BEFORE THE TAMIL NADU REAL ESTATE
APPELLATE TRIBUNAL (TNREAT)
(Tamilnadu, Puduchery, Andaman &
Nicobar Islands)
At Egmore, Chennai – 600 008

(Under the Real Estate Regulation
And Development Act, 2016)

Appeal No.1 of 2019

20th day of March 2019

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Army Welfare Housing Organisation (AWHO),
New Delhi, rep.by its Project Director,
Raman Vihar AWHO Project,
Chinnavedampatti Post,
Coimbatore – 49 ... Appellant / Respondent

-vs-

1. Brig J.S.Dharmadeeran (Retd.,)
2. CfnM.Narasimhan (Retd.,)
3. Col S.P.Raman (Retd.,)
4. Col R.Ganesan (Retd.,)

... Respondents / Complainants

On Appeal against the order passed by the Tamil Nadu Real Estate Regulatory Authority in Complaint Nos. 29/2018, 33/2018, 34/2018 and 45/2018 dated 30.10.2018.

Between :-

Brig J.S.Dharmadeeran (Retd)
& 3 others : Complainants

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-Versus-

Army Welfare Housing Organisation : Respondent
New Delhi

This Appeal was taken on file on 25.01.2019 on the file of this Tribunal and this Appeal was coming up for admission on 06.03.2019 in the presence of Mr.R.Nanjundan, Advocate for appellant and upon perusing the records and documents and upon hearing the arguments of the appellant and having stood over for consideration till this day this Tribunal delivered the following:

ORDER

1. Facts of the complaint in brief

Respondent is the appellant. Originally the complainants have sought for a relief that the Raman Viharproject of Army Welfare Housing Organization (hereinafter called as AWHO), Chinnavedampatti, Coimbatore should be registered under the Real Estate Regulation and Development Act, 2016 for them to get the necessary relief under the Act. According to the complainant, as per the permission obtained in year 2011, they were supposed to construct 496 apartments out of which they have taken up construction only in 400 apartments to be allotted to the serving defence personnel as well as retired personnel. It is a self financed project and as per the original agreement, the completion date was 2014. It has not been completed even in the 400 apartments. As far as the balance 96 apartments, the work has not even commenced. As per the original approval plan, the common facilities like club-house,

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swimming pool and toilets have not completed. Even as per the admission by a letter dated 03.08.2017 by the Executive Officer, Marketing, on behalf of the Managing Director, Army Welfare Organization, New Delhi, the Respondent was requested to intimate the steps taken for registration of the Coimbatore project under RERA Act.

2. Counter of Respondent in brief:

According to the Respondent, the Respondent / Appellant herein originally applied for exemption under the Act as per Rule 2(h)(iii) even as early as on 07-07-2017 and application was submitted to the Local Planning Authority,Coimbatore having completed the project as per rule 2(h)(iii). Further they would contend that the project is being done on 'No Profit No Loss'basis especially for serving and retired army persons / widows. Though they had applied in accordance with the Act for exemption, no query was raised by the Local Planning Authority.Much later,the Local Planning Authority without any basis have rejected their application. The rejection is not correct and even according to them they have handed over 20 dwelling units out of the 400 dwelling units in the month of November 2018 and they have planned to give others subsequently. They have also mainly contended that one of complaint Brig J.S.Dharmadheeran has filed a complaint in C.C. No. 836 of 2017 before the National Consumer Disputes Redressal Commission, New Delhi on the very same allegations and the same is presently pending. Hence on this ground also

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the complaint is not maintainable. Further they would mainly contend that they have structurally completed the apartments by erecting beams, columns even at the time when RERA came into force. Therefore they would come under the rule 2(h)(iii) for exemption even though their application was rejected by the DTCP.

3. Finding of the RERA

Based on the complaint and objections filed by the Respondent, the Authority after giving opportunity for hearing for both the parties, has framed the following issues for consideration:

i. Is this a project of 496 dwelling units and hence incomplete as only 400 units have been taken up or are there two distinct phases of the project as envisaged in the Explanation under Section 3(2)?
ii. Have the necessary statutory requirements under Rule 2(h)(iii) been fulfilled in this case?
iii. Are there any acts or omission by LPA, Coimbatore as alleged by the Respondent and if so, can this Authority grant relief to the Respondent against the alleged acts or omission of the LPA, Coimbatore?

The authority taking into consideration that the Respondent/Appellant herein has not been granted exemption as per rule 2(h)(iii). Naturally he is bound to register their

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project. Further it is also taken into consideration even as per the admission letter dated 08.03.2017by the Executive Officer (Marketing), that the probable date of completion of project has been postponed to December 2017. Coupled with the fact that even as per the report of the Member Secretary, Local Planning Authority, dated 03.07.2018, it has been clearly stated that the filtration plant work has not been commenced as per the original plan approval. The club house, ground floor + first floor building is only in the completion stage and swimming pool and toilet blocks are under construction and therefore it can be only treated as an 'ongoing project' and even if there is a delay in the Local Planning Authority processing the exemption application, without challenging that order, the plea cannot be raised by the Respondent/Appellant. Hence the Authority has ordered for the registration of the project treating it as an 'Ongoing Project'. Aggrieved against the same, the present appeal has been filed.

4. Contention of the Appellant

The Appellant would mainly contend that they had applied for in time for exemption on 07-07-2017, the last date for filing, whereas the date seal was put as 10-07-2017. Probably, 7th July, being a Friday and many applications have been filed for exemption, they had put the date seal on Monday, the 10th and that should not be taken into account for the purpose of rejecting their application. Further they would also contend that as per rule 2(h)(iii), they have structurally completed, putting

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all the slabs, beams and columns and what was left over was only a club house and other small things. Therefore the rejection of exemption was illegal. But if the Appellate Tribunal takes into consideration the completion of the structures and beams, naturally they would be exempted. Further they would also contend that from the month of November 2018, they have started the handing over possession of completed flats. In fact 20 allottees have taken over possession during November 2018 and the Respondent is doing it in phased manner. They would also mainly contend that one of the complainant have preferred a complaint already, before the National Consumer Disputes Redressal Commission and hence the present complaint cannot be entertained at all. Since it is a non-profit organisation, by directing them to register, they will be burdened with huge costs of registration charges and they should not be held liable under Section 14 of the consequential liability for the next five years. Hence they have sought for admission in this case.

5. The point for consideration at the stage of admission of this Appeal

   Whether this Appeal is admissible?

6. Point

6.1 After hearing the Appellant's counsel Mr.Nanjundan, when a specific question was put in the presence of the army officer concerned, when the first flat was delivered, they categorically admitted that the delivery of the completed

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houses was done much later during November 2018. In fact when this Tribunal verified the documents filed by the Appellant, the RERA had issued a notice even as earlier as on 26.02.2018 to the Project Director as they would come under the purview of the Act, as it is not an exempted building, why they have not registered under Section 3 and that non-registration would amount to an offence. Therefore the RERA Authority directed the Appellant to register within 15 days from the date of notice, for which notice, the Appellant had sent a reply dated 10-03-2018 that they have specifically stated in their reply " accordingly only 400 apartments are under construction which are nearing completion and already been allocated to serving / retired armed forces employees and war widows. In case of additional 96 apartments which have to be constructed later, that is after 2018, based on demand, AWHO would apply separately for permission of the same". Therefore they have sought for exclusion from the RERA. Even in this letter dated 10-03-2018 which was an explanation given to RERA for registering, the Appellant themselves have categorically admitted that 400 apartments are only under construction and are nearing completion. It is not their case that the construction has been totally completed.

6.2 Further even as per their own admission, their application for exemption filed before the Authority as per Rule 2(h)(iii) has not been accepted. It has been rejected. It is also admitted case that till date they have not challenged the

order of rejection. So that only has become final. Without challenging that order of rejection, they cannot come now and challenge the consequential order which is as per Section 3 that they should register. In fact, only on this basis, the Authority has initiated action calling upon them to register vide their notice dated 26-02-2018. Further after their application for exemption, the Coimbatore Local Planning Authority had also inspected the project and given a report on 03-07-2018 clearly stating that as per the planning approval Type-E-1 block, Type D – 1 block, Type C – 1 block, Type B - 2 blocks, totaling 5 blocks and the filtration plant the constructions have not even started (ஆகிய கட்டிடங்களுக்கான கட்டிடப்பணிகள் துவக்கப்படாமல் இடம் காலியாகவுள்ளது.) Further the club-house ground + 1 roof has been completed but the work is going on and also the work for the swimming pool, toilet blocks construction is still going on. As per the plan approval, other portions are completed. Therefore it was very clear that even in the inspection report dated 03-07-2018, the buildings have not been completed as late as July 2018. When we also analyse the reply filed before us to the notice issued by RERA by the Appellant Advocate dated 12-03-2018, they have categorically stated that "the construction of apartments were fully completed and transparently registered to the registrants through the random computerized draw by an external board of officers on 17-01-2018". The vacant possession of apartments in fully habitable condition shall be delivered in phased manner to the

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allottees with effect from 01-04-2018". Though the Appellant would claim that their project is apparently a completed project which need not be registered, from their very own admission, it is very clear that their intention of delivery was only on and after 01-04-2018. Whereas they agreed and admitted before the court that the delivery took place only in November 2018. Therefore they could not have completed the project on the crucial date of 22-06-2017. Therefore their application for exemption even filed on 07-07-2017 cannot be correct and rightly rejected by the planning authority as it is not a completed project and treated as an ongoing project. Once their project has not been granted an exemption, they cannot now plead before the authority to seek an exemption under 2(h)(iii). This Tribunal, on earlier occasions, have categorically held that even when an exemption is granted under 2(h)(iii) by the authority concerned, if the buildings have not been completed or handed over as a habitable one as contemplated under the Act, such an exemption is not a bar for the Authority seeking to direct them to register. In this case, admittedly no such exemption itself was granted. Therefore the Order granting them to register is a valid one, especially when they have not completed the project even as per the inspection report of the Coimbatore Local Planning Authority on 03-07-2018.

6.3 Further more there is no provision contemplated under RERA Act to exempt the Appellant from registration

under RERA on the ground that the Appellant is the non-profit organization. In this view of the matter also, we are of the considered view that the Appellant has not made out any case for entertaining the present appeal. Further it is pertinent to point out here even Tamil Nadu Housing Board which constructs flats and sales is not exempted from the purview of the Act.

6.4 It is also pertinent to point out here even though there were 4 complaint numbers given in the Order of the Authority, he has filed only one appeal without filing four separate appeals for the other three complaint numbers. Filing one appeal is legally not correct. That would tantamount to not preferring appeal against the other three other complaints. Therefore that judgment would operate as a res judicata. Therefore also, the appeal is not maintainable.

6.5 The next important question raised is that one of the four petitioners, namely, Brig J. Dharmadheeran, has filed an application before the National Consumer Disputes Redressal Commission, New Delhi seeking for compensation and various other reliefs. That application is pending. In view of the fact that a similar application is pending before another forum, the present application is a bar. Therefore also the application ought not to have been entertained.

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6.6 When we carefully analyze the complaint before the Authority, it is very clear that the Petitioners/ Complainants only wanted a direction to register the project as treating it as an 'Ongoing Project'. When the project has not been completed in full shape as a usable flat, mere construction of the slabs, columns cannot be treated as a completed one and therefore they sought the relief of registration. At this juncture, it is pertinent to point out that the application for exemption filed by the appellant itself has been rejected. Further the RERA itself had issued a notice calling upon them to register. That being so, the complaint before this Authority for registration of the project only has nothing to do with the complaint which is pending before the National Consumer Disputes Redressal Commission for the refund of the amount and for compensation. Therefore the pendency of the application before the National Consumer Disputes Redressal Commission cannot be a bar for filing an application in so far as it regards to registration of the project under the Act. This is more so when that application before the consumer forum was filed long before the coming of the force of the Act when registration was not even thought of, how could the petitioner now say that could be a bar. Further the prayers in both the applications are totally different. If at all, if the Appellant wants a safeguard in the event the complainants wants to come before this forum again for compensation or any other relief under the Act after registration, that can be done only after a complaint before the National Consumer Disputes

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Redressal Commission is withdrawn. Therefore right now as the complaint is only for registration of the project, we do not find any reason to interfere with the reasoned order of the Authority. But we also make it very clear that the complainants cannot file an application for compensation or other any relief which they have asked for before the National Commission without withdrawal of the same with permission of the National Commission for withdrawing from that forum and only thereafter they could file before this Authority. Hence this Appeal is devoid of merits and not admissible.

6.7 In the result this Appeal is dismissed in the admission itself as not admissible.

The appeal is dismissed. No costs.

CHAIRPERSON

ADMN. MEMBER JUDL. MEMBER

Place : Chennai
Dated : 20-03-2019.

Orders Reserved on 06.03.2019
Delivered on 20.03.2019

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