BEFORE THE REAL ESTATE APPELLATE TRIBUNAL
(TNREAT)
(Tamilnadu, Puduchery, Andaman & Nicobar Islands)
At Egmore, Chennai – 600008.
(Under the Real Estate Regulation and Development Act, 2016)

Appeal No. 5 of 2018

M/s. Adinath Srinivasa Foundations LLP,
Rep. by its POA Akshay Seth,
T-2, 1st Floor, No.31, Rajamannar Street,
T.Nagar, Chennai-600017.

... Appellant / Respondent

-Vs-

The Secretary,
Serene Kshetra Owners Association,
Represented by its Secretary Mr.Shekar Murthy,
Plot No.26, CRR Puram, L&T Colony,
Manapakkam, Chennai-600125.

...Respondent / Complainant

Orders Reserved on 21.12.2018
Delivered on 11.01.2019

M/s. K.V.Sundararajan, K.Gopi, G.Janakiraman & R.Balaji ,
Advocates – For Appellant

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Appeal as against the Order dated 24.09.2018 made in Complaint No. 35 of 2018 passed by the Tamil Nadu Real Estate Regulatory Authority.

The Respondent before the Authority is the Appellant herein.

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The facts of the case is that originally 11 complainants have petitioned TNRERA that the project has been wrongly listed as structurally completed project in the list prepared by the DTCP and hence excluded from the definition of 'Ongoing Project' under Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulations & Development) Rules, 2017. They have sought for rejection of the exemption granted by DTCP and for a direction to register the project under the TNRERA Act.

It is an admitted fact of both parties that Serene Kshetra comprises of two planning approvals granted to M/s. Adinath Srinivasa Foundations LLP.

i) A residential layout project at S.F. Nos. 41B/2A3, 41B/2B1A at Nathampettai Village, Kancheepuram Taluk and District, Tamil Nadu, obtaining layout sanction for 35 plots, 21 EWS plots and a shop from the Kanchipuram Local Planning Authority bearing Layout Approval Number 01/2014 dated 09.06.2014 and separate building permissions from the Kanchipuram Municipality for 15 individual houses, 40 Twin Houses and 21 Row Houses.

ii) A group housing residential project at S.F. Nos. 45/4A2, 4B2, 5A2, 5B, 6B, 7, 8, 10, 11, 12 at Valluvapakkam Village, Kancheepuram Taluk and District, Tamil Nadu which obtained plan sanction from the Deputy Director of Town and Country Planning, Chengalpattu bearing Planning Permit Approval Number 4768/2013/CR3 dated 08.05.2014, and building permission from the Local Body.

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As two sites are contiguous, though they are situated in two different villages, two separate plans were approved by different authorities namely the Kanchipuram Local Planning Authority and Deputy Director, Town & Country Planning in Chengalpattu. According to the Complainants, though a larger number of houses were given permission as per the plan approval, certain portion of the houses and flats alone have been constructed in two different plan approvals, but they sought exemption as if they have been structurally completed the 40 Twin houses and 21 row houses in the 43 out of the 56 plots and in the second project, out of 147 row houses, 99 row houses and a club house and staff quarters and on this basis, the Developer has obtained the exemption under Rule 2(h)(iii) and therefore the Authority has also issued a certificate and exempted by publishing as Item No. 106 and 138 in the list of structurally completed projects under Rule 2(h)(iii) and have posted in their website of Town and Planning. According to the complainants, the builder has neither completed in accordance with the Act nor according to the Rules and they have represented to all the authorities. In the meanwhile the developer has registered with TNRERA as two separate projects in so far as the remaining portions of the buildings not completed from each of the two planning approvals vide Registration No. 88 dated 28-09-2017 in regard to Valluvapakkam village and Registration No. 177 dated 13-12-2017 for Nathampettai Village before RERA Authorities. The

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Appellant / Developer herein had categorically stated before the Authority that the houses were structurally completed and hence they would not come under the purview under RERA and also paid compensation for their delay in the project.

As per the pleadings by both the parties, the RERA Authority had directed the Commissioner, Town and Country Planning to undertake an inspection and submit a report. Pursuant to the same, the Authority has inspected and given a report on 28-02-2018

	Structure with Extent	Location	Status
Villas	G+1 floor (1585 sqft)	Plot No.1 to 15 and shop	Out of 16 villas, 9 Nos. of villas constructed and 7 Nos. under construction. Villa proposed in the shop site.
Twin Houses	GF (1050 sqft)	Plot Nos. 16 to 22 & 23 to 35	Out of 20 Nos., 14 Nos. of Twin Houses constructed and 6 Nos. under construction
EWS	GF (515 sqft)	Plot No.36 to 56	21 nos. of EWS blocks constructed.

Regional Deputy Director, Chengalpattu region stated that "99 Nos. of Blocks (GF) are completed and finishing works are progress for handing over the houses. 48 Nos. of Blocks and Block 1 & 2, EWS Block (six) are yet to be started. Club House G+1 floor constructed in the site and it is yet to be functioning. Structural and Brick work completed for Staff Housing (G+1 floor) and finishing work yet to be started.

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After the report, both parties were given time to submit their objections and according to the complainant the project was never intended to be conceived to be developed in phases even as per the original approval. According to them, it is a single integrated township project which cannot be bifurcated only for the purpose of avoiding RERA. The individual agreements also only specifically states that it is an "integrated residential project for senior citizens". Further they have also mentioned even in the allotment letters, even to the individual buyers made a specific mention about the integrated Serene Kshetra projects which includes group development scheme comprising of row houses, apartments on 9.9 acres of land of same survey nos. In its site layout plan also, it has clearly mentioned about all the row houses, apartments, and club house as a single integrated project. Further in the service agreement, though it is a sister concern, there also it has been specifically stated as one integrated project. In the complaint, in Form No. M filed on 17-05-2018 and in the written statement also, the complainant has specifically stated that unless the project itself is an integrated character, the common amenities and infrastructure would not have been on a 100% sharing mode without restrictions and reservations of any nature.

The appellant builder has given a detailed objections before the Authority that the integrated development is a product mix of

two developments, namely, 1) the villa development on laid out plots (Layout Development Scheme) 2) Apartments in group housing development (Group Development Scheme). That is why two different permissions have been taken. Further they have also contended that even in the Construction Agreement, they have specifically made it clear that the common areas of the layout development scheme can be utilized by both groups namely the group development scheme as well as layout development scheme without any hindrance. There is no issue of preferential treatment conferred between the RERA registered project and RERA non-registered projects. According to them, after the promulgation of RERA, the layout development and group development were shown as two developments, namely, the Layout Development Scheme as Phase-1 and Group Development Scheme as Phase-2 for the purpose of registration with RERA. According to them, the common amenities have already been done and to represent the project in two phases is well within the mandate prescribed by law. According to them, since they have shown proof that the building is structurally completed, the authorities have rightly granted the exemption under Rule 2(h)(iii). Based on these pleading and arguments submitted on both parties, the Authority has determined the following issues

From the contention of the two parties and the facts of the case the following issues come up for determination:

(1) Once a project has been included in the list of structurally completed projects by the Directorate of Town and Country Planning under Rule 2(h)(iii), is it open to this Authority to examine whether a project has been correctly included in the list, or on as contended by the Respondent, is the complaint not maintainable on this ground alone, and TNRERA not empowered to question the legality of an exemption under Rule 2(h)(iii)?

(2) What is the scope of the Explanation under Section 3(2) of Real Estate (Regulation & Development) Act, 2016, which deals with registration of phases of the projects?

"*Explanation:- For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.*"

Does it give the promoter/developer an unfettered right to determine what the phases of a project would be?

(3) Depending upon the answers to the above two questions, is the promoter, in the facts and circumstances of the present case entitled to avail exemption as provided under Rule 2(h)(iii) for certain structurally completed portions of the construction undertaken under the two planning permissions accorded to the Serene Kshetra Project?

and answered the same.

The Authority on the first issue has clearly stated that inclusion in Rule 2(h)(iii) cannot take over the powers granted under Section 34 & 35 in the act to examine whether a project is required to be registered and whether shelter available under Rule 2(h)(iii) has been correctly resorted in the particular case.

As regards to the second question is concerned, taking into consideration though the project could be raised in phases, the Authority has stated that they cannot split the project in two phases when the original intention is not stated so. Nor they can further split the two phases into a structurally completed portion as it is exempted from RERA and an 'Ongoing Project' or portion to be registered under RERA.

And therefore in the third issue, the Authority has come to a conclusion that the entire project has to be registered.

Aggrieved against these findings, the present appeal has been preferred by the Appellant and posted for admission.

At the time of admission, the Learned Counsel mainly contended that the Appellant have registered as far as the incomplete phases of group development scheme and layout development scheme and as far as the completed phases of the project is concerned, as they have been given exemption, the order directing them to register is not legally sustainable. He also contended that the purchasers in which the construction have been completed were eligible for all benefits which is available to the registered phase of the project, that is there is no discrimination between the completed phase which was not registered under RERA and non-registered phases in which

construction is ongoing. They would mainly contend that certain phase of the project (both the plan approvals) has been completed and therefore the enlisting of the exemption by DTCP under Rule 2(h)(iii) is legally sustainable. He would also contend that as the proper Authority when it has given an exemption, this Authority cannot go into that question again. According to him, the subsequent report by the DTCP authority only would establish his legal right for grant of exemption. He would mainly contend that the Authority has not properly construed explanation 2 & 3 of Rule 4 to hold that the scheme of development so conceived for the project is a violation of RERA. It would only apply to where the developer seeks to alter or modify the plans and not where the developer sought for exemption under Rule 2(h)(iii). He also would contend that the Authority's reliance on the earlier Judgment of the tribunal made on the Appeal No. 1 of 2018 will not be applicable to the facts of this case. He has also produced additional typed set of papers during hearing to substantiate that they have applied for relevant authorities as early as on 04-07-2017 itself for the grant of necessary exemption and also the certificate of registration by the RERA for the incomplete projects along with architect's certificate dated 04-07-2017.

He would also mainly contend that even as per the definition in the Rule 2(h)(ii) and 2(h)(iii), there is a subtle difference namely in 2(h)(ii) the words that all the buildings in the project

have been structurally completed, has been used where as in 2(h)(iii), the word all the buildings in the project has been omitted. Therefore he can take a plea that even in respect of one project, he can take a different stand that where the building is completed, he can seek for exemption and where the building is not complete, in respect of the same project, they can seek for registration. Therefore he would contend that the order passed by the Authority is not in accordance with law.

Heard the Appellant represented by Advocate K.V. Sundararajan at the time of admission.

ORDER

The whole case of the Appellant is that they have taken two different permissions (Planning Approvals) as it is situated in two different villages and it is pertaining to one, a villa project and other one, a consolidated house cum flats project. The first one is developed in the plots earmarked for each house and the second one is a joint one. But of course the admitted fact by the appellant builder is that the common amenities which is made for both the projects is the same and both the purchasers from both the projects could avail the same without any hindrance by anyone. In this connection, it is also pertinent to point out that it is also admitted by the appellant itself that the entire project is not been completed after the commencement of the Act. No doubt as early as on 04-07-2017, even as per the additional

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typed set of papers, the appellant has sent a letter to the authorities concerned in respect of the two approvals along with the certificate of the architect, that the project in so far as a portion of the buildings as stated in the original plan has been constructed / completed. Only on this basis, as per the inspection of the then authorities concerned they have been granted the exemption under Rule 2(h) (iii). On a careful perusal of the very architect certificate even issued as on 04-07-2017 said to have been submitted to the authority concerned, as only a copy is produced here and not a certified copy, the architect has clearly stated that out of the 147 row houses, club house, staff quarters, apartment planned in the project, only 99 row houses, club house and staff quarters have been structurally completed. He further clarifies completion meaning that all the columns, beams and slabs have been erected for these row houses (99 out of 147). In the letter sent to the authority concerned based on the Architect's certificate, the construction of apartments has not been mentioned at all. Even as per the certificate, it is very clear that out of the 147 row houses, which they have obtained permission, in this particular plan approval, they have only completed only 99 even as per their own architect's certificate. Therefore definitely on the relevant date on the coming of the force of the Act, i.e., on 22-06-2017, and within the stipulated time of 15 days to intimate the authorities, they have categorically admitted that they have not completed as per the

approved plan and a major portion of houses is yet to be completed/constructed. Similarly in respect of the other approval by the LPA, though the approval is for layout sanction for 35 plots, in which 21 EWS plots and shop has been granted for a construction approval for building 15 individual houses, 40 twin houses and 21 row houses, they themselves have clearly stated that 8 individual houses, 28 twin houses and 21 EWS houses have been constructed and completed in 43 plots out of the 56 plots and a shop. Though in the letter they have mentioned about the architect certificate, the architect certificate has not been produced in the typed set of papers here. Therefore here also admittedly they have not completed the balance 7 individual houses, 12 twin houses on the date of the coming of the force of the Act as per their own request letter for exemption as early as on 04-07-2017.

With these background, when we analyze the order of the Learned Authority, the Authority has come to a conclusion that you cannot split the phases to suit to your convenience whether to include a portion into RERA or not. In fact the Authority has taken a precaution of directing the Commissioner, Town & Country Planning to undertake an inspection and submit a report. A report has been submitted on 28.02.2018 much after the coming of the force of the Act and after the grant of the

exemption certificate. A perusal of such certificate extracted earlier in Page No.4,

	Structure with Extent	Location	Status
Villas	G+1 floor (1585 sqft)	Plot No.1 to 15 and shop	Out of 16 villas, 9 Nos. of villas constructed and 7 Nos. under construction. Villa proposed in the shop site.
Twin Houses	GF (1050 sqft)	Plot Nos. 16 to 22 & 23 to 35	Out of 20 Nos., 14 Nos. of Twin Houses constructed and 6 Nos. under construction
EWS	GF (515 sqft)	Plot No.36 to 56	21 nos. of EWS blocks constructed.

it is very clear that the Commissioner has categorically stated that as far as the villas is concerned, out of the 16 villas, 9 number villas are constructed and 7 number of villas are pending construction which is proposed in the shop site. Similarly as far as the twin houses are concerned, only 14 out of the 20 are constructed and 6 are yet to be constructed and of course the EWS block have been constructed insofar as the town and country planning approval.

In respect of the Regional Deputy Director, Chengalpattu region, 99 Nos. of the blocks are completed, 48 Nos. of blocks and Block No. 1 & 2, EWS Block (6) are yet to be

started. Club house, ground and first floor are constructed in the site and is yet to be functioning. Structural and brick work is completed for staff housing (G+1) floor and finishing work is yet to be started.

From this report of both the authorities concerned, one thing is very clear that even after the alleged exemption certificate is granted, as per the direction of the Authority, when further inspection has been made much later after the coming into the force of the Act, it is very clear that the project has not been completed at all even in phases. As rightly pointed by the learned Authority, first of all, the promoter has never or ever stated before the purchasers, that it is to be developed in different phases. Whereas from the various documents as cited by the authority concerned, it is very clear that the builder has only stated it as an integrated residential project for senior citizens. In fact a reading of the Joint Venture Agreement produced by the appellant in typed set of papers, it clearly shows one important aspect. In the consolidated Joint Venture agreement itself, the builders states as follows :-

> WHEREAS, out of the extent of 9.90 acres which was earmarked for a group development scheme, an extent of 8.91 acres(after gifting an extent of 0 acre 99 cents for OSR) which is morefully described in Schedule 'C' hereunder, has been sanctioned as a group development vide approval number 30/2014, vide letter dated 8/5/2014 from the Directorate of Town and Country Planning.

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WHEREAS, out of the extent of 3.83 acres which was earmarked for a layout scheme, an extent of 2.54 acres, (after gifting an extent of 1.29 Acres for internal roads and park areas) has been approved by the Kancheepuram Local Planning Authority vide layout approval number 01/2014, letter no. 349/2013, dated 9.6.2014. In the said extent of 2.54 Acres, an extent of 2.01 Acres has been morefully described in Schedule 'C' hereunder, and an extent of 0 Acre 53 Cents has been earmarked for future development (morefully described as ITEM-2 under Schedule E hereunder)

Further they have also stated in the very agreement, the number of units to be built-up in the entire area as one unit has been shown in the Joint Venture Agreement.

WHEREAS, the product mix, the number of units and its respective sizes stand frozen and is as below, save the changes which can happen in the Villa, Twin House and Single Bedroom Villa saleable sizes in the layout scheme due to the Rules of the development authorities.

S.No.	Type	No.of Units	Total Area Sq.ft.
1	Villa (3 BHK) inclusive of shop site	16	25778
2	Studio Villa (1BHK)	21	11191
3	Twin House	40	20862
4	Row Houses	147	140999
5	Apartments	176	148808
6	**Total No. of units and its total area**	400	347638
7	Common Amenities, Club House and Staff Quarters	-----	35750
8	**Total Built up Area**	----	383388

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> As per the aforementioned, the parties have now decided to enter into this Joint Development Agreement, by converting the agreement of sale dated 18.01.2013 between the parties into this joint venture agreement.

They have also very clearly stated in the agreement that they reserve for future development One acre and 5 cents in nathappatti village in different survey numbers. Therefore when they go to the buyer and say and promote as an integrated project which will be developed as villas, plots, flats, club houses everything together but when the Act came, they have simply modified to say that in respect of certain portion of the project in the two different plans which have been completed should be exempted from the purview of the act and as far as the balance of the portion to be constructed they want to come under RERA has rightly been deprecated by the Learned Authority.

No doubt the Act empowers the builder to develop the property in phases, but he should have made it very clear at the very inception, both to the authority as well as to the buyers. In this case, merely because they have taken two different approvals, as the villages were different, even though the property remains adjoining, that by itself, cannot make them to say that they can split the very project. As rightly pointed out by the Authority, if at all, an argument is taken that so far as one approval is concerned, certain portion has been completed,

certain portion has not been completed, and therefore they seek for registration and in so far as the other approval is concerned, as it is fully completed, it can be exempted, may have a semblance of right where as they cannot split and state that in each of the approvals, they have completed a portion and balance portion they need to get exemption specifically cannot be entertained. As stated supra, even as per the report and admission by the party themselves, as they have rightly come forward for registration for the balance portion, they have not completed the houses, villas, apartments in accordance with the definition of the Act as per the original plan. The plan approval is for the entire project which can be treated as a phase. They cannot split that phase into two different things, portion completed and portion not completed. In this connection we have to take into consideration, Section 3 (2) of the Act and explanation 2 & 3 of Rule 4 of the Tamil Nadu Real Estate Development Rules, which states as follows :-

Section 3(2) of the Act :

> "For the purpose of this Section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately. "The expression where the real estate project is to be developed in phases, clearly implies that there needs to be prior intent that the project will be developed in phases.

Explanation of II and III under Rule 4 are produced below:

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Explanation II – If the project has been conceived to be developed in phases, where the plans for the initial phase are approved by the planning authority prior to the date of coming into force of sub-section (1) of Section 3 of the Act, then for such projects the requirement of obtaining two third consent from existing allottee, under clause (ii) of sub-section (2) of Section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phase/s of development, provided the scheme of developing the project is phased manner has been agreed upon by the allottee and promoter in the agreements executed by them.

Explanation III – If the approval from the planning authority is obtained for larger extent of land, but where the development is conceived to be in phases, the promoter shall be permitted to register each phase as an independent project with the Authority. In such case, the requirement of obtaining two third consent from existing allottee under clause (ii) of sub-section (2) of Section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phases of development, provided the development in phases has been agreed upon by the allottee and promoter in the agreements executed between them, when there is no reduction in the common area and there is no change in the total built up area of the registered phase/project."

A reading of the above section 3(2) and explanation 2 & 3 of the Tamil Nadu Rules would categorically indicate that the promoter is permitted to develop in phases but when the Planning Permit is obtained earlier with an idea to develop in phases at a later stage in respect of the larger extent, such phase expansion can be done only after getting consent of the total 2/3rd of the allottees. The only exemption given under Section 14 is a waiver if there is an explicit prior agreement by the Allottee and Developer even at the initial stage. In fact that specific

understanding/agreement between the parties is clearly missing in this case as categorically pointed by the Learned Authority. In fact on a perusal of various documents by the authority, including the brochure which specifically states ;

"the integrated development is a product mix of two developments, 1) villa development on laid out plots (Layout Scheme) and 2) apartments in group housing development (Group Development Scheme)."

Therefore the intention of the Developer right through was only to develop as an integrated project of the area covered under the both plan approvals. Curiously after the coming into force of the Act, the promoter himself now wants and accepts to split the project into phases only at this later stage. Therefore it also clearly indicates that he has not obtained the permission of the 2/3rd of the allottees either before or after the coming into force of the Act. Hence the finding of the Authority that only portions of the intended development under both the Layout Development Approval and Group House Development Approval have been completed, is correct. Therefore the finding that according of the structurally completed status to the whole project or even to either one of the two phases is neither warranted nor contemplated under the provisions of the Section 3 of the Act is valid, reasonable and correct.

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The next important argument raised by the appellant was a distinction pointed out as in the Rule 2(h)(ii) and 2(h)(iii). Admittedly the project in question falls under the category 2(h)(iii). The argument was in 2(h)(ii), the word all the buildings has been structurally completed has been included whereas in 2(h)(iii), the said words were omitted. Therefore he has got the legal right to say that he need not complete the entire project or construction when seeking for exemption and that he could also seek for exemption when a portion of the project is completed cannot be accepted as under the Act what is contemplated is a completion of the project or the building as such. It further requires that the completed project should be a usable commodity and not a property which cannot be utilized. In fact if a reading is done in respect of rule 2(h)(iii) also, it specifically brings out if the construction is structurally completed, would definitely mean that the completion in respect of the entire building. Further as per the definition in the Act section 2(z)(n), a real estate project has been defined in which it is specifically brought out that the project completion would include the common areas, the development works, all improvements and structures thereon and also easement rights and appurtenances belonging thereto. And the definition 2(e), namely apartment would clearly indicate that the apartment would mean which could be used or intended to be used for any residential or commercial use such as residence, office, shop that would mean

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that it would be a fully operational one and not a semi-finished not fully completed one. In fact in my earlier judgment in the matter pertaining to Appeal No. 1 of 2018, I have held that only completed property which is intended to be used as a house or commercial use as such as residence, office shall alone be deemed to be fully constructed one. The relevant portion of the judgment is extracted below :-

> 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.

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 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.

In fact this is also relied upon by the Learned Authority. Therefore the next argument in regard to the definition in the Rule does not stand to scrutiny especially in this case when the parties themselves have admitted that they have not completed a portion of the project and has chosen to register the unfinished portion as an 'Ongoing Project' though by their imagination, by splitting the very phase of construction, into different stages namely constructed and non-constructed. The net result is their admission of the builder that they have not completed the project as per the approval either on the date of the coming into force of the act and even as per the report by the authority concerned as per the direction of the real estate regulatory authority much after coming into force of the Act they have completed the project at all. Therefore rightly the Authority has come to a conclusion that the project needs to be registered.

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Hence the Order passed by the Authority is lawful, valid and the appeal is dismissed. No costs. Directing the appellant to immediately register the project.

Place : Chennai

Justice B.Rajendran,
Chairperson,
Tamil Nadu Real Estate
Appellate Tribunal
Dated : 11-01-2019.

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