BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Complaint No. CMP/190405/0002577
Dated: 25th JUNE 2019

Complainant : Suneesh P P
Sathyanikethan, Kannadiparamba (PO)
Kannur
Kerala -670604

AND

Opponent : DG AFNHB
Air force station race course road
New Delhi -110003

J U D G E M E N T

1. Suneesh P P has filed this complaint under Section 31 of RERA Act against the project "Jalavayu Towers Mysutu " developed by Airforce Navel Housing Board, bearing Complaint no. CMP/190405/0002577.

2. This complaint is filed by the complainant against the developer. The total cost of the unit was Rs. 39.5 lakhs, later it was revised to Rs. 58.1 lakhs. As per the agreement the developer was expected to complete the project was March 2018 but now the date given by the developer to RERA is different as mentioned in the agreement. Further the developer has violated the terms of the

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agreement and therefore this complaint is filed for refund of the amount. The facts of the complaint is as follows:

The petitioner is a retired short service commissioned officer from Indian Navy. While the petitioner was serving in the Navy, Air Force Naval Housing Board ((hereinafter mentioned as the respondent), which is an organization managed by Indian Navy and Indian Air Force, catering to the housing requirements of serving and retired personnel of the two services and their families), came up with the construction of a housing project in Mysore, Karnataka. The petitioner subscribed to an A1 duplex dwelling unit in the AFNHB Mysore project on 14 Mar 13, in the serving personnel category. The cost of the unit was advertised as Rs39.5 Lakhs, and tentative completion date for the project was published as early 2017, though the contract was not awarded to the builder. Subsequent to the award of contract to the builder M/s GJS Infratech Pvt Ltd, Hyderabad (hereinafter mentioned as the contractor or the builder), the respondent in Aug 2017 revised the cost of A1 DU as Rs 58.1 Lakhs and Completion date as Mar 2018.

Relief Sought from RERA :Refund of money paid wit interest accrued

3. The respondent has appeared and filed his objections.
4. Heard the arguments.
5. The point arise for my consideration is ;
   a. Whether the complainant is entitled for refund of the amount?
   b. If so, what is an order?
6. My answer is affirmatively for the following

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REASONS

According to the complainant the following reasons for going away from the project.

> *Thereafter the opponent entered in to a supplementary agreement with the contractor, without the knowledge and information of any members or representatives from the allottees. The supplementary agreement was suppressed by the opponent from the allottees. The features of the supplementary agreement was intimated to the allottees only on 15th April 2018 by a web update. As per the web update, the opponent has agreed to transfer rights of 180 units to the builder. Apart from this, the opponent and the builder/ contractor have decided to complete the project in two phase, against the sanctioned plan to develop the same in a single phase. This decision was also taken without the permission of the allottees. Again payment schedule was revised by the opponent. The revised payment schedule compels the allottees to make the entire payment, months before the completion of the project. The opponent has collected a total amount of Rs. 55,67,000/- from the complainant till November 2018 and demanded him to make the balance payment by Feb 2019, even though the opponent could not complete at least 50% of the total project. The complainant has taken up this matter with the opponent in several occasions through letters and e-mails and requested them to reschedule the payment in proportion to the work completion. But the reply from the opponent was negative.*

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By reading the above contentions it is clear that the developer has committed a grave error in transferring the 180 units to the builder without taking the confidence of the allottess who have already on record. Now I have to see what is the stand taken by the developer against these allegations.

On behalf of the developer it is submitted that the developer is doing the project only for the members of the Air Force. He also submits that this project is being developed on no profit & no loss on self financial housing scheme. Further the developer has taken specific contention in Para No. 7,

> *Since the scheme is self financed, any expenditure including compensation, if awarded has to be contributed by the allottees of the scheme as the respondent is working no profit no loss basis. Further when Respondent has no funds even to progress the project without instalments being paid so Respondent has no capacity to pay any compensations and in worst case additional financial burden may lead to total stoppage of work and auctioning of the project.*

On behalf of the developer it is further submitted that :

> *Vide clause 19 of the allotment letter, it has been certified that, "due to unforeseen circumstances beyond the control of AFNHB, if the project gets delayed, on no interest/ compensations shall become payable". If the completion of the project get delay, no interest and/ or compensation shall become payable. The rules and regulations of local authority and other state authorities can at times become governing determents affecting the completion of project.*

Further on behalf of the developer it is submitted that this project is based upon no profit no loss principle.

Shri. Biju representative of the developer further submitted that:

> Mysore scheme was initially planned for 388 DUs and construction work started in 2015. Though the

scheme was not fully subscribed, it was anticipated that during the progress of project more aspirants would join the scheme and scheme would get fully subscribed. Until all the planned DUs are subscribed by the aspirants and they pay the instalments. AFNHB cannot progress the entire project. When the completion of project reached 40% the subscription to the project remained only at 49% which was not sufficient to generate funds to progress the project. Further after giving option of withdrawal in 2015 about 169 allottees for refund. The numbers of allottees were thus further reduced to 184 against 388 planned DUs by 16/12/2015. This made the financial condition of the project in bad shape and the contribution made by 184 allottees was in sufficient to progress 388 DUs. As a last resort, the Board of Management approved dilution of scheme in June, 2015, however the scheme remained undersubscribed.

Having no other option in order to limit its financial burden respondent reduced the scope of work to be executed by contractor M/s GJS Infrastructure from 388 to 208 DUs with 17 vacancies existing at that point of time and remaining units to be developed separately. Reduction in scope of work was objected by the contractor M/s GJS constructions who raised dispute & invoked Arbitration. Though the Arbitrator was appointed by AFNHB but during the course of Arbitration proceeding various meeting were held with the contractor in order to amicably sort out the matter so that losses to AFNHB may be minimised.

Further the developer has given the reasons for transfer of some units as under :

Having no other option in order to limit its financial burden Respondent entered in to Supplementary Agreement (SA) with the contractor wherein the scope of work to be executed by Respondent was reduced from 388 to 208 DUs with 17 vacancies existing that the point of time and remaining units to be developed separately.

PRAYER

Under the given facts and circumstances and submission herein above the respondent most respectfully prayer that Hon'ble Authority may graciously be pleased to:-

a) Dismiss the complaint of the complainant since the same being devoid of merits.

b) Impose cost on the complainant/s for filling such frivolous complaint and wasting the precious time of Hon'ble Authority.

c) pass such other or further order/ orders as this Hon'ble Authority deem fit and proper in the fact and circumstances of the case in the interest of justices.

1. By reading the above paragraphs it is clear that the developer has developed this project according to their rules and regulations. But I would like to say that the stand taken by the developer does not holds well because RERA Act prevails over any regulations and principles. As per section 18 in case the consumer wants to go away from the project his amount should be refunded. I would like to say that the contention taken by the Developer has no force. As per RERA Sec 18:

> *"in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"*

2. In view of the same the submission made by the Developer that the Complainant cannot go away from the project has no meaning. Any condition imposed by the developer in the agreement will not affecting the S. 18 of the RERA Act.

However the submission made on behalf of the developer that the project is being developed on the amount paid by the member is taken into consideration. Even though S.18 says that the authority has to give interest by way of compensation but because of the

above said reasons I would say that the amount received from the allotte may be ordered to be returned.

3. Generally refund has to be awarded with interest as prescribed in Rule 16, Prior to commencement of this Act. Karnataka Apartment Ownership Act 1972 was in force. According to Section 8 of the said Act interest @ of 9% has to be awarded. But in this case the whole concept of this project is depending upon the own contribution of the member. In this regard the developer has contended in his objection statement to the effect that 50% of the units have been given to the contractor to raise the fund. Further the developer has also taken stand in his objection statement which is as follows:

> As already submitted that Respondent does not possesses any fund of its own and all its schemes are self financed. If the allottees do not pay their instalments on time progress of work be affected. It is submitted that respondent has always taken care of the interest/ requests of allottees and time to time postpone the instalment schedule whenever it could be done taking into consideration funds position. One of such web updates dated 26/4/2018 is annexed as Annexure-R8. But through its web updated 5/2/2019 (Annexure – R9) Respondent made it clear that since the project is near completion and funds would be required to expedite the same so further deferment of instalment is not feasible.
>
> As mentioned in allotment letter Para 16 and Para 0703 of Chapter 7 of Master Brochure:
>
> "No withdrawal is generally permitted, if a waitlist does not exist. However, even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allotted joins in and pay the due instalments. No interest shall be paid on such refunds on such refunds and cancellation charges as mentioned in Para 0702 above shall be deducted as per existing rules."
>
> This is the reason why the developer is opposing the claim made by the complainant. He has given reasons

for transferring the 180 units to the builder to raise the fund to complete the project. But as per S.15 the developer cannot transfer the units without taking the consent of the buyers and also consent of this authority. However, the complainant wanted to go out of the project for the reason of delay as well as the selling of units to builder. This has to be honoured.

4. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. This complaint was presented on 05/04/2019. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 21/05/2019 and hence, there is no delay in closing this complaint. With this observation I proceed to pass following order.

ORDER

The Complaint No. **CMP/190405/0002577** is allowed.

The developer is hereby directed to return the amount of Rs. 55,67,000/-received from the consumer within 60 days. If not, from 61st day it will carry Simple interest @10.75% P.A till the realization of entire amount.

Intimate the parties regarding the Order.

(Typed as per Dictation, Verified, Corrected and Pronounced on 25/06/2019)

25/06/19

(K.PALAKSHAPPA)
Adjudicating Officer

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IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL, BENGALURU

DATED THIS THE 25th DAY OF JUNE 2021

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) 120/2020
(RERA APPEAL (Old) NO.156/2019)

BETWEEN:

Sri Suneesh P.P
(Retired short service commissioned officer)
S/o Purushothaman,
Residing at 'Sathya Nikethan',
Kannadiparamba P.O,
Kannur District,
Kerala State-670 604.

APPELLANT

(Rep. by Sri Nagesh Poojari. Y, Advocate)

AND

1. Director General
Air Force Navel Housing Board,
Air force Station, Race course Road,
New Delhi, Central Delhi District
Delhi State- 110 003.

2. Real Estate Regulatory Authority,
Represented by Secretary, Department of Housing
Second floor, Silver Jubilee Block,
Unity Building,
CSI Compound, 3rd Cross, Mission Road,
Bengaluru- 560 027.

RESPONDENTS

(Rep by Sri Ramachandar Desu, Advocate for R1)

(R2 served, unrepresented)

RERA-1733

This Appeal is filed under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, before the Interim Tribunal (KAT) praying to set aside the order dated 25.06.2019 passed in CMP/190405/0002577 by the respondent No.2,-Adjudicating Officer and later transferred to this Tribunal on 02.01.2020 and re-numbered as Appeal (K-REAT) No.120/2020.

This appeal having been heard and reserved for Judgment, coming on for pronouncement of Judgment this day, the Administrative Member pronounced the following:

JUDGMENT

The appellant/allottee aggrieved by the order passed by the learned Adjudicating officer in directing the developer to return the amount of the appellant without awarding interest on the said amount, has preferred this Appeal under Section 43(5) and 44 of the Real Estate (Regulation and Development) Act, 2016 r/w Rule 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred in short as **'The Act and the Rules')** praying this tribunal to direct the developer to return the amount along with interest and compensation.

Facts of the case in brief are:

2. The appellant is a retired short service Commissioned Officer from Indian Navy. He has applied for a residential house in "JAL VAYU TOWERS" undertaken to be constructed by the Respondent No.1, Air Force Naval Housing Board (for short, AFNHB) which is a welfare society registered under the Societies Registration Act 1860 with the objectives of

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providing residential houses to the serving Indian Air Force and Navy personnel, and war widows of these services. The society provides houses on "No profit no loss basis" under self-finance housing scheme.

3. As per the allotment letter dated 14.03.2013 issued by the Respondent No.1 it was promised to complete the project by the end of March, 2018. However, the date of completion specified by the developer in the application submitted to RERA for registration of the project is different from the one mentioned in the agreement.

4. As per the allotment letter, tentative date of completion of the project was mentioned as early as 2017, though the contract was not yet awarded to any contractor. Subsequent to the award of contract to the builder M/s GJS Infrastructure Pvt Ltd, Hyderabad, the 1st Respondent revised the cost of residential unit of the allottee as Rs. 58.1 lakh in 2017 and completion date of project was specified as March 2018.

5. According to the appellant, the AFNHB entered into a supplementary agreement with the builder without the consent and knowledge of members/allottees. The details of supplementary agreement was intimated to the allottees only on 15.04.2018 through web update. That under the supplementary agreement the respondent No.1 also agreed to transfer half of the units infavour of the contractor without obtaining the consent from the allottees. The appellant also submitted

that there was deviation in the construction of the project, from the sanctioned plan which lead to completion of the project in two phases against the sanctioned plan to develop the entire project in a single phase. Apart from this, payment schedule compels the allottees to make full payment, earlier to completion of the project. With this compulsion and circumstances, the appellant decided to withdraw from the scheme and filed a complaint under Section 31 of RERA Act 2016 against respondent No.1 for refund of his amount paid towards sale consideration with interest and compensation.

6. The learned Adjudicating officer after hearing both parties and considering the documents produced by them, held that there is delay in completion of the project and the act of respondent No.1 in transferring half of the units to the contractor is without the consent of the allottees and approval from RERA. Accordingly learned Adjudicating officer passed the impugned order allowing the complaint and directing the developer to return Rs.55,67,000/- received from the allottee within 60 days. If not from 61st day it will carry simple interest at 10.75% p.a till realization of entire amount.

7. The appellant/allottee being aggrieved by the impugned order in not awarding interest on the amount paid by him towards sale consideration from the respective date of payments, has preferred this

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appeal seeking to set aside the impugned order and thereby direct the 1st respondent to pay interest and compensation.

8. Heard Sri Nagesh poojari, learned counsel for the appellant and Sri Ramachandar Desu, learned Advocate for respondent No.1 developer. Respondent No.2 RERA, though served, remained unrepresented.

9. The learned counsel for the Appellant apart from reiterating the grounds urged in the appeal memo, contended that the Respondent No.1 entered into a supplementary agreement with the contractor without obtaining prior consent from the allottees which is against the provision of RERA Act. It is further submitted that the date of completion of the project published by the Respondent No.1 on the website and date of completion mentioned in the RERA registration certificate are different. Thus, respondent No.1 by publishing different dates for completion of the project has mislead the allottees. Appellant also pointed out that respondent No.1 by entering into the supplementary agreement has agreed to transfer rights of 180 units infavour of a builder which defeated the scheme of construction of the project on "no profit no loss".

10. It is contended that Respondent No.1 by entering into supplementary agreement with a builder has transferred half of the units in favour of the builder without obtaining the consent from the allottees

and approval from RERA. It is also pointed out that the 1st respondent has made deviations in the construction of the project from the sanctioned plan and not providing financial status returns of the project to the allottees.

11. The learned counsel also submitted that in view of indefinite delay in completion of the project the appellant had no option than to withdraw from the scheme and requested for refund of his money with interest. Since his request was not considered, he was compelled to file a complaint under Section 31 of the RERA Act against respondent No.1 before RERA for refund of his money paid with interest and compensation.

12. It is submitted that the Adjudicating officer, RERA has passed the order directing the 1st respondent *to return the amount of Rs. 55,67,000/- received from the consumer (appellant) within 60 days. If not, from 61st day it will carry simple interest at the rate of 10.75% p.a till the realisation of entire amount, without awarding interest and compensation.*

13. Pursuant to the said order, 1st respondent has transferred an amount of Rs. 55,50,000/- to the account of appellant as against Rs.55,67,000/- received from the appellant. However during the pendency of this appeal, Respondent No.1 has returned the balance of Rs. 17,000/- to the appellant.

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14. It is further urged that the impugned order is erroneous, contrary to the facts and law and principles of natural justice which is liable to be set aside.

15. It is contended that the order is passed without properly considering the complaint filed by the appellant and it is in violation of the provisions of RERA Act, 2016.

16. The appellant, with the above submissions has sought for setting aside the impugned order passed by the RERA and thereby to direct the 1st respondent to pay interest on Rs. 55,67,000/- which was paid by the appellant to the developer towards the cost of apartment unit and pay compensation.

17. Learned counsel for Respondent No.1 submits that Air Force Naval Housing Board is a welfare society registered under the societies Registration Act, 1860 with the objectives of providing residential house to the serving Air Force and Navy personnel and widows of these services on "No profit No loss basis". The scheme which is being implemented is under self-finance housing scheme, under which society collects contribution from allottees of the project as a resources/finance for implementation of the project. The amount collected from allottees is solely used for the

projects of their clients and not for investment or sale benefits like a business organization.

18. The said society has a mechanism of evolving final costing of the dwelling units after completion of the project. This costing exercise is carried out by final costing committee which includes the independent serving officers from Air Force and Navy and representatives of the Members of the particular scheme and two Auditors. After the final costing excess/unspent amount, if any, collected from the allottees is returned to the allottees and in case the cost is increased, the increased amount is collected from each allottee in proportionate share based on the size of dwelling units.

19. It is submitted that the Air Force Navy Housing Board launched Mysore scheme during October, 2012. The scheme was planned for construction of 388 residential houses. Initially 353 applications were registered for allotment. After completion of requisite approvals and tendering process for civil work, construction work started in August, 2015. The Respondent No.1 initially demanded the basic tentative cost and this was subject to change depending upon other factors like cost of award of contract, development charges, super area, parking area, cost of additional area, taxes etc. This was mentioned in paras 4 & 5 of the allotment letter dated 14.03.2013 issued to the appellant. It is also mentioned in the allotment letter that escalation is payable due to possible

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increase in prices of land, material, labour, taxes and other mandatory charges and changes in other specific areas etc.

20. The learned counsel for Respondent No.1 while drawing our attention to Rules mentioned in allotment letter at para 16 and 0703 of chapter VIII of Master Brochure submitted that the appellant was informed of the same which reads:

> *"No withdrawal is generally permitted, if a waitlist does not exist. However, even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allottee joins in and pay the due installments. No interest shall be paid on such refunds and cancellation charges as mentioned in para 0702 above shall be deducted as per existing rules."*

21. Respondent No.1 further submitted that as on date 31 allottees have withdrawn from the scheme wherein 19 allottees have been refunded their amount in two installments and remaining 12 allottees are awaiting refund, as no funds are available with AFNHB. And remaining refund cases can be progressed and they will be able to make payment when all vacant units are subscribed by new allottees.

22. It is contended that when all the schemes of the Respondent-1 are self-financed and the payment of interest by way of compensation to the

appellant/allottees is not only burden with finance resources but respondent will have no option but to put this expenditure into project cost and ultimately recover it from the other allottees of the project. The respondents-1 denied that they have huge corpus fund which has come through profit from various projects. It is submitted that when there is no element of profit in the costing, then how such a huge amount can be collected.

Points for Consideration:-

23. That after hearing the learned counsel appearing for the parties and perusing the grounds of appeal, and documents produced along with the appeal and written arguments including the impugned order passed by RERA, the points that arise for our consideration is:-

(I) Whether the learned Adjudicating Officer was justified in not awarding interest on refund amount?

(II) Whether the appellant-allottee is entitled for interest on refund amount?

(III) What order?

REASONS

24. **Point No.(I):-** It is evident from the records available before the Tribunal that there was inordinate delay on the part of developer in

completion of the project. The respondent No.1 failed to deliver possession of the dwelling units to the allottee within the prescribed period as per the agreement, and further it is also seen from the records and the order of learned Adjudicating officer that the project is not complete even at the time of consideration of the complaint in all respects. Therefore the learned Adjudicating officer has rightly ordered for return of amount to the allottee and pursuant to which the developer happily returned the amount of the allottee and has not chosen to carry the matter in appeal.

25. In this context, firstly, it is apt to extract the Rules mentioned in the allotment letter para 16 & 0703 of chapter VIII of Master Brochure:

> *"No withdrawal is generally permitted, if a waitlist does not exist. However, even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allottee joins in and pay the due installments. No interest shall be paid on such refunds and cancellation charges as mentioned in para 0702 above shall be deducted as per existing rules."*

That based on the above Rule, it appears that Respondent No.1 made clear to the appellant that the refund would be possible only when category is fully subscribed and new alottees join the scheme and pay their installments.

26. Now the question arises regarding payment of interest and compensation on the amount deposited by the allottee with the developer for purchase of a flat.

Section 18(1) of the Act reads:-

"18 (1): If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of an apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter,

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interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

27. Admittedly the project in question was launched in October 2012, and tendering process for civil work was started in August-2015 i.e., prior to RERA Act coming into force and it was not completed before the Act coming into force. As such, as per the provisions of the RERA Act, it is an ongoing project. Even though the project is initiated prior to RERA Act and agreements between developer and allottees have been made on terms and conditions of the concerned by-laws of the society then existing, the provisions of the Act and Rules of the RERA will apply as on the date.

In the case on hand, the allottee had withdrawn from the project since the developer had failed to complete the project in time and was unable to deliver possession of the apartment in accordance with the terms of the agreement for sale. Therefore the provisions of the RERA Act is applicable to the said project and the allottee is entitled to interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. Even assuming that the allottee had not withdrawn from the project, proviso to Section 18 of the Act mandates that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of the possession, at such rate as may be prescribed.

28. It is also relevant to mention here that prior to commencement of the RERA Act, Karnataka Apartments Ownership Flats (Regulation of the Promotion of Construction, sale, Management and Transfer) Act 1972 was in force. Even under the said Act there was provision under Section 8 for refund of amount paid with interest for failure to give possession within the specified time.

29. It is an established fact that under Section 18 of the RERA Act when a developer has not completed the project as per the agreement, he is liable to pay compensation or refund deposited amount to the allottee with interest. Though Section 18 of the Act provides and allows the Authority to award interest by way of compensation, by the impugned order, the Adjudicating officer has directed the 1st respondent only to return the amount deposited by the appellant without interest by wrongly relying upon the submissions and pleadings made by the developer/respondent that the project is developed on "no profit no loss" basis.

30. The conditions mentioned in the letter of allotment and agreed by the developer and the allottee that in case of return of amount, the allottee is not entitled for interest on the said amount will not have over-

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riding effect against the provision of Section 18 of the Act which provides for return of the amount with interest and compensation in the event of allottee withdrawing from the project for lapse and laches on the part of the developer in not delivering possession of the apartment within the time specified in the agreement. Further, it is also pertinent to mention that the 1st respondent-developer has not filed any appeal challenging the impugned order or applicability of the provisions of the Act and Rules to the projects undertaken by them.

31. Admittedly, the developer by entering into a supplementary agreement with a private Builder M/s GJS Infratech Pvt. Ltd., Hyderabad in 2017 itself has transferred 180 units out of the total units of 388 infavour the builder and, therefore the contention of the developer that the project is based on "No profit no loss basis" under self-finance housing scheme, cannot be accepted. Thus, the developer has failed to demonstrate and establish his case that the project is based on "No profit no loss basis" under self-finance housing scheme. Further entire amount collected from the allottee is spent for the development of the project by producing relevant material. Therefore, from a perusal of the impugned order and rival contentions of the parties the application of provisions of the Act and Rules to the project on hand cannot be overlooked. The reason and circumstances stated for withdrawal from the project by the appellant has to be accepted.

32. The very fact that the learned Adjudicating officer having satisfied with the case of the appellant that there was lapse and laches on the part of the developer in delivering possession of the apartment within the time specified in the allotment letter, rightly ordered for return of the amount paid towards sale consideration of the apartment, but erred in not awarding interest on the said amount.

33. Admittedly, respondent no.1 has paid entire amount of the appellant. Now, Appellant is entitled for interest on the said amount as per Section 18 of the Act read with Rule 16 of the Rules.

34. Before concluding with the case, we would like to state that the appeal could not be disposed of within 60 days as per the requirement of Section 44(5) of the Act, due to time consumed in securing the records and negotiating for settlement and so also the lockdown due to covid-19 pandemic.

35. Having regard to the facts of the case and for the reasons stated hereinabove, we answer:

Point No.1 in the negative, and

Point No.2 in the affirmative.

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36. For the aforesaid reasons and taking into consideration the arguments of the learned counsel appearing on both sides, records and documents filed by the appellant and contesting respondent No. 1, we pass the following:

ORDER

1) Appeal filed by the appellant is partly allowed.

2) The impugned order passed by the learned Adjudicating officer, RERA-2nd respondent, dated 25th June 2019 in CMP/190405/0002577, is modified and 1st respondent-developer is directed to return the amount of Rs. 55,67,000/- received from the appellant with interest at the rate of 9% per annum on the amount deposited by the appellant from respective dates of deposits till the date of coming into force of RERA Act i.e, 26.03.2016 and from 26.03.2016 at the rate of interest of State Bank of India highest marginal cost of lending rate plus two percent till the date of return of the amount by the 1st Respondent, after deducting the amount already paid to the allottee, within a period of two months from the date of receipt of this order.

3) In view of disposal of appeal, pending 1.As, if any stand disposed of as they do not survive for consideration.

4) The Registry is directed to comply provisions of Section 44(4) of the RERA Act 2016, and return the records to RERA, if any, received.

There is no order as to costs.

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER

Sd/-
HON'BLE ADMINISTRATIVE MEMBER

TRUE COPY

25/6/2024
SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU-560 027
29/06/21

Karnataka Real Estate Appellate Tribunal