IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT PETITION NO. 568 OF 2024 (GM-RES)

BETWEEN:

SRI. L. NAGARAJA SETTY
S/O MAKANUR LAKSHMANA SETTY
AGED ABOUT 63 YEARS
NO.52/53, ANAM PLAZA
8TH F MAIN ROAD, 3RD BLOCK
JAYANAGAR
BENGALURU 560 011

...PETITIONER

(BY SRI. RAMESHCHANDRA, ADVOCATE)

AND:

SMT. RAMAMANI V
MAJOR
1020, HMT LAYOUT
BENGALURU-560 073

...RESPONDENT

Digitally signed by PREMCHANDRA M R
Location: HIGH COURT OF KARNATAKA

(BY SRI. SUNDARA RAJU R, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ANNX-A NO.CMP/UR/190212/0002124 DTD. 24.08.2023 PASSED BY THE RERA ADJUCATING AUTHORITY BEFORE FULL BENCH.

THIS WRIT PETITION, HAVING BEEN RESERVED FOR ORDERS ON 14.10.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **T.P.VIVEKANANDA J.,** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV ORDER

The petitioner is before this Court challenging the order dated 24.08.2023 in Complaint No.CMP/UR/190212/0002124 passed by the KRERA, Bangalore. The order passed by the RERA-Adjudicating Authority is on the complaint filed by the respondent invoking the provisions of Section 31 of the RERA Act (hereinafter referred to as "the Act" for short).

2. The facts pleaded and considered by the RERA-Adjudicating Authority in the impugned order are that the respondent had approached the petitioner herein for purchase of site bearing No.C68 in the project launched by the petitioner in the name and style of M/s Asset Habitat at Mysore. After negotiation, the petitioner has entered into an agreement of sale dated 14.06.2012 with the respondent and her husband offering to sell the aforementioned residential site for a sum of Rs.21,60,000/-. Under the said agreement, the respondent and her husband have paid a sum of Rs.7,00,000/-, which is duly acknowledged by the petitioner.

3. The petitioner has represented to the respondent in the agreement of sale that he has formulated a scheme for development and construction of Residential Layout in the name and style of M/s Asset Habitat in accordance with the provisions of the Karnataka Town and Country Planning Act, 1961 and in terms of the layout plan approved by the Mysore Urban Development Authority and the order of conversion issued by the Deputy Commissioner. It is the contention of the respondent that subsequent to execution of the agreement of sale, they have paid further amount totaling to Rs.12,40,000/-.

4. On the ground that the project is not completed and the site agreed to be conveyed in favour of the respondent was not conveyed even in the year 2018, the respondent-agreement holder sent repeated reminders, which did not evoke any result and having no other alternative, the respondent had approached the RERA-Adjudicating Authority, Bangalore, in the year 2020

seeking refund of the amount along with interest and compensation.

5. Taking cognizance of the complaint, RERA-Adjudicating Authority had issued notice to the petitioner herein. Despite service of notice, the petitioner chosen to remain absent. In the circumstances, the RERA-Adjudicating Authority passed an order on 22.05.2020 directing the petitioner herein to refund a sum of Rs.12,40,000/- along with interest at 9% per annum from the date of payment till 30.04.2017 and at 2% above MCLR of SBI for the period commencing from 01.05.2017 till the date of payment. It is contended that as there was no proper service of notice/summons of the complaint filed by the respondent, the petitioner herein filed the petition under Order IX Rule 13 of CPC for setting aside the order dated 22.05.2020. The said petition came to be allowed on 15.12.2020 and the complaint was restored for fresh consideration.

6. The proceedings were held by the RERA from 09.02.2021 to 07.12.2021. However, in view of the order

passed by the Hon'ble Supreme Court in the case of ***M/s Newtech Promoters and Developers Private Limited Vs. State of UP and Others*** in ***SLP(C)Nos.3711-3715 of 2021***, the complaint was placed before the RERA Authority for further proceedings. The proceedings were continued before the RERA Authority from 25.01.2023 onwards. After hearing the parties, the matter was posted for orders on 09.03.2023 with a permission to the advocate for respondent therein i.e., the petitioner herein to file the final written submission on or before 23.03.2023. The respondent/petitioner has filed the additional objection on 27.03.2023. It is, thereafter, the order has been passed by the RERA on 24.08.2023. The said order is under challenge in the present writ petition.

7. At the time of hearing of the petition, on a query regarding the availability of alternative remedy of appeal against the order passed by the RERA under Section 31 of the Act, the learned counsel for the petitioner submitted that, though, the petitioner has an alternative remedy of the appeal under Sub-section (5) of

Section 43 of the Act, however, when the writ petition was filed, the Appellate Tribunal was not functioning and therefore, the present writ petition is filed. It is his further submission that, since the impugned order passed by the RERA is in violation of principles of natural justice, therefore, without exhausting the remedy of appeal, the petitioner can maintain the present writ petition.

8. The learned counsel for the petitioner, so also the learned counsel for the respondent has made submissions on the merits of the writ petition also. Since, this Court is of the opinion that against the impugned order, the petitioner has an alternative remedy of the statutory appeal under Sub-section (5) of Section 43 of the Act, the arguments advanced on the merits of the legality or otherwise of the order impugned need not be considered and the petitioner will have to be relegated to file an appeal under the aforesaid provision.

9. As noticed above, for not exhausting the remedy of appeal under Sub-section (5) of Section 43 of the Act, the petitioner has assigned two reasons, i.e.,:

(i) The Tribunal was not constituted and not functioning at the relevant point of time when the writ petition was filed and

(ii) The order passed by the RERA Authority is in violation of principles of natural justice.

10. As regards the first reason of the Tribunal not having been constituted at the relevant point of time, the said situation no longer exists, since the Appellate Tribunal has been constituted and presently it is functioning.

11. Insofar as the contention that the impugned order passed is in violation of the principles of natural justice and having no jurisdiction is concerned, it is needless to observe that the order sheet of the Adjudication Officer and the RERA clearly discloses that at the first instance, the petitioner did not contest the matter and remained absent. However, on his application, the earlier order dated 22.05.2020 was recalled and the complaint was restored on 15.12.2020. From the year 2021 till 2023, the matter was pending before the RERA.

Several hearings took place and finally the matter was reserved for orders on 23.03.2023 with liberty to the petitioner herein to file the final written submission, which was filed by the petitioner and it is, thereafter, the matter was posted for orders.

12. Therefore, the contention of the petitioner that the order is passed in violation of principles of natural justice does not hold any substance. Insofar as the contention that the order is passed without jurisdiction is also liable to be rejected, since the RERA has the jurisdiction to adjudicate the complaint filed by the respondent herein, since the petitioner has failed to adhere to the terms and conditions of the agreement of sale dated 14.06.2012.

13. It is well established that the Writ Court would be justified in entertaining the writ petition despite the party having an alternative remedy under the statute only under the following circumstances:

> *(1) where the writ petition seeks enforcement of any of the fundamental rights;*

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged."

14. None of the aforesaid circumstances exist in the present case. Therefore, there is no reason to entertain the present writ petition when the petitioner has an alternative remedy of an appeal, which is provided under the RERA Act. No exception can be made to the availability of the alternative remedy and entertain the present writ petition.

15. Since, this Court has taken the view that the writ petition is not maintainable, the other submission made by the petitioner and the respondent on the merits of the matter is not considered.

16. The reliance placed by the petitioner on the order dated 05.08.2024 in WP.No.1126/2024 is also not applicable to the case of the petitioner in as much as the said order was passed on the premise that there is

violation of principles of natural justice and there was no consideration as to the availability of alternative remedy of appeal under Sub-section (5) of Section 43 of the Act. However, in the present case, this Court has held that the petitioner had been provided with sufficient opportunity and there is no violation of the principles of natural justice.

17. In the result,

(i) The writ petition is ***dismissed*** as not maintainable.

(ii) However, the dismissal of the writ petition would not come in the way of the petitioner availing the alternative remedy of statutory appeal under Sub-section 5 of Section 43 of the RERA Act.

(iii) It is needless to observe that, since the petitioner is before this Court from 02.01.2024 he would be entitled to seek exclusion of time spent before this Court as provided under Section 14 of the Limitation Act.

(iv) All the contention of both parties is kept open to be considered by the Appellate Authority. The Appellate Authority to consider the appeal that may be filed by the petitioner without being influenced by any of the observation made in this order.

(v) Ordered accordingly.

Sd/-
(T.P.VIVEKANANDA)
JUDGE

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