

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

DATED THIS THE 7TH DAY OF SEPTEMBER 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

FR (K-REAT) NO. 66/2022

BETWEEN:

Dr. K. Balaraman
S/o Late V.L Krishnaswamy
Aged about 75 years
Proprietor of M/s KRSNA Projects
Having Office at KRSNA Gardenia,
No. 559, RMV 2nd Stage,
New BEL Road, Dollors Colony,
Bengaluru – 560 094.

:APPELLANT

(By Sri. Arjun J Birje for Sri. Sanjay S Sethiya, Advocates)

AND

1. Ashwin Gowda,
Major in age,
Residing at No.361, 1st Floor,
13th Main, RMV Extension, Sadashivnagar,
Bengaluru – 560 080.
2. Real Estate Regulatory Authority
Ground Floor, Silver Jubilee Block ,
Unity Building, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560 027
Represented by its Secretary.

:RESPONDENTS

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 praying to set aside the order dated 16.11.2019 in complaint No.CMP/190215/0002143 passed by the learned Adjudicating Officer- respondent No.2.

This appeal coming up before the court for orders this day, Hon'ble Chairman, delivered the following:

JUDGMENT

FACTS OF THE CASE

The appellant is the proprietor of M/s KRSNA Projects and carrying on the business of construction of apartments and hereinafter referred to as promoter, and one such Real Estate project undertaken to be constructed by the promoter is known as "KRSNA LABURNUM".

2. The 1st respondent –allottee who intended to purchase a flat in the said project, entered into an agreement of sale dated 03.07.2015 with the promoter in respect of Flat bearing No.D-9, on the 9th floor of the said project. That the approximate date for completion of the project and delivery of possession of the flat to the allottee as agreed by the promoter including the grace period was on or before October, 2016 with an additional grace period of six months. As the promoter failed to complete the project and deliver possession of the flat as stipulated in the agreement of sale, the allottee filed a complaint before RERA seeking delay compensation.

3. That pursuant to the notice issued to the promoter, they appeared before the learned Adjudicating Officer and denied the allegations made by the complainant and contended that as per clause 19(iii) of the Agreement of sale, there is no delay in delivering possession of the flat as alleged by the allottee.

4. The learned Adjudicating Officer, holding that clause 19(iii) of the Agreement of sale cannot over-ride the spirit of Section 18 of the Real Estate (Regulation & Development) Act, 2016 (for short, the Act), by the impugned order, awarded delay compensation to the allottee in the form of simple interest for every month's delay in delivering possession, as per the operative portion of the impugned order.

5. The promoter being aggrieved by the said order, has filed this appeal on 10.08.2022. At the time of scrutiny, the office has raised several objections including non-deposit of total amount payable to the allottee, as ordered by the learned Adjudicating Officer. At the request of the learned counsel for the appellant, time was granted to the appellant on three occasions viz., from 19.08.2022 to 25.08.2022, from 25.08.2022 to 01.09.2022 and from 01.09.2022 to this day, so as to enable the appellant to comply with the office objections especially to make pre-deposit of statutory amount as mandated under proviso to Section 43(5) of the Act.

6. Even today, the learned counsel seeks time to make the statutory deposit.

7. This is a case of awarding delay compensation by way of interest for every month of delay in delivering possession of the apartment to the allottee. In view of mandatory requirement of proviso to Section 43(5) of the Act, the appellant is required to deposit the total amount payable to the allottee as per the impugned order before the appeal is heard.

8. That proviso to sub-section (5) of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (for short the Act) contemplates pre-deposit by a promoter while filing an appeal. In this regard, we deem it just and proper to refer to the decision of the Hon'ble Supreme Court of India on this aspect of the matter in the case of **M/s NEWTECH** (supra), wherein, in paragraphs 136 & it 137, has held as follows:

"136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal

shall lie or it may lie on fulfillment of precondition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India."

9. Despite granting sufficient time, the appellant-promoter has failed to comply with the office objections including deposit of statutory amount to entertain the appeal. We do not see any ground to grant further time.

10. In view of the law laid down by the Hon'ble Apex court in the Newtech Developers Pvt. Ltd., we pass the following:

ORDER

- 1) Appeal is dismissed 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 RERA Act;
- 2) In view of dismissal of the Appeal, the 1st respondent-allottee is at liberty to recover the

amount awarded to him in the impugned order by initiating appropriate proceedings against the appellant-promoter.

- 3) In view of dismissal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration.
- 4) The Registry is hereby directed to comply with Section 44(4) of the RERA Act and return the records of the RERA, if received.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER