HC-KAR

NC: 2025:KHC:42725-DB
RERA.A No. 49 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

RERA APPEAL NO. 49 OF 2025

BETWEEN:

M/S RAJA HOUSING LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
PRESTIGE BLUE CHIP SOFTWARE PARK,
BLOCK 2, MEZZANINE FLOOR,
HOSUR MAIN ROAD, ADUGODI,
KORAMANGALA,
BENGALURU-560029.

ALSO AT:

M/S. RAJA HOUSING LIMITED,
F-2, RAJA MAHALAKSHMI,
NO.12, BASAPPA ROAD, SHANTHINAGAR,
BENGALURU-560027.
REPRESENTED BY ITS AUTHORIZED SIGNATORY-
MANAGING DIRECTOR, MR. RAJA SUCHINDRA,
S/O RAJA JAYASHANKAR,
AGED ABOUT 56 YEARS

...APPELLANT

(BY SRI. V.B. SHIVAKUMAR, ADVOCATE)

Digitally signed by K G RENUKAMBA
Location: HIGH COURT OF KARNATAKA

AND:

1. THE KARNATAKA REAL ESTATE
   REGULATION AUTHORITY
   2ND FLOOR, SILVER JUBILEE BLOCK,
   UNITY BUILDING, CSI COMPOUND,
   3RD CROSS, MISSION ROAD,
   BENGALURU - 560 027, REP BY ITS SECRETARY

2. MR. SUMEET SHAHPETE,
   S/O RAJENDRA SHAPETI,
   AGED ABOUT 35 YEARS,
   R/A H.NO. 143, SECTOR-6,
   SRI. SUGURESHWARA NILAYA,
   CHENNAMMA HOUSING SOCIETY,
   SHREE NAGAR, BELAGAVI-590017.

…RESPONDENTS

(BY SRI. GIRISH K.V., ADVOCATE FOR R1;

SRI. MADAN K.S., ADVOCATE FOR R2)

THIS RERA.APPEAL IS FILED UNDER SECTION 58 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016, PRAYING TO SET ASIDE THE FOLLOWING ORDERS. (i) JUDGEMENT DATED 06.03.2025 PASSED IN APPEAL NO.(K-REAT) 60/2024 PASSED BY THE HONBLE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU (ii) ORDER DATED 12.12.2023 PASSED BY THE FIRST RESPONDENT THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY, BENGALURU IN COMPLAINT NO. 00362/2023.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE JAYANT BANERJI**
and
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard the learned counsel for the appellant.

2. This appeal has been filed seeking to set aside the judgment dated 06.03.2025 passed by the Karnataka Real Estate Appellate Tribunal, Bengaluru, in appeal No.[K - REAT] 60/2024. It appears that an Agreement to Sell dated 10.12.2018 was entered into between the appellant and one Sri. K. Purushotham Reddy through its General Power of Attorney Holder in favour of the respondents. By means of this agreement, apartment unit bearing No.105 in a real estate project known as "Raja Ritz Avenue " developed by the appellant - M/s. Raja Housing Limited was agreed to be sold was agreed to be sold for a total Sale Consideration of Rs.68,17,492/-. As per the terms of the Agreement to Sell, the appellant had agreed to handover possession of the apartment unit

on or before 31.12.2021. In view of the failure of the appellant to deliver possession within the stipulated time, the allottees / respondents filed a complaint before the Karnataka Real Estate Regulatory Authority[1] under Section 31 of the Real Estate [Regulation and Development] Act, 2016 for the relief of compensation by way of interest for every month of the delayed period. By means of the impugned order of 12.12.2023 passed by the first respondent - Authority, the complaint bearing No.00362/2023 was allowed and the appellant was directed to pay a sum of Rs.8,27,209/- to the respondents towards delayed period interest calculated at the rate of SBI MCLR + 2% from 31.12.2021 till 15.07.2023. Aggrieved by the said order, the appeal was filed by the appellant before the Appellate Tribunal, which came to be dismissed by means of the impugned order of 06.03.2025.

[1] RERA Authority

3. The contention of the learned counsel for the appellant is that during the period when the Agreement to Sell was entered into by the parties, there was COVID-19 Pandemic, and in view of the notifications issued by the Central Government and the Real Estate Regulatory Authority[2], the time for completion of project was extended from time to time. It is stated that the last extension granted was till 31.10.2022.

4. Learned counsel has drawn our attention to the agreement to sell that is enclosed from page No.118 onwards with particular reference to Clause-6 thereof. He has referred to the provisions of the Agreement contained in Clauses - 6.1, 6.2 and 6.3(a) of the Agreement to Sell. It is his contention that the respondents did not comply with the terms of the agreement in as much as the cost escalation that had taken place was demanded from the respondents, but the same was not paid within time. It is further stated that in

[2] RERA Authority

view of the aforementioned sub-clauses of Clause No.6 of the Agreement to Sell, the respondents are not entitled for delayed payment interest in the facts and circumstances of the case, as the issue is not covered by the provisions of Section 18 of the RERA Act.

5. We have perused the record of this appeal. Clause Nos.6.1, 6.2 and 6.3(a) of the Agreement to Sell dated 10.12.2018 read as follows:

> *"6.1) The possession of the Schedule 'C' Apartment in Schedule 'A' Property will be delivered by the Developer/Promoter to the Purchaser within* ***December/2021*** *from the date of issue of Commencement Certificate by the plan sanctioning authorities. Provided that the Developer/Promoter shall be entitled to reasonable extension of time for giving delivery of Apartment on the aforesaid period, if the completion of project in which the Apartment is to be situated is delayed on account of*
>
> *(a) War, civil commotion or act of God as understood under applicable law for the time being in force; or*

(b) Any notice, order, rule, notification of the Government and/or other public or competent authority/court.

6.2) It is clarified and accepted to by and between the parties hereto that delay in handing over the possession of the said Apartment due to any reason/s mentioned above shall not be construed as delay in construction or completion.

6.3) In the event Developer/Promoter fails to deliver possession of the Apartment to the Purchaser as agreed above or such extended period of time for completion of the project as granted by the competent Authority, the Purchaser shall, at his/her/its/their discretion:

(a) Be entitled to continue with this Agreement and in such case, the Developer/Promoter agrees to pay to the Purchaser who does not intend to withdraw from the Project, interest at SBI MCLR + 2% as existing at the date of execution and registration of this Agreement, on the total Sale Consideration paid by the Purchaser. Interest shall be payable for every month of delay or part thereof, from the date on which the Apartment was agreed to

> *delivered, till the date the Developer/Promoter announces their readiness to hand over the possession of Apartment; or*"

6. The appellant has not been able to demonstrate that its case would be covered in any of the points (a) and (b) mentioned in Clause - 6.1 of the Agreement to Sell. Though it has been contended by the learned counsel for the appellant that there exists a Notification issued by the RERA Authority for extending the period of construction of the building in question, however, neither before the Authority nor before the Appellate Tribunal and nor before this Court, has the Notification been placed. As a matter of fact, the Appellate Tribunal records in paragraph 24 onwards of its judgment that two extensions were obtained from the Authority by the promoter-appellant, which extensions were initially up to 31.10.2021 and the second extension till 31.10.2022. The Appellate Tribunal noted that no such documents are forthcoming as to whether the promoter had filed an application and

obtained specific exemption of their projects by filing specific application for extension of date of completion and they seemed to be relying only on the general extensions given by the RERA Authority. It was noted that the extension granted by way of a General Circular was only until 15.12.2020. It was further recorded that the Sale Agreement itself was signed not only after the onset of pandemic, for which, the first date of lockdown was ordered by the Government of India, but also after the general extension. The orders issued by the Authority for the period of extended validity of registration, was till 15.12.2020. It was held that the allottee cannot be deprived of its statutory right to claim compensation by way of interest for every month's delay especially in view of the fact that they would have to pay interests on the loans obtained by them from the bank.

7. With regard to the aspect of the Doctrine of Waiver that was sought to be raised by the appellant-promoter, it was noted that the appellant had levied delay

penalty from the allottees for the delay in payment of installments by the allottees - respondents at the time of handing over the possession, without which, the allottees would not have been able to get their sale deeds registered from the promoter. It was held that it is not unreasonable for the allottees to claim the interest on the delay in handing over the project. Accordingly, the appeal was dismissed and the order of the Tribunal and the order of the RERA Authority was confirmed.

8. On the record on page No.151 of this appeal is the Sale Deed pertaining to Apartment Unit No.105, First Floor, Block-3 in Raja Ritz Avenue, which was executed on 16.12.2023 in favour of the respondents. The sale deed records that in consideration of the payment of sale consideration of Rs.60,87,046/- already paid by the purchasers to the appellant, the seller hereby grants, conveys, sells, transfers, assigns and makes over to the purchaser the scheduled properties.

9. Therefore, it is evident that despite the date provided in the Agreement to Sell of delivering possession to the respondents within 31.12.2021, the property in question was delivered on 06.12.2023.

10. The notifications that were produced before the Authority and available for perusal before the Appellate Authority were general in nature that were issued by the RERA Authority only upto 15.12.2020. Therefore, the Appellate Tribunal is justified in stating that the agreement was entered into between the appellant and the respondents much after the last date of above extension. In view of the aforesaid, the appellants cannot claim the benefit of Force Majeure clause that is reflected in Clause - 6.1 of the Agreement to Sell.

11. Another ground that is sought to be raised by the learned counsel is that the Authority as well as the Appellate Tribunal has relied upon the calculation submitted by the respondents.

12. We have perused the order and we find that the appellant, despite time being granted, had not submitted any calculation. The Appellate Tribunal, therefore, was justified in accepting the calculation submitted by the respondents.

13. For the reasons aforesaid, we find no merit in this appeal in as much as no question of law much less substantial question of law arises. The appeal is accordingly ***dismissed***.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

SJK
List No.:1 Sl No.:3.14