel appearing for them, is taken on record.

4. The terms of compromise were read over to the appellant/allottee and to the authorized signatory of the promoter's Company, who were present in the Court, in the language known to them. Both the allottee and the promoter have declared that they have entered into compromise on their free will and volition and it is free from any force, mis-representation, undue influence and coercion and there is no impediment for recording this compromise and disposing of the Appeal in terms of the said Compromise Petition.

5. Learned Counsel appearing for the parties, appellant/allottee, the authorized signatory of 1st respondent/promoter and learned Counsel appearing for them, submit that the Appeal may be disposed of in terms of the Compromise Petition.

6. The parties, having present in the Court, have signed the order sheet of the Appeal.

7. In view of the same, the following

ORDER

(1) The Appeal stands disposed of in terms of the Compromise Petition.



- (2) The Compromise Petition is ordered to be treated as part and parcel of this order.
- (3) In case of the parties applying for copy of this order, the Office shall issue a copy of the order along with a copy of the Compromise Petition.
- (4) The appellant/allottee and respondent No.1/promoter shall perform and discharge their respective obligations, as incorporated in the Compromise Petition, in order to give effect to the compromise and to avoid unnecessary litigation in future.
- (5) In the event of the appellant or contesting Respondent No.1/promoter failing to comply with any of the terms and conditions of Compromise Petition, it is always open for the opposite party to take steps as indicated in the Compromise Petition.
- (6) In view of disposal of the Appeal, pending I.As., if any, stand rejected, as they do not survive for consideration.
- (7) The Registry is directed to comply proviso to Section 44(4) of the RERA Act and to return the records of RERA, if received.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

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[Handwritten Signature]
SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU-560 027



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**BEFORE THE KARNATAKA APPELLATE TRIBUNAL AAT
BENGALURU**

APPEAL NO. 04 /2021 ^{4s}

BETWEEN:

D. Amarnatharao Bhonsley,
S/o Late M.D. Bhonsley,
Aged about 69 years,
Residing at No.17, 7th Main,
16th Cross, AECS Layout,
2nd Stage, Sanjay Nagar,
Bengaluru 560 094.

APPELLANT

And

1. OZONE DEVELOPERS
BENGALURU PRIVATE LIMITED,
Ozone Urhena Pavillion,
No.38, Ulsoor Road,
Bengaluru 560 0442,
Represented by its Managing Director/ (Represented
Chief Executive Officer/ Chairman *by its Authorised signatory*)

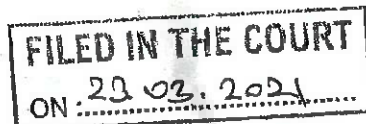
2. The Real Estate Regulatory Authority,
having its office at
No. 1/14, Ground Floor,
Silver Jubilee Block, Unity Building,
CSI Compound, 3rd Cross, Mission Road,
Bengaluru-560 027.
Represented by its Secretary

RESPONDENTS

**MEMORANDUM OF SETTLEMENT UNDER ORDER XXIII RULE 3 OF
CODE OF CIVIL PROCEDURE:**

The Appellant and Respondent No.1 above named most respectfully submit as follows:

1. The appellant was desirous of purchasing an apartment unit bearing number K 201, Second Floor, Block K of the residential complex named 'URBANA PAVILLION, as constructed and sold by Second Party, and situated at Kannamangala Village, Kasaba hobli, Devanahalli Taluk, Bangalore District (the Apartment) from the Respondent No.1.
2. The Appellant had entered into two agreements one for sale of an apartment and one for construction with the Respondent No.1 herein as per Agreements dated 13.02.2014. As per the agreement entered into between the parties, the Respondent No.1 ought to have delivered the apartment on



A. B. 2021

or before October 2016. There was additional grace period of six months to the Respondent No.1 to hand over the apartment. Therefore, the outer limit of delivery of the apartment was of April 2017. The appellant had paid entire sale consideration on time as agreed in the sale agreement and no amounts of whatsoever nature is due from the Appellant to the Respondent No.1. There is no dispute by the Respondent No.1 as to payment of sale consideration by this Appellant.

3. The Respondent No.1 has failed to keep up its promise. It has not delivered the apartment even after the lapse of grace period. The Appellant's several personal visits to the office of the Respondent No.1 as well as to the site did not result in anything better.

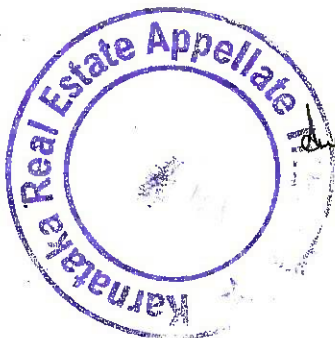
4. Appellant approached the office of the Hon'ble Adjudicating Officer set up under the RERA by way of CMP/180608/0000904 (the Complaint) for delay in handover of possession of the Premises to appellant by Respondent No.1 and sought appropriate compensation.

5. Adjudicating Officer passed an order in the Complaint CMP/180608/0000904 on 4th October 2018, where the Respondent No.1 was directed to pay delay compensation at the rate of Rs.13 per sq ft super built up area of the Scheduled Apartment for each month's delay till such time as possession is handed over.

6. The Appellant has approached this Hon'ble tribunal to modify the order of Karnataka Real Estate Regulatory Authority, Bengaluru in Complaint No. CMP/180608/0000904 dated 04.10.2018 which is filed at Document No. 1 by enhancing the compensation to the tune of Rs.6,01,900/- per year from the date of payment till handing over of the apartment.

7. The Appellant and Respondent No.1 submit that they have agreed to settle the issues between them amicably and hence this memorandum of settlement is being filed before this Hon'ble court.

NOW THIS COMPROMISE PETITION FURTHER WITTNETH AS FOLLOWS:



A. A. Bhat

The Respondent no.1 undertakes to pay the Appellant a compensatory sum in accordance with the terms below, in the interest of arriving at an amicable solution, the Parties have arrived at the present settlement set forth herein below:

9. The Respondent no.1 undertakes to pay delay compensation at the rate of 7.5% per annum, amounting to INR 37,619 (Rupees Thirty Seven Thousand, Six Hundred and Nineteen Rupees) per month. Thereby, the Respondent has paid the arrears for the period from May 2017 to November 2020.

10. The Respondent no.1 agrees to pay a delay compensation at the rate of 37,619 (Rupees Thirty Seven Thousand, Six Hundred and Nineteen Rupees) i.e., at the rate of agreed 7.5% per month from December 2020 till the handover of the possession of the Apartment. The Respondent no.1 shall clear the arrears from December 2020 to till date within end of March 2021 and continue to pay on a monthly manner on or before 10th of every month without fail till the delivery of the apartment, which shall be done within 12 months from today.

11. The Respondent no.1, in case of failure to pay the agreed interest to the Appellant on a timely and monthly manner, further agrees to pay a further delay compensation at the rate of 9% (Nine Percent) for the delay. The Appellant shall be entitled to institute necessary proceedings to recover the arrears and shall also be entitled for such costs involved in recovery from the Respondent no.1.

12. That accordingly, the Appellant agrees to immediately withdraw the Appeal No. 04/2020 and other proceedings instituted before the Real Estate Appellate Tribunal. That the present Agreement shall constitute a valid binding contract upon the Parties and neither Party shall be permitted to resign from their obligations hereinabove.

13. That the execution of this Agreement shall signify the satisfactory conclusions of any complaints raised by the First Party against the Second Party

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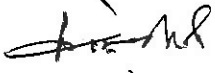
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14. Both parties agree that there are no further claims against each other and It is agreed by both parties that there is no undue influence, or coercion to enter in to this compromise petition and that the parties have signed this compromise petition voluntarily with full consent and satisfactorily after reading the contents.

WHEREFORE, the Appellant and Respondent No.1 pray that this Hon'ble Tribunal be pleased receive this compromise petition on record and accept the same as per the terms of this compromise petition the interest of justice.



Advocate for Appellant



Appellant



Advocate of Respondent No.1



Respondent No.1

VERIFICATION

We, the Appellant and Respondent No.1 above named do hereby solemnly state and declare that what is contained in the above paragraphs of this compromise petition are true to the best of our knowledge, belief and information.




Appellant
Bangalore
Date: 30.03.2021



Respondent No.1

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SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU-560 027

