

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

DATED THIS THE 11th DAY OF JANUARY, 2022

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. 148/2020

(OLD RERA. APL No.195/2019)

BETWEEN:

Akhilesh Karanth
S/o B Krishna Karanth,
Age about 36 years,
Permanent Resident of
"Akshaya", #5-76, Kidiyoor,
Udupi-576 103

Currently Residing at
#17-387, 180D Riverdae Crescent,
Sengkang, Singapore- 544 180

Represented by Power of Attorney
Anirudh. K Karanth,
S/o B Krishna Karanth,
Age about 30 years,
Residing at D.No. F-03, 1st floor,
Silverwaves Elite Apartment,
Near church bust stop, Kengeri Satellite Town,
Bengaluru – 560 098.

...APPELLANT

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

AND:

1. Real Estate Regulatory Authority Karnataka,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI Compound,
3rd Cross, Mission Road,
Bengaluru, Karnataka-560027
Represented by its Secretary

2. M/s Mantri castles Pvt Ltd.,
A company incorporated under the Companies Act,-1956
And having Registered office,
Mantri House 41, Vittal Mallya Road,
Bangalore – 560 001.
Represented by its Directors

...RESPONDENTS

{R.2 impleaded vco dated 22.1.2021}

(R-1 RERA served, unrepresented)
(Sri Sunil P Prasad for M/s Tapasya Law Chambers,
Advocate for Respondent-2)

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 27th December, 2018 in CMP/181002/0001340 passed by the Adjudicating Officer, RERA Respondent-1. On establishment of this Tribunal appeal was transferred on 02.01.2020 and renumbered as Appeal No.(K-REAT) 148/2020.

This appeal coming on for hearing this day, the Chairman, made 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 27th December,2018 in CMP/181002/0001340, 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 SERENITY" undertaken to be developed by M/s Mantri Castles Private Limited (hereinafter referred to as 'Promoter') - 2rd respondent, booked an apartment bearing No.N-601 in Wing 'N' for a total consideration of Rs.94,89,016/- 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 23.7.2015, Construction Agreement and Agreement to sell both dated 8th September, 2015 with the allottee and agreed to complete the construction and deliver possession of the said apartment to the allottee on or before 28.2.2018.

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, the complainant filed a complaint with RERA under Section 31 of the Act for return of the full amount with interest.

5. The promoter who was arrayed as respondent in the complaint before RERA resisted the complaint by filing statement of objections

contending that in view of the nature of the scheme under which the appellant has intended to purchase the flat and having regard to the scope and object of the provisions of Sections 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 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:

"a. The complaint No. CMP/181002/0001340 is allowed.

b. The developer is hereby directed to return the voluntary contribution amount to the complainant within 30 days from today. If not it will carry interest @ 10.25% from 31st day.

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

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

e. The developer is hereby directed to hand over the necessary documents to the complainant in case he has paid GST to the Government to enable the complainant to take back that amount.

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

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 by directing:

“a) The developer/respondent No.2 to return the own contribution amount of the appellant with interest at the rate of 12.00% from August 2015;

b) The developer/respondent No.2 be hereby directed to return the 2X amount to the complainant along with interest at the rate of 12.00% from August 2015 till repayment or realization;

c) The developer is hereby directed to discharge the loan raised in the name of the appellant with all the pending Pre-Emi from the date of default till repayment or realization and cheque return charges;

d) The developer be hereby directed to pay compensation for unfair trade practice and cost of litigation.

e) Pass such other order/direction as deem fit under the facts and circumstances in the interest of justice and equity”.

8. It is relevant to mention here that the promoter also had preferred an appeal challenging the very impugned order passed by the learned Adjudicating Officer in Appeal (KREAT) No.55/2020. This Tribunal by Judgment dated 7th April, 2021 dismissed the said appeal for non-depositing of the total amount payable to the allottee as per the impugned order as contemplated under proviso to Section 43(5) of the Act in spite of granting sufficient opportunities and directed the 1st respondent-RERA to release the amount deposited by the promoter at the time of filing appeal before the Interim Tribunal (KAT) in part compliance of proviso to Section 43(5) of the Act in favour of the allottee.

9. Sri Srinivas V, learned counsel appeared for the Appellant-allottee. R-1 RERA 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, Sri Sunil P Prasad 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. However he submits that in the event of remitting the matter to the Regulatory Authority 2nd Respondent may be given opportunity to put forth his case before RERA.

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 apt 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:

ORDER

- (i) The appeal is allowed in part;
- (ii) The impugned order dated 27.12.2018 in CMP/181002/0001340 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 2015, 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) All the contentions of the parties are kept open to be urged before RERA.
- (v) 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;
- (vi) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;
- (vii) 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**