

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

DATED THIS THE 8th DAY OF DECEMBER, 2021

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

APPEAL NO. (K-REAT) 322/2020

BETWEEN:

NHDPL Properties Private Limited,
Having registered office at,
No. 110, Level-1, Andrews Building,
M.G Road, Bengaluru- 560 001.

Presently Known as
NHDPL South Private Limited Ltd.,
7th Floor, Nitesh Time Square,
No.8, MG Road,
Bengaluru-560 080
Represented by its Authorized Representative
Mr. Gopinath K S

...APPELLANT

(By Sri. M. D. Vasusena for M/s Shetty & Hegde Associates,
Advocate for Appellant)

AND

1. Flinta Real Estate LLP
Level 6, Prestige Trade Tower,
No. 46, palace Road, Bengaluru - 560 001
Represented by its Authorized Signatory
Saandipkundu

✓ 2. Real Estate Regulatory Authority,
2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
3rd Cross, Mission Road,
Bengaluru-560 027.
Represented by its Secretary

..RESPONDENTS

(By Ms. Tamarra Sequeira, for M/s Khaitan & Co., LLP, Advocate
for R-1

R-2-RERA -served un-represented)



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This Appeal is filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal praying to set aside the order dated 20th June 2020 passed by the Adjudicating Officer, RERA, Bengaluru in CMP/190903/0004117.

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

J U D G M E N T

The appellant, who is a promoter of a real estate project known as "Nitesh Hyde Park" has preferred this appeal challenging the impugned order dated 20th June 2020 passed by the learned Adjudicating Officer, RERA, Bengaluru in CMP/190903/0004117.

Brief facts of the case:

2. As averred in the appeal memo, the 1st respondent-company has entered into Master Agreement with the appellant on 31st March, 2015 for the purchase of 16 apartments in the project name "Nitesh Hyde Park", 26 apartments in the project named "Nitesh Columbus Square" and 38 apartments in the project named "Nitesh Caesars Palace", for a total consideration of Rs. 54,08,10,361/- and paid initial amount of Rs. 9,98,12,738/- on 06.04.2015.

3. According to 1st Respondent-company, as per clause 5.1 of the said agreement the appellant-promoter was required to complete the project by 30th June, 2016. However, as per the Supplementary Agreement dated 25th January, 2017, deadline for completion was extended up to 31st August, 2017. As, the appellant failed to complete the project even after the expiry of the



time specified under the supplementary agreement, the 1st Respondent-company filed a complaint before the RERA on 03rd September, 2019 seeking refund of Rs. 12,55,50,083/- along with interest and compensation from the appellant-promoter. The complaint was assigned to the learned Adjudicating Officer for adjudication.

4. During the pendency of the complaint before the Adjudicating Officer, the appellant-promoter filed an application under Section 34(F) and 38 of RERA Act 2016 seeking dismissal of the complaint filed by the 1st Respondent-allottee on the ground that the same was in violation of the Rules and Regulations prescribed under the Karnataka Real Estate (Regulation and Development) Rules 2017.

5. While passing the impugned order, the learned Adjudicating Officer, by placing reliance on the Judgment of the Hon'ble Apex Court rendered in the case of **Pioneer Urban Land and Infrastructure Limited and another -vs- Union of India and others (Writ Petition (Civil) No.43 of 2019) (2019 (10) Scales-523**, held as under:

"As per the observation made by the Hon'ble Apex Court it is clear that the proceeding before this authority is independent from the proceeding before the NCLT. The prayer of the complainant in the present case is pertaining to his grievance whereas the relief sought before the NCLT is in the nature of rem. In view



of the said observation made by the Hon'ble Apex Court I have no any other way except to proceed with the present case. However, before concluding I would say that the present complaint is filed on 03.09.2019 by that time there was no any litigation and the case before the NCLT is subsequent to the present complaint. Hence, it is up to the complainant to take a decision to retain which case but the prayer of the developer for dismissal of this complaint cannot be considered in view of the observation made by the Apex Court as well as it is not hit by clause 6 of Form No.'O' and as such I answer this point negative".

Consequently, the learned Adjudicating Officer dismissed IA-III filed by the promoter under Section-34 (F) and 38 of RERA Act, 2016. Challenging the said order dated 20th June, 2020 the present appeal is preferred by the appellant-promoter.

6. When the matter is called today, learned counsel for the 1st respondent-company (allottee) submits that in view of the law laid down by the Hon'ble Apex Court in the case of ***M/s. Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Ors. (2021 SCC OnLine SC-1044)***, the complaint filed by the 1st Respondent-allottee before the RERA through online which is pending for consideration before the learned Adjudicating Officer is not maintainable before the learned Adjudicating Officer and hence, she submits that the above appeal may be allowed and the



impugned order passed by the learned Adjudicating Officer on IA-III may kindly be set aside and the complaint filed by the 1st respondent-company may be dismissed as withdrawn by reserving liberty to the 1st respondent to file fresh complaints one before the Authority for refund of his amount with interest and other before the learned Adjudicating Officer for compensation in the prescribed forms N and O respectively.

7. Sri. Vasusena, learned counsel appearing for the appellant-promoter fairly submits that in view of the judgment of the Hon'ble Supreme Court **M/s. Newtech Promoters** cited above, the impugned order passed by the learned Adjudicating Officer is not sustainable in law and is liable to be set aside. He further submits that in view of the submission made by the learned counsel for 1st respondent-company (allottee), that the complaint filed by the 1st respondent may be dismissed as withdrawn granting liberty to the complainant to file separate complaints before the Authority and the Adjudicating Officer in the prescribed form N and O respectively, the appeal may be allowed, the impugned order may be set aside and in the event of granting liberty to the 1st respondent to file fresh complaints before the Authority and the Adjudicating Officer, liberty may be granted to the appellant to make an application for seeking interim relief.



8. The submissions made by the learned counsel for the parties are placed on record.

9. At this juncture it is relevant to note that indisputably, the agreement between the appellant- promoter and 1st respondent was entered into between them on 31st March, 2015 under which the appellant promoter agreed to complete the project on 30th June, 2016 and thereafter supplementary Agreement was entered on 25th January, 2017 under which, time for completion of the project was extended up to 31st August, 2017 and complaint was filed by 1st respondent –company (allottee) before the RERA on 03.09.2019.

10. Admittedly, the reliefs sought for in the complaint are as under:

(i) refund of principal amount with interest;

(ii) interest @ the rate of 9% per annum under Section 8(b) of the Karnataka Ownership Flats (Regulation of the promotion of Construction, Sale, Management and Transfer) Act 1972;

(iii) Delay compensation of Rs. 50,00,000/- with interest and other reliefs.

Thus, the reliefs sought for by the 1st respondent-allottee are two fold. One is for refund of his amount with interest and other is for compensation with interest.

11. Now, in view of the dictum laid down by the Hon'ble Apex Court in the case of ***M/S Newtech Promoters and Developers Pvt Ltd., -vs- State of U.P and others (2021 SCC OnLine SC-***



1044), the first part i.e., the claim relating to 'refund/return of money with interest' is required to be decided by the Authority and the second part of the claim i.e., 'compensation with interest' is required to be adjudicated by the learned Adjudicating Officer. In the event of permitting the 1st respondent-company to withdraw the complaint before the learned Adjudicating Officer and granting liberty to file fresh complaints as sought, the impugned interim order passed by the learned Adjudicating Officer is liable to be set aside as it has become infructuous.

12. As per the provisions of sub-section (2) of Section-107 of the Code of Civil Procedure, 1908, this Tribunal being first appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. Added to this, as per the provisions of Order XXIII Rule-1 and 3, there is no legal impediment for this Tribunal to permit the complainant to withdraw the original complaint filed before the learned Adjudicating Officer, and file a fresh complaint.

13. In the above background of the facts and circumstances of the case, there is considerable force in the submissions made by the learned counsel appearing for the appellant-promoter as well as the 1st respondent-allottee praying the Tribunal to allow the appeal and set aside the impugned order and permit the first respondent to



withdraw the complaint pending before the learned Adjudicating Officer with liberty to file fresh complaints before the RERA and Adjudicating Officer in the prescribed form 'N' and 'O' respectively.

14. Even otherwise, as per the latest Judgment of the Hon'ble Apex Court referred supra, the claim for return or refund of the amount paid by a home buyer with or without interest falls within the jurisdiction of the Authority and the claim for compensation with or without interest falls within the jurisdiction of the Adjudicating Officer.

15. For the foregoing reasons, we pass the following:

ORDER

- i) The appeal is allowed in part.
- ii) The complaint bearing No. CMP/190903/0004117 filed by the 1st respondent-company (allottee) before the RERA is also dismissed as withdrawn and the first respondent is granted liberty to file fresh complaint as per the observations made in paragraph-86 of the Judgment of the Supreme Court rendered in the case of ***M/S Newtech Promoters and Developers Pvt Ltd., -vs- State of U.P and others (2021 SCC OnLine SC-1044)*** and in the light of the observations made in the course of this order;
- iii) Consequently, the impugned order dated 20th June 2020 passed by the learned Adjudicating Officer,



RERA, Bengaluru in CMP/190903/0004117 on I.A. No.III is set aside, as the same has become infructuous;

- iv) In view of granting permission to the 1st respondent-complainant to withdraw the present complaint pending before the learned Adjudicating Officer with liberty to file fresh complaint before the Authority in the prescribed Form-N and O respectively. It is needless to say that it is always open to the appellant-promoter as well as the 1st respondent-company (allottee) to seek interim relief, if necessary, by filing appropriate application;
- v) In view of disposal of the Appeal, pending I.As, if any, do not survive for consideration and shall stand disposed of;
- vi) 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

"TRUE COPY"

16/12/14
SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU - 560 027



