

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

DATED THIS THE 11TH DAY OF JANUARY 2022

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

AND

HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER

**APPEAL NO. (K-REAT) 146/2020
(OLD RERA. APL No.193/2019)**

BETWEEN:

Sunil Pathiyam Veettil,
S/o Menath Gopinathan,
Age about 39 years,
Permanent Resident of
Aswathi, Kottili Lane Kanattukara
Thissur, Kerala – 680 011.

Currently Residing at
A1 Sheiba Towers,
Block B-2504, Barsha Heights,
Dubai, United Arab Emirates.

Represented by Power of Attorney
Navakad Madhavan Rajasekaran,
S/o. N Madhavan, Age about 73 years,
Residing at No.97, 6th Main,
3rd Stage, BEML Layout,
Rajarajeshwari Nagar,
Bengaluru-560 098.

...APPELLANT

(Sri Srinivas V For M/s Legal Whisper, Advocate for Appellant)

AND:

1. The Karnataka Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound, 3rd Cross, Mission Road,
Bengaluru, Karnataka-560027
Represented by its Secretary
2. M/s Mantri Developer Pvt Ltd.,
A Company incorporated under the companies Act,-1956
And having Registered Office,
Mantri House 41, Vittal Mallya Road,
Bengaluru – 560 001. Karnataka
Represented by its Directors.
3. PNB Housing Finance Limited,
No.5, Mathrushree Arcade, 2nd Floor,
100 Feet Ring Road, 1st Phase,
2nd Stage, BTM Layout,
Bangalore – 560 076
Represented by its Manager

..RESPONDENTS

{R.3 impleaded VCO dated 19.01.2021}

(R-1 RERA served, unrepresented)

(Sri Sunil P Prasad for M/s Tapasya Law Chambers,
Advocate for R-2)

R-3 Served, unrepresented. Notice held Sufficient)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 23rd March, 2019 in CMP/181122/0001654 passed by the Adjudicating Officer, RERA Respondent-1. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 146/2020.

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

JUDGMENT

An allottee of a flat in a real estate project, having not fully satisfied with the order passed by the learned Adjudicating officer dated 23rd March, 2019 in CMP/181122/0001654, has preferred this appeal seeking for enhancement of compensation.

Brief facts leading to this appeal are:

2. The appellant being interested to buy a flat in the project "MANTRI WEBCITY 2A" undertaken to be developed by M/s Mantri Developers Private Limited (hereinafter referred to as 'Promoter') - 2nd respondent, booked an apartment bearing No.N-703 in Tower-N for a total consideration of Rs.92,61,135.94/- under the buyback scheme, also known as Assured Return Scheme.

3. It is stated in the appeal memo that the promoter entered into Memorandum of Understanding dated 26.03.2014, Construction Agreement and Agreement to sell both dated Nil with the allottee and agreed to complete the construction and deliver possession of the said apartment to the allottee on or before 31.07.2017.

4. The allottee alleging that there was delay in handing over possession of the apartment and lack of transparency on the part of the promoter in abiding with the terms of the MOU, Construction Agreement and Agreement to sell, filed a complaint with RERA under

Section 31 of the Act for urgent settlement of Buy Back Scheme and refund of the amount.

5. The promoter who was arrayed as respondent in the complaint before RERA resisted the complaint by filing statement of objections contending that when the promoter mooted an idea of buy back scheme, the complainant came forward to invest in flats in the said project with the sole intention of making lucrative profit and entered into an agreement of sale of undivided interest and also agreement to invest the amount in a scheme launched by the promoter called pre -EMI scheme in respect of the flat allotted to the appellant. Therefore, in view of the nature of the scheme under which the appellant intended to purchase the flat and having regard to the scope and object of the provisions of Section 18 and 71 of the Act, the appellant is not an allottee in the eye of law and, at the most, he is an investor, and as such he cannot seek the relief of compensation or refund of the amount inasmuch as the appellant is seeking double the amount for which he has invested in the flat and prayed for dismissal of the complaint on other several grounds urged in the appeal memo.

6. The learned Adjudicating officer, after hearing the complainant who appeared as party-in-person and the learned counsel appearing for the promoter, perusing the complaint filed by the appellant, statement of objections filed by the promoter and documents produced

by the parties, holding that the promoter has admitted the relationship of the appellant-complainant, allowed the complaint and granted the reliefs as under:

"1. The complaint No. CMP/181122/0001654 is allowed.

a. The developer is hereby directed to return the own contribution amount to the complainant with interest @ 10.75% from today.

b. The developer is hereby directed to return the 2X amount to the complainant.

c. The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI which is permissible and interest if any.

d. The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.

e. The developer is directed to pay Rs. 5,000/- as cost towards this petition."

7. The complainant being not fully satisfied with the order passed by the learned Adjudicating officer has preferred this appeal, praying to allow the appeal and enhance the compensation.

8. After filing the appeal, the appellant had filed an application for impleading -PNB Housing Finance Limited (PNBHFL) as additional respondent on the ground that the PNBHFL is a party to the tripartite agreement entered into between the appellant and Respondent No.2-

promoter and therefore, it is a necessary and proper party to the proceedings. After hearing the parties and accepting the reasons stated in the affidavit filed in support of the application, the said application was allowed and PNBHFL was impleaded as 3rd respondent in the case.

9. Sri Srinivas V, learned counsel appeared for the Appellant-allottee. R-1 RERA and R-3 -Bank, though served, remained unrepresented. Sri Sunil P Prasad for M/s Tapasya Law Chambers, learned counsel appeared for R-2-promoter.

10. Today, when the matter is listed for hearing, the learned counsel appearing for the appellant submitted that in view of the Judgment of the Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., Vs. STATE OF UP & ORS. ETC. in Civil Appeal No(s).6745 - 6749 of 2021 **reported in 2021 SCC ONLINE SC 1044**, the impugned order passed by the learned Adjudicating officer lacks jurisdiction and is liable to be set aside and the matter requires to be remitted to RERA for fresh consideration.

11. Whereas, Learned counsel for Respondent No.2-promoter submits that the 2nd respondent cannot have any objections for the same in view of the aforesaid Judgment of the Supreme Court.

12. The Hon'ble Supreme court in the case of M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD (*supra*) while dealing with the jurisdiction of the Authority and the Adjudicating officer under the provision of the Real Estate (Regulation and Development) Act, 2016 (for short the RERA Act), has framed a question as follows:

"2. 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?"

After elaborate discussion, the Hon'ble Apex court at paragraph 86 held that:

" 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”.

13. At the stage, it is relevant to note that it is a cardinal principle of construction that every decision of the Supreme Court declaring the law is retrospective, unless it is expressly or by necessary implication restricted to prospective operation. The true and correct position of law declared by the Supreme Court applies not only to transactions and proceedings subsequent to the decision, but also to transactions and proceedings prior to the decision, as held by the Division Bench of the Hon’ble High Court of Karnataka in the case of ***Suresh Babu -vs- Smt. S. Susheela Thimmegowda (1998 SCC OnLine Kar 691=(1999)2 Kant LJ 580(DB).***

14. Therefore, in view of the law laid down by the Hon’ble supreme court distinguishing the powers of the Authority and the Adjudicating Officer under the RERA Act and holding that the decision of the supreme court in any matter will apply to all pending transactions and proceedings and submission made by the learned counsel for the parties, without expressing any opinion on the merits of the matter, we deem it appropriate to dispose of the above appeal, set aside the order as one without jurisdiction and remand the matter to the Authority for fresh consideration in the light of the Judgment of the

Apex court in the case of *M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT LTD.,(supra)*.

15. In the circumstance of the case, we pass the following:

O R D E R

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 23rd March, 2019 in CMP/181122/0001654 by respondent No.1 Adjudicating Officer, RERA, is set aside, as one passed without jurisdiction and the matter is remanded to RERA for fresh consideration in the light of the Judgment of the Apex Court in the case of *M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs. STATE OF UP & ORS. ETC. (supra)* and in accordance with law;
- (iii) Since the matter pertains to the year 2014, the Authority shall make an endeavor to dispose of the complaint as expeditiously as possible and at any rate within the outer limit of 45 days from the date of parties entering appearance;
- (iv) Since the appellant as well as the respondents have already entered appearance through their respective counsel, they shall appear before the RERA on 27.01.2022 without expecting further notice from RERA;
- (v) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;

- (vi) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

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