BEFORE THE REAL ESTATE APPELLATE TRIBUNAL (TNREAT)
(TAMIL NADU, ANDAMAN & NICOBAR ISLANDS)
AT EGMORE, CHENNAI – 600008
(Under the Real Estate Regulation and Development Act, 2016)

Quorum : Hon'ble Mr.Justice B.Rajendran, Chairperson.

APPEAL NO. 1 OF 2018

Mr.Y.Ravishankar,
S/o G.Yayathi,
New No.6, Old No.9, 1st Street,
Balaji Nagar, Anakaputhur,
Chennai-600070. ...
Appellant

- Vs -

1. M/s.Marg Properties Limited,
Marg Axis,
4/318, Rajiv Gandhi Salai,
Kottivakkam, Chennai-600041.

2. The Managing Director,
M/s. Marg Properties Limited,
Marg Axis, 4/318, Rajiv Gandhi Salai,
Kottivakkam, Chennai-600041 ...Respondents

Heard on 08-05-2018
Delivered on 23-05-2018

M/s. Ralph V.Manohar & R.Ramana, Advocates - For Appellant

Dr.S.Padma & G.Muniyandi, Advocates – For Respondents

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Appeal as against the Order dated 12-12-2017 made in Lr. No. TNRERA/384/2017

The appellant herein is the petitioner before the authority. According to the complaint, the fats of the case is that the Petitioner has booked a flat with the respondent in a residential project under the name and style of "Savithanjali" at Kalavakkam village, Thiruporur Panchayat, Chenglepet Taluk, Kanchipuram district. According to him, the respondent has agreed to complete the construction in Phase-1 consisting of Block A, B and C with 353 residential apartments and Phase-2 consisting of Block D and E with 325 residential apartments. The Appellant has booked a residential apartment in the above said project in Block C, 3rd floor and has been allotted Apartment No. 307 with a built up area measuring 1323 sq. ft and 422 sq. ft of undivided share in the land. The original agreement was entered as early as on 12-04-2012 and the time for delivery was fixed by June 2013 with a grace period of three months. The total cost of the apartment including club membership, corpus fund TNEB , water and sewage charges, swimming pool, Gym, sewage treatment plant, lifts, electricity backup and legal charges was a total sum of Rs.46,01,565/- which was exclusive of all government taxes and other charges and the cost of the car-park. According to the appellant, he has almost paid 93% of the total cost and his payment is to the tune of Rs.42,66,185/- and there is a balance of only Rs.3,35,380/- is due and payable by him. The Undivided Share of the land was registered on 13-03-2013 under a registered Document No. 3219 of 2013 at the office of Sub-Registrar, Thiruporur. According to the

complainant/appellant, the time as fixed by the respondent for completion of the project was not adhered to. It has been extended stating flimsy reasons though the approval was received by them as early as on 05-05-2011 and communicated to the other purchasers even way back on 09-05-2011. According to him till date of the complaint and even thereafter, even the slabs have not been completed. They have not shown any progress for the past 3 1/2 years. The project has almost been abandoned and there is no development. In the meanwhile, the Thiruprour Town Panchayat, as the approval has expired and the extension approval has also been rejected, have issued a lock and seal notice and also to demolish unauthorized structure. All these things are concealed to the appellant and to the other purchasers and the approval expiry or renewal rejection were never made known to them. Even according to the petition on or after 04-05-2014, they could not put any construction as there is no approval. According to the petitioner, even the application for extension has been made only after a period of one year on 17-04-2015. Therefore according to him the respondents have deliberately delayed the project. The appellant has approached the Consumer Court for refund of sale consideration as early as in year 2015 which is numbered as C.C. No. 253 of 2015 and is pending which is nothing concerned with the present application. According to him, even as per the Act, if the project is registered, he can withdraw from the Consumer Court and file it here.

In the meanwhile as Real estate Regulatory Authority (herein after called as TNRERA) was notified in Tamil Nadu on 22-06-2017

under the Section 3 of the Act, it is mandatory on the part of the promoter to register the real estate project with the RERA established under the Act and further under the proviso and Section 3(1)(iii) of the Act, even ongoing project which was pending on the date of the commencement of the Act, where completion certificate has not been issued or the building is not completed in the DTCP area, registration is mandatory. It is also contended under the second provision to section 3, for the projects which are developed beyond the planning area, also to be registered if the authority thinks in the interest of the allottees.

According to the petitioner/.appellant, the project "Savithanjali" as per the Rule definition 2(h) is an ongoing project wherein completion certificate has not been issued. The respondents who are the promoters of the project have failed to register the project with the authority as stipulated under the act and accordingly abandoned the project. More than 30 Crores have been collected by the promoter and none of the flats were handed over to any of the beneficiaries. Therefore unless the respondent is directed to be registered under the Act, the entire purchasers who have paid more than 85% of the sale consideration will not get any relief and the project has been abandoned for more than 3 ½ years now, will become a waste if necessary intervention is not made by this Authority. Therefore the Petitioner/Appellant filed a complaint to the Regulatory Authority on 12-11-2017 seeking for direction to register the project with the authority with in a stipulated time and to penalize the Respondent for non-registration. But this application was summarily rejected on 12-12-2017 in a mechanical

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manner. The impugned order was not a speaking order. No opportunity was given to the Petitioner for a personal hearing. In fact only from the Order, the Appellant came to know that the Respondent had filed a counter to the complaint and accepting the counter, the Authority has summarily rejected the complaint. Even the counter copy was served only along with the order copy as the order is passed without giving an opportunity which violates the principle of natural justice.

Further the Authority has dismissed the complaint on two grounds, namely, the project is structurally complete and therefore falls outside the ambit of Tamil Nadu Real Estate Regulatory Authority and on the ground, the flat which was booked by the appellant is not a part of any project registered with Tamil Nadu Real Estate Regulatory Authority and therefore the Authority has no jurisdiction. According to him, both these grounds are not available to the Respondent because in the objection counter filed by the respondent, they have admitted that Block B and C in their project have not been completed. Therefore the reliance of the Authority on the Letter certified by DTCP in ROC No. 14084 of 2017/SP cell dated 20-09-2017 is factually not correct, when there is a clear admission by the party himself that even the slabs have not been completed. Therefore the disposal of the authority is only summary in nature. The counsel for the Appellant would contend that even according to the Respondent, they have applied to DTCP on 06-06-2017 and the Order of the DTCP is dated 20-09-2017 whereas in the counter objection filed before the authority dated 02-11-2017, they themselves have clearly admitted that in Block-3,

in 3 floors, even the slabs have not been completed. According to the Appellant's counsel, it is clearly a project which would come under the proviso Section 3 as an ongoing project as it has not been completed. Merely because they have applied to the DTCP on the last date as given in the notification, on coming into the force of the Act, without even completing, will not give any legal right to contend that the project need not be registered. Whereas even after the alleged application, before the authority, they have conceded that it is not completed. Therefore he would contend that the rejection is not correct. Here the only prayer is that the project has got to be registered before the authority under the Act. He is not seeking for any compensation or any other relief except the consequences of non-registration which the authority should take.

The Respondent represented by Advocates would mainly contend that even for the complaint before the authority, they have filed a detailed objection, they have mainly contended that since the project is within the limits of DTCP, they have intimated the local authority by a letter dated 06-06-2017 that the project has been completed in respect of all slabs, columns and beams except top two floors of Block B and C and hence it would be outside the purview of Tamil Nadu Real Estate Regulatory Authority. They have admitted regarding the booking, the payment and all the details made by the petitioner. After narrating their various projects taken up by them, they would mainly contend in the objection that they had to face lot of hurdles because of delay in obtaining various approvals from the statutory authorities. Therefore the delay is beyond the control of the developer. According to them, the DTCP

approval was obtained on 05-05-2011 and the environmental clearance was obtained only on 28-11-2013 with lot of delay for more than 3 years. Where as a notice for lock and seal was received from E.O, Thiruporur on 27-07-2013. And because of the delay in obtaining various statutory approvals, there is a huge cost escalation of the project and as the delay is not due to the developer, there is a substantial clause in the agreement for extension also. According to them they have informed the customers about various developments of the project and action being taken by the company to accelerate the development of the project and requesting cooperation from the customers for timely payment. He would also contend that due to the recession in the economy and the delay in obtaining various approvals, it caused huge difficulty for having cash flow to construct the project. 50% of the project is still unsold. Further they have clearly stated in the objection in para 5.2,

> "The structural works of A Block is already completed and in the case of B and C blocks, only 3 floors slab is to be casted. The internal finishing of A Block can be commenced immediately. The structural completion of B Block will require 2 months and structural completion of C block will require 3 months. Accordingly B and C blocks will require only 3 months commencing internal finishing."

Further according to their objection, they need 2 months for structural completion and 4 months for internal finishing in B Block and 3 months for structural completion and 4 months for internal

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finishing in case of Block C. They have also pointed out in their objection the various methods for arriving at a conclusion between the parties for an amicable settlement and that they can complete upon the balance payment by the allotees' within a stipulated time of six months. According to the Respondent's counsel the application was rightly rejected by the authority and in the appeal he has filed an objection mainly contending that the TNRERA has jurisdiction only to adjudicate on the complaint of the projects which is registered under TNRERA. The facts referred to in the complaint does not fall under jurisdiction under TNRERA. The Appellant cannot compel the respondent to register and the authority has come to the conclusion that it is outside the ambit of RERA, that there is no scope for entertainment of the complaint. He would further contend that as per Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) rules, an ongoing project would exclude such projects where all the buildings in the project have been structurally completed, that is all the columns,beams, and slabs have been erected. Therefore in this case where the competent authority to which the respondent applied as early as on 06-06-2017 have concurred that slabs have been erected, the complaint is not maintainable before the authority. Similarly he would contend that no complaint can be registered as against an unregistered project. He would mainly contend even relying upon the website of the DTCP stating the status of the project has been clearly stated that Block A is completed, interior work is processed. Block B and C structural work is completed as per approved plan and Block D & E, foundation work is under process and Block – F not yet started. Therefore relying on this, he would contend that

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the authority has rightly held that it is not an ongoing project and further contended that the Respondent has filed an arbitration proceeding and is pending. Hence it will not come under the purview of TNRERA and sought for the dismissal of the appeal.

Heard both the parties. The parties were given personal hearing on all the hearing dates and heard on 25-04-2018 and 08-05-2018.

ORDER

The issue involved in the matter is whether a project needs to be registered under the Act when according to the promoter, the slabs, beams have been completed when they have already applied for the necessary certificate before the DTCP stating that they have completed the project.

In this case, the Petitioners booking for the flat, payment of money, handing over, duration are all admitted. There is no dispute in that. The only point is on the date of coming into force of the Act in Tamil Nadu, whether the project can be deemed as an ongoing project as per the act and the rules. This is the main point raised by both the parties. Of course before that, a technical point was raised. The Petitioner has given a complaint under the TNRERA seeking for direction to register the project stating it is an ongoing project. Even though notice has been issued to the Respondent and they have also given an objection, no opportunity was given, unfortunately for both the parties for any personal hearing after the filing of the objection. In fact it is admitted by both parties and the office that even the objection (counter) itself was sent along with the final order only to the Appellant/Petitioner. Therefore the principle of natural justice according to them have been violated.

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According to the Petitioner, had he been given an opportunity and given a copy of the counter, he would have clearly rebutted that the project has not been completed as per the terms as required to be completed and he would have brought to the notice of the Authority that even the slabs have not been completed which would clearly indicate that the clauses as contemplated in the Rules, 2(h) has not been complied with and hence will come under the purview of the Act. In this connection both parties have stated that they have been given sufficient opportunities, personal hearing in the appeal and the pleadings have been completed by both sides. Instead of remanding the matter on technical ground for adjudication, as they have raised only a technical legal point, whether they would come under the category of ongoing project, they argued on merits and sought for judgment on merits. Hence I am considering the matter on merits itself even though I categorically agree that the principle of natural justice has been violated. Further there would be no purpose in remanding the matter when they have argued only for the registration of the project is necessary or not. As regards the point raised regarding pending arbitration filed by the Respondent, the Appellant has not been served with a copy and he is not aware according to him and also that is filed by the Respondent for the cancellation of the very contract which is nothing connected with the present application which is a mandatory provision under the Act seeking for registration. Hence that objection is also over-ruled.

Before going into the question involved, we have to read the Section in the Act and the Rules. Section 2 (j) of the Act which defines building "Building includes any structure or erection or part of a structure or erection **which is intended to be used for**

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residential, commercial or for the purpose of business, occupation, profession or trade, or for any other related purposes. (emphasis made by me)

3. Prior registration of real estate project with Real Estate Regulatory Authority. – (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

5. **Grant of registration.** – (1) On receipt of the application under sub-section (1) of Section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

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(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(h) "*Ongoing project*" means, a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of coming into force of sub-section (1) of Section 3 of the Act:-

(i) ....

(ii) .....

(iii) in the case of projects under execution outside Chennai Metropolitan Area, as no provision and procedure has yet been prescribed for issue of completion certificate, if the construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. Such projects shall be intimated to the concerned Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of these rules with a copy marked to the office of the Director of Town and Country Planning. The Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority.

2(zf) Occupancy Certificate means occupancy certificate, or such other certificate by whatever name called, issued by the

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Competent Authority permitting occupation of any building as provided under local laws which has provision for civic infrastructure such as water, sanitation and electricity.

2(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

On a careful reading of the section and the rule, first it is very clear that the Act specifies in Section 5 that the Authority when an application is received for registration it should register within thirty days, but if it is to be rejected, it can do so only after giving an opportunity of being heard in the manner as per section 5(b) proviso. Therefore it is mandatory on the part of the authority before rejecting any application to give a personal hearing. First of all, on this score alone, the appeal has got to be allowed as discussed earlier, since they have agreed to go on merits, I am dealing on merits also.

First taking section 3(i) second proviso even where the projects are developed beyond the planning area but with requisite permission of the local authority, it may be by an order direct the promoter of such project to register with the authority. Here in this

case, though the project is outside the CMDA area, it comes within the DTCP area which is covered under the rules. Therefore the project itself comes under a place covered under the Act. In this connection we will now analyze the Act and Rules.

Section (2)(h) defines ongoing project in the rules. When it is under a cmda area, it is covered under section 2(h)(ii) and when it is outside the Chennai Metropolitan Area, it comes under section 2(h)(iii)., when the rules have been notified in June 2017, the Developer has to intimate the Deputy Director (Town & Country Planning) within 15 days from the date of notification of the rules whether the construction is structurally completed. The rule also specifies what is the meaning of structurally completed construction. It says " construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified by the Architect or structural engineer / licensed surveyor associated with the project supported by photographs". Therefore it is mandatory very clear in the rule that for structural completion, all the columns, beams and slabs have to be erected and should have been certified by Architect / Structural engineer. With this when we analyze the provisions of the act, namely, Section 2(e), definition of an apartment, which clearly says that "any immovable property including one or more rooms or enclosed spaces located on one or more floors or any part thereof in a building or in a plot of land, used or **intended to be used for any residential or commercial use such as residence, office."** The intention of the legislature is very clear that the property should be in a usable condition by the allottee. The rules also have stated

that at least the slabs, columns, beams should have been completed.

If we also take into considerations the objects and reasons of the Act, the Act has been enacted mainly to infuse transparency, ensure accountability towards allottees and protect their interest. It also imposes certain responsibility on both the Promoter and the Allottee, mainly to establish a fast track dispute resolution mechanism. Therefore the intention of the legislature is to have a workable solution for any difficulty faced by an allottee. This can be done only if a project is registered under the Authority. In fact when we also take into consideration, the rule 2(zn) where the definition of Real estate project is given, it actually says the development of the building includes the common areas, the development works, all improvements and structures thereon and all easement rights and appurtenances belonging thereto which will clearly indicate that the legislature's intention in the Act is to say that the project should have been completed in all respects.

In the rules, it has been specifically mentioned that completion of all columns, beams and slabs have to be erected and certified by architect or structural engineer. Whether in this case, the Respondent has completed the project either as contemplated under the Act or at at least as contemplated under the Rules? Of course the Act prevails over the rules.

Under the Act, it is very clear that the end product namely the flat is a usable commodity. It does not contemplate the promoter to say that they have only completed a portion of it.

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Similarly under Section 11 (4), under the functions of the promoter, it is their responsibility of the promoter to obtain the completion certificate or the occupancy certificate or both as applicable from the relevant competent authority as per local laws. Further under section 11 (4) (d) (e) and (f) it is obligation of the promoter independent of the fact of the project being registered or not, be responsible for providing and maintaining the essential services on reasonable charges till the taking over of the maintenance of the project by the association of the allottees and to enable the formation of the association or the society therefore when the duty is cast on the promoter to fulfill the objects of the completion of the project, can the promoter now argue that inspite of he not completing the three floors in the particular project as per the approved plan still to say that he will be exempted under the Act as if he has completed the project by finishing the slabs and beams. Whereas admittedly in this particular case, he has not even completed all the floors as per the approved plan even till date of the appeal hearing.

Whereas in this particular case, the Respondent has himself admitted in the 1st objection to the complaint filed before the Authority that in November 2017 in paragraph 2 very clearly that they have intimated the local authority by their letter dated 06-06-2017 that the project has been completed in respect of all the slabs, columns and beams except top two floors of Block B and C which means that even in November 2017, they have not completed even

the slabs, columns and beams of the project in two floors. Further they have committed in the very same objection in paragraph 5(2) ....

> "The structural works of A Block is already completed and in the case of B and C blocks, only 3 floors slab is to be casted. The internal finishing of A Block can be commenced immediately. The structural completion of B Block will require 2 months and structural completion of C block will require 3 months. Accordingly B and C blocks will require only 3 months commencing internal finishing."

Wherein they have categorically stated that three floor slabs have to be casted. That means their admission is very clear that they have not completed their project. It could only be construed as only an ongoing project even as per their own admission. In fact even in the objections, they seek further two months time for completion of structural completion in respect of Block B and three months for structural completion for Block C for which the Petitioner has applied. Therefore having admitted in their objection itself, that it is not structurally completed, how could they even apply to the concerned authority that it should be treated as a completed project as per the Act within 15 days from the notification of the rules which is much earlier namely on 06-06-2017. Therefore the argument of the counsel for the petitioner is very clear that on the date of the coming into force of the Act, the project has not been completed. Hence they would squarely come under the purview of the Act. Further in the course of the argument in the Appellate

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Forum, Learned Counsel on getting instructions from the concerned officer present in the open court, clearly admitted that on that day of their filing before the Authority in June 2017, they have not completed slabs, columns and beams for three floors. Subsequently they have completed slabs for one more floor which is after November. The counsel also relied upon the website of the DTCP regarding their application for completion. There it has been stated as SL. No. 87 and the status of the project as stated by the Authority concerned clearly states that Block B and C, 14 floors structural work completed as per approved plan. Whereas in the objection filed in the November, they have categorically admitted that they have not completed the structure and prayed for three months time. Even now when the question is asked in the open court in the appellate forum, they have clearly admitted that further 3 – 6 months to complete the structural columns and slabs. Only then it can be used as a flat. Therefore the intention of the legislature was only for the parties to have a workable usable commodity namely a flat which cannot be construed as an incomplete flat. As per the Act, it even states that the property is intended to be used as a residential or commercial use such as residence or office or shop. Therefore the alleged mere completion of structure or beam cannot connote to the actual users entitlement. In this case, even the authority has only stated 14 floors completed whereas the approved plan is for 16 floors even as per the admission of the parties concerned. Therefore even according to the rules, they have not completed the project. Therefore in this case, the Respondent has neither finished the project either according to the Act or even the rules. Therefore it

can only be called as ongoing project as even the slabs have not been completed for three floors as per the Respondent's very own admission.

Further considering the parties statement before the appellate forum, even after the coming into force of the Act, after the notification of the rules, after the application for certificate for completion of project, till date, nearly after one year of the coming into the force of the Act, admittedly they have not completed the project. Further taking into consideration, that the project has not been completed, does it not mean that it is a continuing offence? The allottee has every right to bring to the notice of the authority when there is non completion of the project on the date of the coming into force of the Act. He has to establish that the promoter is not entitled to claim the exemption because of his continued non completion. In this particular case, as I have discussed earlier, even as per the admission of the Respondent, till date it has not been completed and hence it can only be construed as ongoing project on the date of coming into force of the Act. Therefore they cannot take the umbrage under the alleged application for completion made within the stipulated time from the notification date of the rules to say that they will not come under the provisions of the act. Therefore the main and the only contention raised by the Respondent legally they cannot be compelled to register does not stand to scrutiny. Hence it cannot be construed that the legislature intended that even persons abandoning the project merely by completing a portion within the purview of the rules, so

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that they can go scot free without even registration. In fact Section 3(ii) proviso in the Act, that gives the power to the authority in the interest of the allottee, if it thinks necessary if a project has to be registered, it can direct such promoter to register. When such is the case, definitely here is a case where the respondent having admitted that the project has not been completed, in the strict sense of the law, it cannot be summarily allowed to go scot free under the pretext that he had applied within the stipulated time from the date of notification as if it has been completed. Whereas factually it has been proved till date it has not been completed at all.

For the above said reasons, the Order dated 12-12-2017 is set aside. The complaint of the applicant seeking a direction to register the project has got to be allowed. Consequently the appeal is allowed.

There shall be a direction to the Respondent that they should apply to the Authority within 15 days from the date of receipt of this Order to file an application for registration of the project under this Act and on such application being filed, the Authority shall dispose of the same within 30 days. No Costs.

Place : Chennai

Justice B.Rajendran,
Chairperson,
Tamil Nadu Real Estate
Appellate Tribunal

Dated : 23-05-2018

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