IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL, BENGALURU

DATED THIS THE 19th DAY OF JULY, 2021

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 294 /2020

BETWEEN:

1. Mr. Venugopal Gella,
   s/o Mr Jagannadham,
   aged about 39 years;

2. Mrs. Lavanya Gella,
   w/o Mr Venugopal Gella,
   aged about 38 years,

   Both presently residing at No.28/58,
   3rd floor, Smiron Arcade,2nd Main,
   Banashankari, 1st Stage,
   Bengaluru 560 050

...APPELLANTS

(Rep. by Sri Suhail Ahmed for M/s Trial Base, Advocates)

1. The Real Estate Regulatory Authority,
   Karnataka, Having it office at
   2nd Floor, Silver Jubilee Block,
   Unity Building,CSI compound,
   3rd cross, Mission Road,
   Bengaluru 560027.
   Represented by its Secretary.

Real Estate Appellate Tribunal

RERA-2025

2. M/s ETA Star Infopark,
A partnership firm having its registered office at:
501 & 502, 5th floor, Front Wing, North Block,
Manipal Centre, 120, Dickenson Road,
Bangalore 560 042

3. M/s ETA Karnataka Estates Limited,
A company incorporated under the Companies Act, 2013
and having its office at:
Fourth floor, "Chennai Citi Centre,"
10 & 11, Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004, also at
501 & 502, 5th floor, Front Wing, North Block,
Manipal Centre, 120, Dickenson Road,
Bangalore 560 042

4. M/s ETA Constructions (India) Limited,
A company incorporated under the Companies Act, 2013
And having its office at:
Fourth floor, "Chennai Citi Centre,"
10 & 11, Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004,

and having its corporate office at:
501 & 502, 5th floor, Front Wing, North Block,
Manipal Centre, 120, Dickenson Road,
Bangalore 560 042

5. M/s Relationship Properties Private Limited,
A company incorporated under the Companies Act, 2013
and having its office at:
No.70, Nagindas Master Road, Fort,
Mumbai 400 023

Respondent Nos. 2 to 5 represented by
Authorised signatories:
Mr Suresh Kumar and Mr. S. S.Vasan **...RESPONDENTS**

(R.1 served, unrepresented)
(Sri Veeresh Budihal, Advocate, for M/s Anup S Shah Law firm for R.2-5)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal praying to call for the records and set aside the order dated 1st August 2019 passed in CMP/181218/0001774 by respondent No.1-Adjudicating Officer, RERA.

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

JUDGMENT

The appellants, who are husband and wife and allottees of a flat in their joint names, in a real estate project known as "PARKWEST-EMERALD TOWER 2", constructed by Respondents 2 to 5- developers, have preferred this appeal challenging the impugned order passed by the learned Adjudicating Officer dated 1st August 2019 in CMP/181218/0001774.

2. The operative portion of the impugned order reads as under:

> "The complaint filed by the complainant bearing No. CMP/181218/0001774 is allowed.
>
> 1) The complainant is hereby directed to take physical possession of the unit bearing No.T2-0-02 within a month from today by tendering the amount payable to the developer.
>
> 2) The developer is directed to deliver the same by giving delay compensation @ 10.75 p.a on the amount received from the complainant for purchase of the flat commencing from 18/12/2017 till 23/04/2018.

3) The complainant and developer may adjust the amount payable to each other.

4) Further the developer shall also pay Rs.5000/- as cost of the petition.

5) The complainant is at liberty to take action against the developer for providing poor quality of amenities or non-providing amenities as agreed by him."

3. The appellants-allottees and Respondents 2 to 5 –developers, after due deliberation and discussion of their dispute pending between them, with the intervention and advise of the learned counsel appearing for them, have got the dispute settled by reducing the terms and conditions into writing by way of filing a detailed compromise petition. The compromise petition filed today, is taken on record.

4. The 1st appellant, on his behalf and on behalf of the 2nd appellant and Sri Suresh Kumar, one of the authorized signatories of Respondent No. 5-developer are present in the court. Respondent No.5 is the GPA holder of Respondents 2 to 4. The terms of compromise were read over to the 1st appellant and Sri Suresh Kumar, one of the authorized signatories of the developers-Company. Both have submitted that the compromise petition is entered into between them on their free will and volition and there is no

force, misrepresentation, fraud, undue influence or coercion and they submit that the appeal may be disposed of in terms of compromise.

5. In addition to this, learned counsel for the appellants and respondents 2 to 5 have submitted that parties have signed the compromise petition in their presence and appeal may be disposed of in terms of the compromise petition.

6. In view of the above submission, we pass the following:

ORDER

i) Appeal is disposed of in terms of the compromise petition;

ii) Compromise petition filed by the parties today shall be treated as part and parcel of this order;

iii) Parties shall discharge their respective obligations enunciated in the compromise petition in order to give effect to compromise and to avoid unnecessary litigation in future;

iv) In view of disposal of the appeal in terms of compromise petition, pending I.As, if any, stand disposed of as they do not survive for consideration;

v) Office while issuing certified copy of the order, at the instance of any of the parties, shall issue the same along with copy of the compromise petition;

vi) Registry is directed to comply with provision of Section 44(4) of the Act.

No order as to costs.

Sd/-

HON'BLE CHAIRMAN

Sd/-

HON'BLE JUDICIAL MEMBER

Sd/-

HON'BLE ADMINISTRATIVE MEMBER

TRUE COPY

SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU-560 027

Karnataka Real Estate Appellate Tribunal

IN THE HON'BLE REAL ESTATE APPELLATE TRIBUNAL, KARNATAKA

AT BENGALURU

APPEAL No. 294 of 2020

BETWEEN:

1. **Mr. Venugopal Gella**
   S/o Mr. Jagannadham
   Aged about 39 years

2. **Mrs. Lavanya Gella**
   W/o Mr. Venugopal Gella
   Aged about 38 years
   Both presently residing at No. 28/58,
   3rd Floor, Smiron Arcade, 2nd Main
   Banashankari, 1st Stage,
   Bengaluru 560 050 .. **APPELANTS**

AND:

1. **The Real Estate Regulatory Authority Karnataka,**
   Having Office at:
   2nd Floor, Silver Jubilee Block,
   Unity Building, CSI Compound,
   3rd Cross, Mission Road,
   Bengaluru - 560 027
   Represented by its Secretary

2. **M/s. ETA Star Infopark,**
   A Partnership firm having its regd. office
   at: 501 & 502, 5th floor, Front Wing,
   North Block, Manipal Centre, 120,
   Dickenson Road, Bangalore - 560 042

3. **M/s. ETA Karnataka Estates Limited**
   A Company incorporated under the Companies Act, 2013
   and having its office at:
   Fourth Floor, "Chennai Citi Centre,
   # 10 & 11 Dr. Radhakrishnan Salai,
   Mylapore, Chennai 600 004
   also at:

For RELATIONSHIP PROPERTIES PVT.LTD.,

Authorised Signatories

Lavanya

Karnataka Real Estate Appellate Tribunal

501 & 502, 5th floor, Front Wing,
North Block, Manipal Centre,
120, Dickenson Road,
Bangalore - 560 042

4. M/s. ETA Constructions (India) Limited

A Company incorporated under the Companies Act,2013
and having its office at:
Fourth Floor, "Chennai Citi Centre, # 10 & 11
Dr. Radhakrishnan Salai, Mylapore,
Chennai 600 004 and having its corporate office at:

501 & 502, 5th floor, Front Wing,
North Block, Manipal Centre,
120, Dickenson Road,
Bangalore - 560 042

5. M/s. Relationship Properties Private Limited,

A Company incorporated under the Companies Act, 2013
and having its office at:
No. 70, Nagindas Master Road, Fort,
Mumbai - 400 023

Respondent Nos. 2 to 5 represented by
authorized signatories:
Mr. Suresh Kumar and Mr. S. S. Vasan .. **RESPONDENTS**

MEMORANDUM OF COMPROMISE PETITION UNDER ORDER XXIII RULE 3 OF THE CODE OF CIVIL PROCEDURE

1. The Appellants are the allottees of the apartment bearing No. T2-02 Emerald Tower 2, Phase 1 in the project "PARK WEST". The Appellants have entered into Agreement for Sale and Construction Agreement both dated 22.12.2014 agreeing to purchase the aforesaid apartment and have, in all, paid a sum of Rs.1,65,99,618/- (Rupees One Crore Sixty Give Lakhs Ninety Thousand Six Hundred Eighteen only) to the Respondents.

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Lavanya

For RELATIONSHIP PROPERTIES PVT.LTD.,

Authorised Signatories

2. In terms of the aforesaid Agreements, the Apartment was to be delivered to the Appellants along with all the other amenities and facilities in the project. The Appellants filed a complaint in Complaint No. CMP/181218/0001774, before the Adjudicating Officer- Real Estate Regulatory Authority, seeking refund of the entire amount paid by them along with compensation before the Real Estate Regulatory Authority alleging that there is a delay in completion of development work in the project. The complaint filed by the Appellants came to partly allowed by an order dated 01-09-2019, aggrieved by the order passed by the AO-RERA, the Appellants have filed the above Appeal challenging the said Order.

3. During the pendency of the Appeal, the parties herein have negotiated and agreed to settle the dispute by arriving at a compromise on the following terms and conditions:

A) In terms of the settlement arrived at between the Appellants and the Respondents it is agreed that the Appellants shall pay to the Respondents, a sum of Rs.12,26,637/- (Rupees Twelve Lakhs Twenty Six Thousand Six Hundred Thirty Seven only) within 15 days from the date of this compromise, being the total outstanding balance towards the sale of the Apartment, inclusive of all other charges,deposits, etc.,.

B) The Respondents shall receive the said sum and issue receipt towards the same as the full and final amount payable by the Appellants towards purchase of the apartment bearing No. T2-0-02, Emerald Tower, Phase 1 in the project "PARK WEST"

Karnataka Real Estate Appellate Tribunal

For RELATIONSHIP PROPERTIES PVT.LTD.,

Authorised Signatories

C) Both the parties hereby waive all claims of interest and compensation as against each other and state that there are no further claims of whatsoever nature as against each other.

D) The Appellants are permitted to transfer/assign their rights under the Agreement for Sale and Construction Agreement both dated 22.12.2014 in favour of any Third Party and they shall not be required to pay any transfer fees (assignment fees) or any other fees, costs, charges etc, to the Respondents for assigning their rights. The Respondents shall execute and provide necessary document/s in this regard as and when called upon by the Appellants.

E) The Appellants or their assignees shall be required to pay the applicable stamp duty, registration fees and any other charges towards registration of the Sale Deed.

F) Upon receipt of the balance payment the Respondents shall hand over the apartment to the Appellants to enable them to find a buyer for the same and also the Respondents shall also facilitate with the sale of the apartment to any third party by assisting the Appellants.

G) The responsibility of selling the apartment to any third party shall be that of the Appellants and not the Respondents. The Respondents would only be required to assist them in this regard. The Appellants would endeavour to sell the Apartment to any third party at the earliest.

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For RELATIONSHIP PROPERTIES PVT.LTD.,

Authorised Signatories

H) The Appellants who have decided not to retain the apartment shall not be immediately required to get the Sale Deed executed and registered in their favour. However, if they choose to retain the Apartment for themselves and call upon the Respondents to execute and register the Sale Deed in their favour, the Respondents shall be obliged to do so, having received the entire sale price. Any consequences arising out of the above shall be the responsibility of the Appellants.

I) The Appellants will be liable to pay all outgoings towards the apartment including the maintenance charges, property tax, electricity consumption charges and any other applicable outgoings towards the apartment until the apartment is either sold to a third party or the Appellants themselves get the Sale Deed executed & registered in their favour.

J) The Appellants shall fulfil all the obligations as required in common by all the Apartment Owners.

4. It is specifically agreed between the parties that the settlement under this compromise has been arrived at, out of their free will and consent and in accordance with the settlement effected under this Compromise Petition, subject the parties adhering to the mutual obligations stating that there will be no further claims whatsoever against each other.

5. That the parties have specifically agreed and conceded that the settlement under this compromise has been arrived at out of their own freewill and consent and in accordance with the settlement effected under this compromise petition, they

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For RELATIONSHIP PROPERTIES PVT.LTD.,

Authorised Signatories

state that there are no further claims of whatsoever nature against each other.

6. In the above circumstances, the parties jointly seek leave of this Hon'ble Tribunal to proceed with this compromise and pray that the order be passed in terms of the aforesaid settlement by taking this compromise petition on record, in the interest of justice and equity.

PRAYER

WHEREFORE, it is respectfully prayed that this Hon'ble Authority may be pleased to pass an Order allowing this Compromise Petition by recording the terms and conditions of the compromise and pass such appropriate orders in the above Appeal in pursuance of this Compromise Petition, in the ends of justice and equity.

For the kindness of which the parties would remain obliged.

Advocate for Appellants

Appellants

For RELATIONSHIP PROPERTIES PVT.LTD.,

Authorised Signatories

Advocate for Respondents

Respondents

Place: Bengaluru

Date: 19.07.2021

Karnataka Real Estate Appellate Tribunal

IN THE REAL ESTATE APPELLATE TRIBUNAL, KARNATAKA

AT BENGALURU

APPEAL No. 294 of 2020

BETWEEN:

Mr. Venugopal Gella and Anr. **APPELLANT**

AND

The Real Estate Regulatory Authority, Karnataka and Ors. **RESPONDENTS**

VERIFYING AFFIDAVIT

I, Venugopal Gella, S/o. Mr. Jagannadham, aged about 41 years residing at No. 28/58, 3rd Floor, Smiron Arcade, 2nd Main, Banashankari, 1st Stage, Bengaluru 560 050, the 1st Appellant in the above Appeal, do hereby solemnly affirm and state on oath as follows:

1. I submit that I am the 1st Appellant in the above appeal and the 2nd Appellant is my wife. I am aware of the facts and circumstances leading to the filing of the above appeal, hence, I am swearing to this affidavit on behalf of my wife as well.

2. I submit that the averments made in Paragraphs 1 to 6 of the Memorandum of Compromise Petition are true and correct to the best of my knowledge, information and belief.

I, the deponent named above, do hereby verify and affirm that the contents of the affidavit are true and correct to the

Karnataka Real Estate Appellate Tribunal

best of my knowledge, information and belief and this is my name and signature. I swear accordingly.

Identified by me

ADVOCATE

DEPONENT

Place: Bengaluru

Date: 19 .07.2021

TRUE COPY

23/7/2021

SECTION OFFICER
KARNATAKA REAL ESTATE
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23/7/21

Karnataka Real Estate Appellate Tribunal