



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

RERA APPEAL NO. 18 OF 2023 C/W
RERA APPEAL NO. 19 OF 2023

IN RERA APPEAL NO. 18/2023

BETWEEN:

SUHAS S KULKARNI
AGED ABOUT 45 YEARS
S/O SHRIKANT N KULKARNI
R/AT ANAND ENCLAVE
FLAT NO.111, 1ST FLOOR
JAMBUSAVARI DINNE
OPP SRI CHAITANYA TECHNO SCHOOL
J P NAGAR, 8TH PHASE, BENGALURU 560 083 ...APPELLANT

(BY SRI. SRIDHAR G. ADV.)

IN RERA APPEAL NO. 19/2023

BETWEEN:

PADMAVATHI BIRUDURAJU
AGED ABOUT 52 YEARS
W/O SUDEEP KUMAR, FLAT NO.207
ANAND ENCLAVE, JAMBUSAVARI DINNE
OPP.SRI.CHAITANYA TECHNO SCHOOL
J.P.NAGAR, 8TH PHASE, BENGALURU - 560 083 ...APPELLANT

(BY SRI. SRIDHAR G. ADV.)

AND:

1. T. R. BUILDERS AND DEVELOPERS
REP. BY ITS PARTNERS, M REDDAPPA
PG THYAGRARAJ, P.A VINAY, PRESENT ADDRESS

Digitally signed by
MALA K N

Location: HIGH COURT
OF KARNATAKA



M/S T R BUILDERS AND DEVELOPERS YASHODA
REGACY, NO.3, 5TH C MAIN, TATA SILK FORM
K R ROAD, BENGALURU 560 070

2. SRI VIJAYA ANAND KUMAR
AGED 58 YEARS, R/AT ASHWINI, NO 33/1
AGA ALI, ABBAS ROAD, BENGALURU 560 042
3. SMT KARPAGAM ANAND KUMAR
AGED MAJOR, ASHWINI, NO 33/1, AGA ALI
ABBAS ROAD, BENGALURU 560 042
4. KARNATAKA REAL ESTATE REGULATORY AUTHORITY
NO 1/14, 2ND FLOOR, SILVER JUBILEE BLOCK
UNITY BUILDING, CSI COMPOUND, 3RD CROSS
MISSION ROAD, BENGALURU 560 027
REP. BY ITS SECRETARY

...RESPONDENTS
[COMMON IN BOTH APPEALS]

(BY SRI.PROMOD NAIR, SR.ADV. FOR
SRI.R.VENKATESH, ADV. FOR R1;
SRI. VIJAYA ANAND KUMAR,
R2-PARTY IN PERSON;
SRI.KARPAGAM ANAND KUMAR,
R3-PARTY IN PERSON;
SRI. I. S. DEVAIAH, ADV. FOR R4)

THESE APPEALS FILED UNDER SECTION 58 OF THE
REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016,
PRAYING TO (a) SET ASIDE THE IMPUGNED ORDER DATED
25/01/2021 PASSED BY THE HON'BLE REAL ESTATE
APPELLATE TRIBUNAL IN APPEAL (K-REAT) NOS.66/2022 AND
65/2022 PRODUCED AS ANNEXURE-A.

THESE APPEALS, COMING ON FOR FINAL HEARING,
THIS DAY, **P.S.DINESH KUMAR J.**, DELIVERED THE
FOLLOWING:



JUDGMENT

These two appeals are presented by purchasers of two flats from respondents No.1 to 3, challenging the judgment dated 25.01.2023 passed by the K-REAT¹, Bengaluru, in Appeal No.(K-REAT) 65/2022 and 66/2022.

2. Heard Shri G.Sridhar, learned Advocate for the appellants, Shri Pramod Nair, learned Senior Advocate for respondent No.1, Shri Vijaya Ananda Kumar/Party-in-person for respondents No.2 and 3 and Shri I.S.Devaiah, learned Advocate for respondent No.4.

3. The undisputed facts of the case are, the appellants have entered into agreements to purchase respective flat on 24.11.2014 (in Appeal No.19/2023) and 04.03.2015 (in Appeal No.18/2023). The sale deeds have been executed

¹ Karnataka Real Estate Appellate Tribunal



by first respondent as Power Agent of respondents No.2 and 3 on 30.04.2016 (in Appeal No.18/2023) and 26.03.2016 (in Appeal No.19/2023).

4. Appellant in Appeal No.19/2023 is the subsequent purchaser of a flat from its previous owner.

5. On 01.07.2020, the appellants have filed their complaint before the K-RERA² with a prayer *inter alia* to direct the respondents to get the Project registered under RERA and to impose penalty of 10% of project cost as per Section 59 of the Real Estate (Regulation and Development) Act, 2016 ('the Act' for brevity). The complaint has been disposed of by the following;

"ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing

² Karnataka Real Estate Regulatory Authority



*No.CMP/UR/200109/0005161and MP/UR/200106/
0005148 are hereby disposed of as under:*

*Respondent is directed to take steps to
obtain OC from competent Authority."*

6. Feeling aggrieved, appellants approached K-REAT. By the common impugned order, the K-REAT has allowed the appeals, set aside the common order passed by the K-RERA and remitted the matter to the Authority for fresh consideration in accordance with law in the light of the observations made by the Tribunal. Feeling aggrieved, the appellants are before this Court.

7. Shri Sridhar, learned Advocate for the appellants contended that since four years, the purchasers are driven from pillar to post without any relief. The project is still incomplete and the same is required to be registered under the Act. The K-REAT has recorded its finding in favour of the appellant, nonetheless remitted the matter for fresh



consideration and the said course is unsustainable in law.

8. Shri Nair, learned Senior Advocate submitted that in any event the matter has been remitted to the K-RERA. Hence, it would be appropriate for the appellants to make out a case before the RERA authority and not approach this Court with these appeals. He submitted that an appeal to this Court shall lie under Section 58 of the Act, which is akin to Section 100 of CPC. Unless a substantial question of law is framed, such an appeal cannot be considered.

8.1. So far as the jurisdiction aspect is concerned, he submitted that the project was completed prior to the commencement of the Act, which has come into effect from 01.05.2017, the date on which Section 3 has been notified.

9. Shri Vijaya Anand Kumar, Party-in-person submitted that the owners are in no way connected



with the alleged lapses. Lapses if any, are on the part of builder. They are being unnecessarily harassed by various litigations by the appellants. This Court may declare that respondents No.2 and 3 are not liable to be prosecuted.

10. We have carefully considered the rival contentions and perused the records.

11. The K-REAT has allowed the appeals and remitted the matters to the K-RERA for re-consideration. It is relevant to refer to Section 58 of the Act, which reads thus:

"58. Appeal to High Court.—(1) *Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):*



Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.—The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."

12. As rightly pointed out by Shri Nair, no substantial question of law has been raised in these appeals. In any event, to consider these appeals on merits, amounts to pre-judging an issue to be considered by the original authority under the Act.



13. In the circumstance, the following;

ORDER

(i) Appeals are ***dismissed***;

(ii) In view of appellants' contention that four years have been elapsed, we direct the K-RERA to expedite the consideration of appellants' complaint and to dispose of the same, in any event within an outer limit of three months from the date of receipt of a copy of this order;

(iii) Without further notice, parties shall appear before the Authority on ***11.12.2023***.

(iv) All contentions are kept open.

**SD/-
JUDGE**

**SD/-
JUDGE**

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