

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

DATED THIS THE 30th DAY OF NOVEMBER, 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) 13/2020

(Old Appeal No. 2/2019)

BETWEEN:

Mr. Sujit Sircar,
S/o. Late Robin Sircar,
Occ: Business,
Salapuria Magnificia – A-2004, 78,
Doorvani Nagar,
Next to Tin Factory Bus-stop,
Bengaluru-560016..

...APPELLANT

(By Sri. Nirupana Gowda M/s JSM Law Partners,)

AND

1. Nitesh Housing Developers Private Limited.,
Nitesh Columbus Square Phase II,
Level 7, Nitesh Times Square,
No.8, M G Road,
Bengaluru – 560 001
2. Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road
Bengaluru-560 027.

...RESPONDENTS

(Sri. Shervil Adapa for M/S Shetty & Hegde Associates,
Advocates for R-1
R-2 –RERA-Served unrepresented)

The appellant has filed the above appeal under Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 26th September, 2018 passed by the learned Adjudicating Officer, RERA, Bengaluru in CMP/180313/0000567.

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

J U D G M E N T

This appeal is by an allottee of a flat bearing No.B-602 of a real estate development project known as "Nitesh Columbus Square Phase-II" developed by the 1st respondent-promoter, being not fully satisfied with the impugned order dated 26th September, 2018 passed by the learned Adjudicating Officer, in complaint No. CMP/180313/0000567, has preferred this appeal.

2. By the impugned order, the learned Adjudicating Officer allowed the complaint filed by the appellant herein and directed the promoter to pay a sum of Rs.6,545/- per month to the allottee for the period from January, 2015 to April, 2017 and to pay a sum of Rs.10,000/- per month from May, 2017 till handing over of possession of the flat towards delay compensation.

For the purpose of convenience, the appellant hereinabove will be referred to as "allottee" and the 1st respondent will be referred to as "promoter" hereinafter.

Facts of the case:

3. As averred in the memorandum of appeal, the allottee has entered into an agreement to sell and construction agreement with 1st respondent-Nitesh Housing Developers Private Limited on 4th August, 2011 to purchase a flat bearing No.B-602 and in all, paid a sum of Rs.50,93,000/- towards 95% of the cost of flat. In terms of the agreement, the promoter was required to complete the project and deliver possession of the flat within 30 months from 4th August, 2011 including six months grace period which would be on 4th August, 2014.

4. As, the promoter has failed to fulfill their obligation and hand over possession of the flat within the time stipulated, the allottee has filed a complaint before the RERA seeking refund of the entire investment amount with interest. Whereas, it is contended that the learned Adjudicating Officer, instead of considering the claim of the appellant for refund of his amount with interest has committed an error in awarding delay compensation.

5. Sri. Nirupana Gowda, learned counsel appearing for the appellant submits that though the complaint filed before the Authority is for refund of investment made with the promoter with interest, the Adjudicating Officer has committed an error in directing the 1st respondent-promoter to pay delay compensation.

6. He further submits that in view of the latest judgment of the Hon'ble Supreme Court, the impugned order passed by the learned Adjudicating Officer is not sustainable, inasmuch as, he has no jurisdiction to entertain the complaint relating to refund of the amount and hence, he prays that the impugned order may be set aside and the matter be remitted to the RERA for fresh adjudication of the complaint.

7. On the other hand, Sri. Shervil Adapa, learned counsel appearing for 1st respondent-promoter fairly submits that the prayer made by the complainant in his complaint was for refund of amount with interest. He further submits that in view of the latest Judgment of the Hon'ble Apex Court in the case of **M/S Newtech Promoters and Developers Pvt Ltd -vs- State of UP**, the promoter cannot have any objection for allowing the appeal, setting aside the impugned order and to remit the matter to the Authority for fresh consideration. However, he submits that 1st respondent-promoter may be given an opportunity to put-forth his case before the Authority.

8. In view of the above submissions made across the bar and after hearing the learned counsel for the parties and on perusal of the records, the following point arise for our consideration:

- i) Whether the learned Adjudicating Officer was justified in granting delay compensation as against the claim of the appellant for refund of amount with interest?
- ii) What order?

9. Re issue (i): Before advertizing this issue, it is just and necessary for this Tribunal to refer the dictum laid down by the Hon'ble Apex Court in the case of ***M/S Newtech Promoters and Developers Pvt Ltd -vs- State of UP and others (2021 SCC OnLine SC-1044)***. In the said case, the Apex Court, while considering the issue as to whether the Authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act, was pleased to held that **"refund and compensation"** are two distinct rights under the Act and they cannot be conflated/clubbed together and the manner in which the two are to be determined would require a different process and involve different consideration. The findings recorded by the Hon'ble Supreme Court in paragraph-86 is relevant for the purpose of deciding the above issue which read thus:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct

expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016"

(emphasis supplied)

10. In view of the law laid down by the Hon'ble Supreme Court in the case of **Newtech Promoters (supra)**, this Tribunal is of the considered view that the learned Adjudicating Officer has no

jurisdiction to entertain the complaint filed by an allottee seeking refund of the amount invested by him with the promoter for purchase of a flat. It is the 2nd respondent-RERA alone has jurisdiction to adjudicate the complaint filed by the appellant-allottee for return/refund of sale consideration. Hence, without expressing any opinion on the merit of the case, this Tribunal is of the considered view that the impugned order is liable to be set aside solely on the ground that the relief of delay compensation granted by the learned Adjudicating Officer is contrary to prayer sought for by the complainant-appellant for refund of amount invested by him with the promoter with interest and the matter requires to be remitted to the Authority for fresh adjudication. Accordingly, we answer the issue No (i) in the negative holding that the learned Adjudicating Officer has no jurisdiction to entertain the complaint filed by the appellant-allottee as it relates to refund of the amount and proceed to pass the following:

ORDER

- i) The appeal is allowed in part and the impugned order dated 26th September, 2018 passed by the learned Adjudicating Officer, in complaint No. CMP/180313/0000567 is hereby set aside;
- ii) The matter is remitted to the RERA for fresh adjudication in accordance with law, after affording reasonable opportunity to both the parties;

- iii) All the contentions of the parties urged in the appeal are kept open to be urged before RERA while considering the complaint afresh;
- iv) Keeping in mind that the matter relates to the year 2011, the Authority shall make an endeavor to dispose of the matter on merit, as expeditiously as possible, but not later than the outer limit of fifty days from the date of parties entering appearance;
- v) Since the appellant-allottee as well as 1st respondent-promoter had entered appearance through counsel in this appeal, they are directed to appear before the RERA on 15.12.2021, without expecting further notice from the RERA;
- vi) In view of disposal of this appeal all pending IAs if any, stand disposed off;
- vii) The Registry to comply with the provisions of Section-44 (4) of the RERA Act and to return the records to RERA if any;
- viii) No order as to the costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER