

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

DATED THIS THE 10TH DAY OF APRIL 2023

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

FR No. (K-REAT) 55/2023

BETWEEN

1. Shriprop Dwellers Private Limited.
Present Address:
No.31, 2nd Main, T Chowdaiah Road,
Near Bashyam Circle,
Sadashivanagar, Bengaluru-560080
A Company incorporated under the
Provisions of Companies Act, 1956 and rep. by its
Authorised Signatory-Mr. Bharat Jumrani.
2. Shriram Properties Limited,
(Earlier Shriram Properties Pvt. Limited)
Present Address:
No.31, 2nd Main Road, T. Chowddiah Road,
Near Bashyam Circle,
Sadashivanagar, Bengaluru-560080
A Company incorporated under the
Provisions of Companies Act, 1956 and rep. by its
Authorised Signatory-Mr. Bharat Jumrani.

Old Address

No.40/43,8th main,
4th cross, Sadashivanagar,
Bengaluru-560 080

... APPELLANT

(By Sri Savou for M/s JSM Law Partners, Advocate)

AND

1. The Karnataka Real Estate Regulatory Authority
 No.1/14, Ground Floor,
 Silver Jubilee Block, Unity Building,
 CSI Compound, 3rd Cross,
 Mission Road,
 Bengaluru - 560 027.
 By its Secretary.

2. Mr.Santhosh Subbarao,
 Block 8,B-13, Nandi Garden Phase I
 Anjanpura Post,
 JP Nagar 9th Phase,
 Bangalore-560 108.

...RESPONDENTS

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the impugned order dated 30.12.2022 passed in Complaint No.CMP/220518/0009480 passed by respondent No-1 Authority.

This Appeal, coming on for orders this day, the Chairman delivered the following:

J U D G M E N T

The appellants are engaged in the business of developing real estate project and one such project developed by them is known as "SHRIRAM SUMMIT" in property bearing Survey No. 80/1, 2, 3, 4, 84/6 & 7, 85/2, 87/2, 89/1 & 2, 121/1, 2, 3 situated at Veerasandra Village & Hebbagodi Village, Attibele, Anekal Taluk, Bengaluru Urban-562107 has preferred this Appeal challenging the order dated 30.12.2022 passed in Complaint No. CMP/220518/0009480 by the Authority – 1st Respondent.

2. The 2nd respondent –allottee who intended to purchase a flat in the said project, entered into an agreement of sale dated 31.05.2018 with the promoter in respect of Apartment No.SMT No. 19.09.03. However, as there was delay in completion of the project and handing over possession of the flat on time to the allottee within the stipulated period as agreed between the parties in the agreement of sale, the allottee filed a complaint before RERA seeking compensation by way of interest for the delayed period.

3. That pursuant to the notice issued to the promoter, they appeared before the Authority and filed statement of objections denying the allegations made by the complainant and contended that the delay caused in completing the project and delivering possession of the flat is due to pendency of cases before the National Green Tribunal and the Hon'ble Supreme court. The delay is neither intentional not mala fide, but due to *force majeure*. Accordingly, prayed for rejecting the complaint filed by the allottee.

4. The Authority after considering the complaint, statement of objections and hearing the parties, passed the impugned order, the operative portion of which reads as under:

"In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/220518/0009480** is hereby allowed. Respondent is directed to pay a sum of

Rs.12,57,179/-(Rupees Twelve Lakh Fifty Seven Thousand One Hundred and seventy Nine only) towards delay period interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 31/12/2019 till 10/06/2022. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority."

5. This is a case of payment of interest for delay in delivering possession of the flat 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.

6. This appeal was filed on 06.03.2023 and the Registry has placed it before the bench on 14.03.2023 for orders regarding non-compliance of office objection i.e., regarding non deposit of statutory amount as per proviso to Section 43(5) of the Act. On the undertaking of the learned counsel appearing for appellant on instruction from the Authorized Signatory of the appellant-company to deposit the amount as mandated under proviso to Section 43(5) of the Act, the matter was adjourned to 24.03.2023,

7. Once again on 24.03.2023 appellant sought further time by filing a Memo. Accordingly, granted time finally up to 04.04.2023 to make pre-deposit and in the event of appellant failing to deposit the amount, the matter was directed to be listed on 10.04.2023, as to

why appeal should not be dismissed for non-deposit of statutory amount.

8. Today, on instruction from Authorised Signatory of the appellant who is present in the court, learned counsel appearing for appellant submits that due to financial constraint, the appellant is unable to deposit the amount as mandated under proviso to Section 43(5) of the Act.

9. 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 of the amount by a promoter while filing an appeal. On this aspect of the matter, the Hon'ble Supreme court of India in the case of **M/s NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD Vs. STATE OF U.P AND OTHERS reported in (2021 SCC ONLINE SC 1044)**, at paragraphs 136 & 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.”

10. That in spite of granting sufficient opportunity, the appellant has not complied objection relating to pre-deposit of statutory amount as mandated under proviso to Section 43(5) of the Act. Further, in view of the submission made by the learned counsel for the appellant that due to financial constraint the appellant is unable to deposit the statutory amount and law the laid down by the Hon’ble Apex court, 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 mandated under proviso to Section 43(5) of the RERA Act and;

- 2) In view of dismissal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration.
- 3) 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**

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