IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 1323 OF 2024 (GM-RES)

BETWEEN:

M/S SMR BUILDERS PVT LTD
A PRIVATE LIMITED COMPANY
INCORPORATED UNDER THE
PROVISIONS OF COMPANIES ACT, 1956
HAVING ITS REGIONAL OFFICE AT
SMR VINAY ESTATE
COMMERCIAL BLOCK
NO.402, 4TH FLOOR
NEAR HORAMAVU JUNCTION
OUTER RING ROAD, BANASWADI
BENGALURU-560 043

REPRESENTED BY ITS RESIDENT
DIRECTOR AND GPA HOLDER
MR.S. GOPAL REDDY

...PETITIONER

(BY SRI: SAMMITH S, ADVOCATE)

Digitally signed by
PAVITHRA B
Location: HIGH
COURT OF
KARNATAKA

AND:

1. KARNATAKA REAL ESTATE
   REGULATORY AUTHORITY
   REPRESENTED BY ITS CHAIRPERSON
   NO.1/14, 2ND FLOOR
   SILVER JUBILEE BLOCK
   UNITY BUILDING BACKSIDE
   CSI COMPOUND, 3RD CROSS
   MISSION ROAD
   BENGALURU-560 037

2. SRI. SHAILESH KUMAR
AGED ABOUT 53 YEARS
NO.E2-412, SMR VINAY ESTELLA
SINGAPURA PARADISE
NEAR AVEKSHA HOSPITAL
BENGALURU-560 097

…RESPONDENTS

(BY SRI: GOWTHAMDEV C. ULLAL, ADVOCATE FOR R1;
SRI: TANMAY L, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE UNDATED GUIDELINES ISSUED BY THE RESPONDENT NO.1 TO COMPLAINANTS SEEKING (A) REFUND WITH INTEREST AND (B) DELAYED PERIOD INTEREST, AS CONTAINED IN ANNEXURE-M, INSOFAR AS IT RELATES TO DIVESTMENT OF JURISDICTION OF ADJUDICATION OFFICER TO ADJUDICATE ON CLAIMS UNDER PROVISO TO SECTION 18(1) OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016, AS ULTRA VIRES THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 AND KARNATAKA REAL ESTATE (REGULATION AND DEVELOPMENT) RULES, 2017 AND ETC.

THIS WRIT PETITION, HAVING BEEN RESERVED FOR ORDERS ON 18.11.2026, 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 seeking the following reliefs':

> *"i. Declare the undated Guidelines issued by the Respondent No.1 to complainants seeking (A) refund with interest and (B) delayed period interest, as contained in **ANNEXURE-M**, insofar as it relates to divestment of jurisdiction of Adjudicating Officer to adjudicate on claims under Proviso to Section 18(1) of*

Real Estate (Regulation and Development) Act, 2016, as ultra vires the Real Estate (Regulation and Development) Act, 2016 and Karnataka Real Estate (Regulation and Development) Rules, 2017;

*ii. issue a writ, order or direction in the nature of certiorari quashing the order in CMP/211219/0008736 dated 07/10/2023 passed by Respondent No. 1 as contained in **ANNEXURE-N**;*

*iii. issue a writ, order or direction in the nature of certiorari quashing the e-mail notice dated 13/12/2023 issued by the Respondent No. 1 as contained in **ANNEXURE-P**; and*

iv. pass any other orders or directions as this Hon'ble Court deems fit and proper in the circumstances of the case in the interest of equity and justice."

2. The reason for the petitioner approaching this Court as culled out in the writ petition are stated as follows:

The petitioner is a developer who has developed a residential apartment project, namely, 'SMR Vinay Estella' at Singapura Village, Yelahanka Hobli, Bengaluru North Taluk, Bengaluru. Respondent No.2 is one of the purchaser of flat in the aforesaid residential apartment complex bearing flat No.412 in E2 Block. Respondent No.2 and his wife have jointly entered into an agreement of sale dated 10.05.2017 with the petitioner

- Company and the construction agreement of the even date. As per the terms of the agreement, the petitioner was obliged to hand over possession of the flat within 24 months with a grace period of 6 months from the date of agreement i.e., 10.11.2019. According to the petitioner, the construction of the residential project was completed well within the stipulated time and project was ready for handing over possession to the purchasers. Though the other purchasers of the Flats in the very same Block took possession from 11.09.2019 onwards, however, respondent No.2 denied to take possession of the flat. Respondent No.2 came forward to secure the absolute sale deed only on 26.06.2020. Subsequent to the said sale deed, respondent No.2 was put in possession of the flat in question. After nearly 2 years from the date of obtaining possession of the subject flat, respondent No.2 had approached respondent No.1 on 21.03.2022 with a complaint that he had occupied the flat only on 21.03.2021 and sought compensation for delay in completion of the project along with amenities.

3. Observing that the relief claimed by respondent No.2 is for compensation for delay in completion of the project, complaint submitted by respondent No.2 was placed before the Regulatory Authority. The matter was posted on 25.07.2023 for

filing the objections. No hearing of the matter took place on the said date and it was posted for orders after 2½ months from the said date. Respondent No.1 passed orders on 07.10.2023 directing the petitioner to pay a sum of Rs.15,68,344/- towards the delayed period interest as on 21.03.2022 along with interest as per MCLR at 2% from 12.05.2019 till 21.03.2022. The said order is called in question in the instant writ petition.

4. The submissions of the learned counsel for the petitioner are as follows:

(i) Though the petitioner has an alternative remedy of appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act'), however, in view of the lack of jurisdiction of the Regulatory Authority to adjudicate the complaint filed by respondent No.2, the instant writ petition is filed.

(ii) There is gross violation of principles of natural justice while conducting the proceedings by respondent No.1.

(iii) The undated guidelines produced at Annexure-M issued by RERA is in contradiction to the judgment of the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters***

and Developers Private Limited Vs State of Uttar Pradesh and Others[1].

(iv) Respondent No.1, the Regulatory Authority is the competent authority to hear and dispose of the complaints concerning the prayer for refund under Sections 18(1) and 19(4) of RERA Act, whereas, the complaints under the proviso to Sections 18(1), 18(2), 18(3), 12, 14 and 19 of RERA Act for compensation would have to be adjudicated by an Adjudicating Officer, who is from the cadre of District Judge.

(v) In the instant case, the prayer of the complainant is for compensation in terms of Sections 12 and 18 of the RERA Act, as depicted in the checklist and in the website of respondent No.1. Respondent No.1 had no jurisdiction to adjudicate the complaint. Respondent No.1 has no legal authority to issue guidelines assigning the jurisdiction overriding the Rules framed by the State Government.

(vi) There is inconsistency in dealing with the identical cases in different perspectives by different benches.

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[1] (2021) 18 SCC 1

(vii) Assignment of the function of the adjudication on compensation to the Regulatory Authority is in complete contravention of the object of conferring the authority to determine the compensation to an Adjudicating Officer, who is in the rank of District Judge and legally trained person, who would be in a position to appreciate the evidence while adjudicating the complaints.

5. In support of the aforesaid contentions, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra).* Based on the aforesaid judgment, it is the submission of the learned counsel that the adjudication of the claim for compensation would have been considered only by the Adjudicatory Authority and not the Regulatory Authority.

6. Learned counsel has relied upon the judgment of the Bombay High Court in the case of ***Marvel Landmarks Pvt. Ltd., Vs State of Maharashtra and Others[2].*** Though several paragraphs of the said judgment were read over, however, the point which the learned counsel has emphasized is with regard

[2] 2026 SCC Online Bom 2462

to the power of delegation, namely, the observation made by the Court at paragraph 35, which reads as follows:

> *"35. Under Section 81, any power and function of RERA other than the legislative function may be delegated to any officer of RERA. The Adjudicating Officer is but an officer of RERA. It would follow that there is a power to delegate any of RERA's powers and functions to the Adjudicating Officer. What the scheme of the RERA Act prohibits is the delegation of the power to adjudicate compensation, exercisable solely by the Adjudicating Officer to any other officer because that would be contrary to the requirement that quasi-judicial adjudication of compensation must necessarily vest in the Adjudicating Officer, who is meant to be a judicial officer."*

7. Learned counsel has also placed reliance on paragraphs 40, 41 and 42, which reads as follows:

> ***"****40. Indeed, in Issue 2 in* ***Newtech****, the Supreme Court was not dealing with a question of delegation under Section 81 of the Act, but was dealing with whether under the very scheme of the RERA Act (without any element delegation of power under Section 81), it could be held that the Adjudicating Officer had exclusive jurisdiction to grant refund. The Supreme Court answered in the negative. In Issue 3, the Supreme Court considered the question of delegation and squarely answered that delegation of any power or function of RERA to any officer of RERA was feasible*

under Section 81 save and except for the power to make subordinate legislation.

*41. There is one other facet of **Newtech** that stands out, and that too to indicate what the power to adjudicate compensation entails, and what the power to direct refund does not entail. The Supreme Court analysed the scheme of the RERA Act to find that the exercise of power to adjudicate compensation necessitated conducting of a trial while in sharp contrast, the exercise of power to direct a refund, although strictly not mechanical, the kind of inquiry to be undertaken was summary in nature based on indisputable documentary evidence with minimal scrutiny and no discretion in dealing with admitted material on record.*

*42. Therefore, what an Adjudicating Officer alone is empowered by law to do, with a careful choice of who can be an Adjudicating Officer (a judicial officer), other officers of RERA (who are not judicially trained) cannot be expected to do. On the other hand, a judicially trained Adjudicating Officer, in whose domain a quasi-judicial adjudication would lie, would be able to undertake the lesser task of conducting a summary procedure to decide a refund. Therefore, delegation of the exercise of refund power to the Adjudicating Officer is not contrary to the scheme of the Act. It is the extrapolation of Section 71 "**as prayed**" that was commented upon by the Supreme Court, making it clear that any other manner of delegation can always be judicially reviewed when such a delegation is made.*

8. The submission of learned counsel on the aforesaid paragraphs is that, the consideration of claim for compensation requires conducting of a trial. It can only be done by the judicially trained officer, namely, the Adjudicating Authority, and only in the case of simple prayer for refund of the amount paid by the alottees, inquiry could be conducted in summary nature and which power could be exercised by the Regulatory Authority and thus, the power to adjudicate the prayer for compensation cannot be delegated to the Regulatory Authority.

9. Learned counsel has also placed reliance on the judgment of the Hon'ble Apex Court in the case of ***State of M.P. Vs B R Thakare and Others***[3] and points out that while allotting the work by the Authority, the Chairman should keep in mind the nature of litigation and the issue involved and assign the respective cases either to the Regulatory Authority or to the Adjudicatory Authority.

10. Learned counsel appearing for respondent No.1 - Regulatory Authority has filed the written synopsis/arguments countering the grounds urged by the petitioner insofar as the

[3] (2002) 10 SCC 338

powers of Regulatory Authority and the Adjudicating Authority and with regard to the aspect of delegation of power to the single member of the Authority. Learned counsel has also produced the order dated 28.10.2016 issued by the Ministry of Housing and Urban Poverty Alleviation and makes reference to the following provisions:

> *"and whereas sub-Section (2) of Section 31 of the Act provides that the form, manner and fees for filing complaint under sub-Section (1) of said Section shall be such as may be specified by the Regulations made by the Authority."*

11. Taking support from the aforesaid provision, learned counsel for respondent No.1 submits that respondent No.1 is well within its power and jurisdiction to issue Circular or Guidelines prescribing the manner of presentation of the complaints, documents to be enclosed, fee to be paid and the required documents to be enclosed along with the complaint. The percentage of interest that could be granted in the case of withdrawal from the project, refund with interest, projects which were completed after 01.05.2017 and prior to 01.05.2017 etc. Therefore, no fault can be found in issuance of the guidelines. The guidelines are only for the benefit of the complainant, so also, for the promoters.

12. Learned counsel for respondent No.1 further submits that the Authority has power to entrust the matter to Single Bench and other members of the Authority in exercise of power under Regulation 12 of the Karnataka Real Estate Regulatory Authority (General) Regulations, 2022. It is in exercise of the said power, Notification dated 10.03.2022 has been issued by respondent No.1 - Authority constituting additional benches apart from full bench. The relevant portion of the said Notification is extracted herein below:

> *"Now, there is an urgency to constitute additional benches to hear and adjudicate the large number of complaints pending before the Authority. Hence, Authority considered this issue in its meeting dated 14/02/2022 and decided to constitute the following benches apart from the full bench consisting of Chairman, Member-1 and Member-2. Having regard to the above legal and functional aspects of the work of the Authority and in exercise of the powers vested with the Authority u/s 81 of the Act, the following additional benches are constituted with effect from 14/03/2022 and until further orders:*
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> *1. First Additional Bench / Bench 1: Consists of H.C. Kishore Chandra, Chairman and D. Vishnuvardhana Reddy, Member-1.*
>
> *2. Second Additional Bench / Bench 2: Consists of H.C. Kishore Chandra, Chairman and Neelmani N Raju, Member-2.*

3. Third Additional Bench / Bench 3: Consists of D. Vishnuvardhana Reddy, Member-1 and Neelmani N Raju, Member-2.

4. Fourth Additional Bench / Bench 4: H.C. Kishore Chandra, Chairman

5. Fifth Additional Bench / Bench 5: D. Vishnuvardhana Reddy, Member-1

6. Sixth Additional Bench / Bench 6: Neelmani N Raju, Member-2

Sd/- *(Neelamani N Raju)* *Member-2* *K-RERA*	*Sd/-* *(D. Vishnuvardhana Reddy)* *Member-1* *K-RERA*
Sd/- *(H.C. Kishore Chandra)* *Chairman* *K-RERA*	*Sd/-* *(IBRAHIM MAIGUR)* *Secretary* *K-RERA*

13. Insofar as the controversy involved in the present case, learned counsel submits that the complaints are filed through online process. In the column provided regarding nature of complaint though the relief sought by the complainant is for payment of compensation for delay in completion of the project, the website used to show the complaints are under Section 12 regarding veracity of the advertisement and Section 18 regarding return of the amount and compensation. However, subsequently, the web portal has been suitably

modified, which now shows the actual relief sought for by the complainant. Insofar as the complaint made by respondent No.2 is concerned, the Regulatory Authority has considered the same for relief of interest on delayed period. Therefore, the said prayer could only be considered by the Regulatory Authority, which has been rightly decided by the Regulatory Authority. Therefore, the allocation of the complaint filed by respondent No.2 to the Regulatory Authority is in strict compliance of the judgment of the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra).* Therefore, no fault can be found in the exercise of power by the Regulatory Authority.

14. In reply, learned counsel for the petitioner submitted that even going by the Notification dated 10.03.2022 while constituting additional benches of the Authority, the delegation is to a specific named Member i.e., Fifth Additional Bench, which was to be headed by Sri D Vishnuvardhana Reddy. The complaint in question has been adjudicated by Bench No.5 headed by Sri G R Reddy, IRS. If the delegation and constitution of bench is with reference to the name of member/officer, the adjudication of the complaint should have been by the Member who has been delegated with the

adjudication of the complaint heading the concerned Bench. With the aforesaid submission, learned counsel submits that heading of the bench by a member who has not been delegated with the power to head the named bench lacks jurisdiction to adjudicate the complaint and order passed by such authority is illegal and contrary to the principles of delegation of power.

15. In support of the said contention, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Ballabhdas Agarwala Vs J C Chakravarty[4].***

16. Learned Counsel has further placed reliance on Rule 29 of the Karnataka Real Estate (Regulation and Development) Rules 2017 (for short 'the Rules, 2017) and points out that the submission of the complaint and holding of enquiry by the Regulatory Authority shall be in terms of the said Rules. Even the Regulatory Authority shall have the power to take evidence in the course of enquiry and the Regulatory Authority cannot decide the complaint only on the basis of complaint submitted by the complainant and the Authority is required to conduct summary enquiry and provide fullest opportunity of hearing to the respondent.

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[4] 1960 SCC Online SC 273

17. In the instant case, the impugned order has been passed in direct contradiction to the procedure contemplated in Rule 29 of the Rules, 2017 and therefore, prays for allowing of the writ petition and to set aside the impugned order, so also, the guidelines issued by the respondent Authority.

Consideration of submissions and conclusion:

18. The first submission of learned counsel for the petitioner is that the order impugned is passed in gross violation of the principle of natural justice. In order to consider the said submission, the order sheet produced at Annexure-N is perused. The order sheet discloses that the notice of the proceedings was issued on 01.04.2023 and the next date of hearing was on 29.04.2023. No proceedings were held on the said date and the hearing was postponed to 27.06.2023. The order sheet of 27.06.2023 discloses that the complainant was present and the respondent was absent. Whether the notice of the proceedings was served to the respondent? If so, on which date is not recorded. However, with an observation that one more opportunity is given to the respondent to file a statement of objections, the matter was adjourned to 25.07.2023. On 25.07.2023, the complainant was not present and exemption was granted. Respondent was present. It is recorded that the

complainant has filed memo of calculation together with supporting documents and served on the respondent and posted for orders. After 2½ months from the date of posting the matter for orders, the impugned order was passed.

19. On perusal of the aforesaid dates and the proceedings recorded by respondent No.1, there is no doubt in the mind of this Court that the minimum requirement of observance of the principles of natural justice is not adhered to by the respondent Authority. When the matter was adjourned to 25.07.2023, only accepting the memo of calculation filed by the complainant without providing an opportunity to the respondent to put forth its case, the authority had straightaway posted the matter for orders. It is a clear case of violation of principles of natural justice. Therefore, the first contention of the petitioner will have to be answered in favour of the petitioner and thus, the petitioner is justified in filing the instant writ petition, notwithstanding the availability of alternative remedy of appeal under Section 44 of the RERA Act. The observance of principles of natural justice is not an empty formality. It is the basic principles of law of judicial/quasi judicial proceedings, to provide sufficient opportunity for the

parties to put forth their contentions for consideration before the Courts and Tribunals.

20. The next contention of the learned counsel for the petitioner that the undated guidelines produced at Annexure-M which was issued by the RERA is in contravention to the judgment of Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra),* cannot be accepted for the reason that Annexure-M is the guidelines for the complainants for submission of the complaints under different circumstances enumerated under the RERA Act. The guidelines also provides a bird's eye view, entitlement of the allottees/homebuyers in case of violation of the provisions of the RERA Act and the relief that could be granted while considering the complaints, more particularly, the percentage of interest for delay in completion of the project. The guidelines also covers the issue relating to the applicability of the provisions of RERA Act and the prayers that could be made by homebuyers in respect of the projects which were completed on or before 30.04.2017 and after 30.04.2017. At no stretch of imagination, it could be construed that the guideline is contrary to the judgment of the Hon'ble Apex Court in ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)*.

21. By Act 16/2016 of RERA Act, sub-Section (2) of Section 31 has been amended replacing the word 'prescribed' for the word 'specified by Regulation'. The publication of the undated guidelines could be construed as the prescription in terms of sub-Section (2) of Section 31 of the RERA Act and it cannot be said that, the RERA has no power to prescribe or notify the modalities, norms for submission of the complaint, in the manner in which the complaints are to be dealt with. On a reading of the aforesaid guidelines, it does not suggest that the same is contrary to the judgment of the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)*.

22. Insofar as the contention regarding competence of the respondent - Regulatory Authority for consideration of the complaint submitted by respondent No.2 is concerned, before considering the said submission, it is necessary to notice the provisions of Section 18, which reads as follows:

> ***"18. Return of amount and compensation -***
>
> *(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 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:

Provided 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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he

shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

23. To elaborate the powers and functions of the Regulatory Authority and the Adjudicating Authority, it is necessary to notice the definition of the Adjudicating Officer. The 'Adjudicating Officer' means the Adjudicating Officer appointed under sub-Section (1) of Section 71 of the RERA Act. Section 71 of the RERA Act deals with the power of adjudication for the purpose of adjudicating compensation under Sections 12, 14, 18 and Section 19 of the RERA Act. The Authority, in consultation with the appropriate Government, would appoint one or more judicial officer, who is or has been a District Judge for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard. The powers and functions of the Adjudication Officer and the Regulatory Authority has been considered in extenso by the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)*. The ambiguity regarding the powers and functions of Adjudicating Officer and the Regulatory Authority has been clarified in paragraph 85 of the said judgment, which reads as follows:

> *"85. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that* ***when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint****. At the same time,* ***when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine****, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.:*

24. In view of the aforesaid clarification, there is no doubt in understanding the nature of complaints that could be considered and the nature of relief that could be granted by the Regulatory Authority. If the relief is for refund of amount,

interest on the refund amount, directing payment of interest for delayed delivery of possession or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of the complaint. When it comes to a consideration of the relief of compensation and interest thereon under Sections 12, 14, 18 and 19 of the RERA Act, it is the Adjudicating Officer which has exclusive jurisdiction to adjudicate the complaints.

25. In the instant case, as could be seen from the order impugned, the relief claimed by respondent No.2 is for interest on delayed period. In light of the judgment of the Apex Court in ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)*, the complaint filed by respondent No.2 had to be decided by the Regulatory Authority and which has been considered and decided by the Regulatory Authority only. Therefore, the petitioner cannot have any grievance as regards the jurisdiction of respondent No.1 in deciding the complaint of respondent No.2. In view of the fact that respondent No.1 has considered the relief of interest on delayed period, the nature of complaint and the relief which is depicted in the web portal of respondent No.1 do not have any significance.

26. It is noticed from the webpage of respondent No.1, though in the column provided regarding nature of complaint and the provisions under which the complaint is filed is reflected as one under Sections 12 and 18 of the RERA Act, however, at the bottom of the said page, the relief sought is clearly indicated as "compensation for delay from November, 2019 as per RERA Act". Therefore, the relief is only for compensation for delay in completion of the project. Therefore, the reliance placed on the column provided in the online complaint portal has no relevance for the present consideration.

27. The reliance placed by the learned counsel for the petitioner on the judgment of Bombay High Court in ***Marvel Landmarks Pvt. Ltd.,*** *(supra)* do not support the contention of the petitioner regarding the powers of the Adjudicating Officer and the Regulatory Authority. The said judgment does not distinguish the proposition of law laid down by the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)*. Paragraph 85 of the judgment in ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)* has been taken note of the Bombay High Court and the contention of the petitioner therein was that the Adjudicating Officer cannot exercise any power other than

adjudication of compensation. The said contention was repelled by the Bombay High Court.

28. In addition to the above, the point involved in the said case was that the power to adjudicate the prayer for refund of the amount was delegated to the Adjudicating Officer, which is the lesser task compared to the adjudication of compensation and the interest. It is in the said context, the Bombay High Court has observed that the Adjudicating Officer is a judicially trained officer, would be able to undertake the lesser task of conducting a summary procedure to decide a refund and therefore, the delegation of power to the Adjudicating Officer with the lesser task cannot be found fault with. That is not the situation in the instant case. Therefore, the observation, if any, made by the Bombay High Court in the aforesaid case, do not support the contention of the petitioner in the instant case.

29. In light of the Notification dated 10.03.2022 issued by the RERA constituting the benches to decide different kinds of complaints, the argument of the learned counsel for the petitioner that while constituting the benches comprising of single member or more, whether judicial or administrative, the

Chairman should keep in mind the nature of litigation and whether questions of law and interpretation are involved, they should be assigned to an appropriate bench does not hold any significance. Inasmuch as, the powers of the Adjudicating Officer and the powers of the Regulatory Authority has been delineated by the judgment of the Hon'ble Apex Court in the case of ***M/s. New Tech Promoters and Developers Private Limited*** *(supra)*. Therefore, no discretion is vested in the RERA to entrust the cases relating to consideration of the prayer for compensation and interest to the Regulatory Authority. The said power is completely within the domain of the Adjudicating Officer. In that view of the matter, none of the arguments relating to the powers and functions of the Adjudicating Officer, Regulatory Authority, and delegation of power has any merit consideration and accordingly, the same are rejected.

30. The submission of learned counsel for the petitioner that the impugned order is passed by Bench-V consisting of a Member Mr. G. R. Reddy, IRS and as per the Notification dated 10.03.2022 at Annexure-R produced by respondent No.1, Fifth Additional Bench was to be headed by Sri Vishnuvardhan Reddy, Member-I and therefore, the adjudication of complaint filed by respondent No.2 by Bench-V consisting of Member

Sri G R Reddy is without jurisdiction is concerned, the said submission is not only technical, but it is hyper technical. It is common knowledge that as on the date of issuance of Notification dated 10.03.2022 as against the bench numbers names of the members who were occupying the position as Members and the Chairman were indicated. If for any reason, the Member or Chairman who is named in the Notification dated 10.03.2022 is subsequently either transferred or attained the age of superannuation or completes the term of office, it is quite common that new member or the Chairman would have been appointed and the new incumbent officer or the member would occupy the post of the member of the authority. That by itself would not be a ground to challenge the impugned order on the ground of lack of jurisdiction.

31. In order to prevent these kind of hyper technical arguments, it is advisable for respondent No.1 to issue necessary corrigendum or amendments to the Notification dated 10.03.2022 substituting the names of the members whenever there is a change in composition or in the alternative to amend the Notification dated 10.03.2022 nominating only with reference to the benches and not by name.

32. Though it is out of context, the submission of the learned counsel for the petitioner with regard to the manner of conducting of enquiry by the Regulatory Authority and the Adjudicating Authority is considered. As noticed, Sub Rule (1) of Rule 29 of RERA Rules, 2017 deals with the manner of filing of the complaint before the Regulatory Authority. Sub Rule (2) of Rule 29 of the Rules, 2017 speaks about the manner in which the summary enquiry is to be conducted. An elaborate procedure is provided under sub-Rule 2(a) to (j) of the RERA Rules, 2017. This Court may have to take judicial notice of the fact that none of the orders which are challenged before this Court discloses the Regulatory Authority having followed the procedure contemplated under sub-Rule (2) of Rule 29 of the RERA Rules, 2017.

33. The order sheets which are produced in some of the matters discloses that upon issuance of notice and on appearance of the parties only based on the memo of calculation and the complaint of the complainant, the orders have been passed. Even in the instant case, the procedure prescribed in the aforesaid Rules has not been adhered to by respondent No.1. Therefore, this Court deems it appropriate to issue necessary direction to respondent No.1 to follow the

procedure as contemplated under sub Rule (2) of Rule 29 of the RERA Rules, 2017, not only in the instant case, but in all the cases which are filed and pending before it, so that the challenge to the orders of the Regulatory Authority could be minimized.

34. The other contention regarding the validity of delegation of power is concerned, the same is governed by Rule 12 of the Karnataka Real Estate Regulatory Authority (General) Regulations 2022. Rule 11 speaks about the scrutiny of complaint and reference. Sub-Regulation (4) of Regulation 11 speaks of the powers of the Authority regarding formation of benches among the Chairperson and the members for effective and timely disposal of the complaint, appeal, review application etc., Sub-Regulation 12 speaks about the powers of the Authority to direct specific matters or issues to be heard and decided by the Single Bench of either the Chairperson or any member of the Authority. A combined reading of Regulations 11 and 12 would leave no room for any doubt regarding the power of Authority to constitute the benches. Though the Notification dated 10.03.2022 is prior to the aforementioned Regulation, the same is in conformity with the Regulations 11 and 12 of Regulations 2022.

35. The submission of the Learned Counsel for the petitioner that in similar and identical set of facts different considerations are made by different benches is not a matter which requires to be considered in the instant Writ Petition, since the legality or otherwise of the order impugned is not adjudicated in this order. It is to be observed that the orders passed by the quasi judicial/administrative authorities are always subject to judicial review and no directions/declaration can be made in this proceedings to the Benches of the Authority to apply/adopt same yardstick in consideration of the complaints.

36. In the result, the following:

ORDER

(i) The writ petition is ***allowed.***

(ii) The order in CMP/211219/0008736 dated 07.10.2023 passed by respondent No.1 is quashed.

(iii) The matter is remitted to respondent No.1 for fresh consideration in accordance with the provisions of Section 18 read with sub-Rule 2 of Rules 29 of the Karnataka Real Estate (Regulation and Development) Rules 2017.

(iv) Respondent No.1 is directed to issue suitable corrigendum or amended Notification regarding the members

who are delegated with the power to hold their respective benches as and when the members or the chairperson demit the office for any reason.

(v) Respondent No.1 is also directed to issue necessary guidelines unlike the undated guideline at Annexure-M directing the strict adherence of Rules 29 and 30 of the Karnataka Real Estate (Regulation and Development) Rules 2017 while adjudicating the complaints.

Sd/-
(T.P.VIVEKANANDA)
JUDGE

BGN