

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

DATED THIS THE 07TH DAY OF DECEMBER, 2022

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) 77/2022

BETWEEN:

BCV Developers Pvt. Ltd.,
A company incorporated under
the provisions of Companies Act,
1956, having its registered office at
29th Floor, World Trade Center,
Brigade Gateway Campus,
26/1, Dr.Raj Kumar Road,
Malleshwaram-Rajajinagar,
Bengaluru - 560 055.

Represented by its Authorised Representative,
Varun Tallam.

...APPELLANT

(By Miss Sahana Devanathan for M/s Induslaw, Advocates)

AND

1. Dr. Asha A,
Wife of Ram Kumar,
Aged about 44 years,
Residing At No.66/2032,
Nehru Extension, Maluru,
Kolar - 563 130.
2. The Real Estate Regulatory Authority, Karnataka,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road
Bengaluru,
Karnataka - 560027.

Represented herein by its Secretary.

...RESPONDENTS

(Sri. Sri. N.V. Vasanth, Advocates for R-1
R2-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 13.07.2022 passed by the RERA, Bengaluru in CMP/201113/0007055.

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

J U D G M E N T

This appeal is by the Promoter of a Real Estate Project challenging the order passed by the Authority directing to refund a sum of Rs.95,37,114/- to the allottee with interest.

2. For the sake of convenience, the appellant, the first Respondent and the second respondent are hereinafter referred as the promoter, the allottee and the Authority respectively.

Brief Facts of the case:

3. The promoter is engaged in the business of real estate projects and one such project undertaken to be developed by the promoter is 'Juniper at Brigade Orchards' situated at Rayasandra Village in Devanahalli Taluk of Bengaluru Rural District.

4. The allottee who proposed to purchase a flat in the said project and after negotiation, she was allotted a two BHK flat bearing No.F136, for a sale consideration of Rs.73,07,938/- and both the parties agreed for payment of sale consideration by installments. Accordingly, the allottee entered into an agreement of sale and

construction agreement on 07.09.2016 with the promoter. It is stated that the promoter had agreed to deliver possession of the flat to the allottee on or before 31.12.2019 with all amenities by executing registered sale deed. However, when the allottee visited the project site she came to know that the flat was not constructed as per the actual plan shown in the brochure. As such, the allottee gave a notice to the promoter regarding deviation in the construction of the project from the original plan and requested them to modify the construction as per the original plan. In response to the said notice, the promoter submitted their reply accepting only some of the modifications. Being not satisfied with the said reply the allottee issued notice to the promoter terminating the agreement of sale and sought refund of the amount paid towards sale consideration along with interest and costs. As the promoter did not rectify the violation in the project, the allottee filed a complaint before the RERA seeking refund of the amount with interest from the date of remittance till its realization.

5. After issuing notice of the complaint, the promoter appeared before RERA through their counsel and filed objections to the complaint.

6. The Authority, after considering the rival contentions and documents furnished by both the parties passed the impugned order. The operative portion of the impugned order reads as follows:

"In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/201113/0007055 is hereby allowed. Respondent is directed to pay Rs.95,37,114/- to the allottee within 60 days from the date of this order. Further, the interest at the rate of SBI MCLR + 2% shall be calculated from 12/07/2022 till the date of payment paid to the allottee. Failing which allottee is at liberty to enforce this order in accordance with law."

7. Heard, Miss Sahana, learned counsel appearing for appellant-promoter and, Sri. N.V. Vasanth learned counsel appearing for respondent No.1-allottee. Respondent No.2-RERA though served, remained unrepresented.

8. The sum and substance of the argument advanced by the learned counsel for appellant-promoter is stated as under:

- i) That the Authority has grossly erred in directing that a sum of INR 95,37,114/- be paid to the respondent-allottee and that figure is arbitrary, unjustified, baseless and unsustainable.
- ii) That the impugned order is an indicative of non-application of mind by the Authority.
- iii) That there is no justifiable arithmetical or logical basis and no reasoning has been assigned by the Authority in directing the promoter to pay a sum of INR 95,37,114/- with interest and cost.
- iv) That it is not forthcoming from the impugned order, as to how the Authority arrived at the amount ordered to be paid to the allottee.

- v) That the amount of INR 95,37,114/- as awarded by the Authority is about INR 30,00,000/- more of the total sale consideration paid by the allottee and almost INR 20,00,000/- more than the amount claimed by the allottee.
- vi) That the Authority has grossly erred in taking an amount of INR 69,15,935/- as the total sale consideration paid by the allottee and it is pertinent to highlight that it is neither party's case that the allottee has paid an amount of INR 69,15,935/-, and both parties agreed and acknowledged that the allottee has paid a total amount of INR 65,23,726/-, and the promoter has received only a sum of INR 59,84,414/- from the allottee, with the remaining amounts having been remitted to the Government towards VAT, Service Tax, GST and Stamp Duty.
- vi) The Authority has grossly erred in observing that it would not be fair to ask the allottee to bear the GST in respect of the property which she is not going to purchase and bear the cost of the taxes payable on the said unit.

On the above and other grounds, the learned counsel for the promoter prays for allowing the appeal by setting aside the impugned order and remitting the matter to the Authority for reconsideration afresh by providing an opportunity of hearing to both the parties.

9. That, on the contrary the learned counsel appearing for allottee submits as under:

- i) That allottee had paid a sum of Rs.69,15,935/- to the promoter by way of installments and therefore the Authority was justified in directing the promoter to refund the said amount with interest and cost by calculating interest at the rate of SBI MCLR from respective dates of payment excluding the amount shown to have been deducted by the promoter towards taxes.
- ii) That the impugned order passed by the Authority is just and proper and it does not call for interference by this Tribunal.
- iii) The learned counsel admits that the principal amount was not paid in one lumpsum and it was paid in installments and he fairly submits that the order does not disclose the details regarding principal amount and interest.
- iv) That the Authority has calculated the interest payable on the principal amount through auto calculation and its details may be available in the hard copy of the software maintained by the Authority.

On the above grounds learned counsel prays for dismissal of the appeal.

10. However, he submits that in the event of this Tribunal allowing the appeal and remanding the matter to the Authority for reconsideration, the Authority may be directed to reconsider the matter as expeditiously as possible in the facts and circumstances of the case by providing an opportunity of hearing to both the parties.

11. The learned counsel for the appellant has filed a Memo in the court today which reads as under:

1. The appellant is aggrieved by the Final Order dated 13.07.2022 in CMP/201113/0007055 passed by the Ld. Karnataka Real Estate Regulatory Authority. Hence, the Appellant has preferred the above Appeal. The contents of the memorandum of appeal may be read as forming part and parcel of the present memo, for the purposes of brevity and avoiding repetition. The appellant has also deposited INR 96,95,913/- before this Hon'ble Tribunal.
2. The appellant, on a without prejudice basis, regularly sought to contact the respondent No.1 and attempt discussions for an amicable settlement. In fact, the appellant made genuine and *bona fide* attempts in this regard prior to and even during the pendency of the respondent No.1's complaint as well as the above appeal. However, to every approach of the appellant, the respondent No.1 chose to respond with a demand for more monies.
3. Nonetheless, following the hearing of 02.12.2022, the appellant deliberated over the matter again, and are keen to place the below submission for the kind consideration of this Hon'ble Tribunal and the Respondent No.1 too.
 - 3.1 The Respondent No.1 filed her complaint CMP/201113/0007055, seeking refund of principal sum of INR 65,23,726/- plus interest.
 - 3.2 The Respondent No.1 then filed her memo dated 14.06.2022, confirming her calculations of her claim for payment of principal dues of INR 65,23,726/- plus interest dues of INR

11,12,214.85/- [calculated at SBI MCLR + 2% (7.40% +2% = 9.40%) for 662 days from 20.08.2020 to 14.06.2022]. A true copy of the Respondent No.1's Memo dated 14.06.2022 is produced herewith and marked as Document No.1.

- 3.3 The appellant is willing to make payment of the aforesaid entire amount claimed by the Respondent No.1 before the Ld. Karnataka Real Estate Regulatory Authority i.e., INR 76,35,940.85/- in full and final settlement of all claims and disputes of the Respondent No.1.
4. In view of the above, read with grounds urged in the above appeal, it is most humbly prayed that this Hon'ble Tribunal be pleased to set-aside the impugned order, direct remittance of INR 76,35,940.85 from out of the deposited monies in favour of the Respondent, and direct the balance of the deposited monies to be released in favour of the appellant.
5. The appellant has an excellent case on the merits of the above appeal. However, in keeping with its core beliefs and corporate philosophy, the appellant is keen for a mutually beneficial resolution of the matter at hand. Hence, the present memo is filed without prejudice and in good faith, and with a view to not only avoid any more litigation but also maintain cordial relationship. The appellant's submissions herein can neither constitute nor be construed as an admission of the respondent No.1's allegations and claims, or, even any wrongdoing and liability on the part of the appellant.

Wherefore it is most respectfully prayed that this Hon'ble Tribunal be pleased to accept the present memo on record and pass such suitable orders in terms thereof as it deems fit, in the interests of justice and equity."

12. Whereas, learned counsel appearing for the allottee submits that the allottee disputes the principal amount and interest stated in the memo of calculation of the promoter and filed a separate memo of calculation of the allottee. He further submits that since there is serious dispute between the parties with regard to both the principal amount and interest, the prayer sought by the appellant under their memo of calculation may be rejected and consequently, appeal may be dismissed by confirming the order passed by the Authority.

13. In view of the above submissions made by the learned counsel appearing for the parties and on perusal of the memos filed by the parties and the impugned order, the following point arises for our consideration:

- i) Whether the impugned order is vague and arbitrary and calls for interference at the hands of this Tribunal?
- ii) What order?

Point No.1:-

14. As could be seen from the impugned order, it is not clear as to how the Authority has arrived at a figure of Rs.95,37,114/- which is ordered to be paid to the allottee with interest. Further the

order does not indicate that out of the amount ordered to be paid to the allottee, what is the principal amount the allottee had deposited with the promoter for purchasing of a flat in the real Estate Project undertaken to be constructed by the promoter and whether that amount was paid in one lumpsum or through installments. It is admitted by the allottee that it was paid by installments, but the order does not disclose through how many installments it was paid and what was the amount paid in each installment. These details are required to be stated since interest has to be calculated from respective dates of payments with reference rate of interest applicable during relevant period. It is also relevant to state here that the Authority is required to award interest as per Section 18 of the RERA Act Read with Rule 16 of the KRERA Rules.

15. That in the event of the Authority taking the help of Auto-Calculation to ease out difficulty in calculation of interest in such case, the Authority is required to state in the order, the manner in which it has calculated the interest and has arrived at the amount ordered to be paid to the allottee. Further it is also relevant to observe here that the Authority is required to state the reasons as to why the promoter is not entitled for deduction of the amount shown to have been paid towards taxes from the amount payable to the allottee.

16. Further it is also not clear from the impugned order as to what is the principal amount and how the interest is calculated and

whether the amount ordered to be refunded to the allottee is inclusive or exclusive of GST and other taxes.

17. In the above facts and circumstance of the case, the prayer sought in the memo filed today and referred in para 11 herein above is liable to be rejected and the appeal deserves to be allowed, the impugned order is to be set aside and the matter is to be remitted to the Authority for fresh consideration by providing an opportunity of hearing to both the parties. Consequently, the amount deposited by the appellant with this Tribunal while preferring the appeal is to be released in favour of the appellant.

Accordingly, we answer Point No.(i) in the affirmative.

18. For the reasons stated above, we pass the following:

ORDER

- i) The appeal is allowed;
- ii) The memo filed by the appellant/promoter today and referred in para 11 above is rejected.
- iii) The impugned order dated 13.07.2022 passed by the RERA, Bengaluru in CMP/201113/0007055 is hereby set aside and the matter is remanded to the RERA for fresh consideration in accordance with law and in light of the observations made herein above by providing an opportunity of hearing to both the parties;
- iv) Since the matter pertains to the year 2016, the Authority shall make an endeavor to dispose of the complaint as expeditiously as possible and at any rate within the outer limit of 40 days after parties entering appearance;

- v) As the appellant and 1st Respondent have already entered appearance through their counsel, they shall appear before the RERA on 02.01.2023 without expecting further notice from RERA and extend co-operation with RERA so as to enable the Authority to dispose of the appeal in time;
- vi) In the event the Authority is not sitting on the said date, the matter may be taken up on the immediate next date of sitting;
- vii) In view of disposal of the Appeal, pending I.As, if any, do not survive for consideration and shall stand disposed of;
- viii) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in compliance of the proviso to Section 43(5) of the RERA Act, along with interest, if any, accrued thereon, by issuing either a cheque or DD in the name of appellant-company and shall hand over the cheque or DD to the authorized signatory of the appellant-company who has signed the vakalath and appeal memo, on furnishing necessary documents and by following due procedure;
- ix) Registry is hereby directed to comply with the provision of Section 44(4) of the Act and to return the record to RERA, if received.

No order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

**Sd/-
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**