BEFORE THE TAMILNADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamilnadu, Puduchery, Andaman & Nicobar Islands)
(Under the Real Estate Regulation and Development Act, 2016)

Dated the 25th day of April, 2019

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

APPEAL NOs. 3 & 4 of 2019

A.R.Ravisankar,
S/o. L. Ramanathan,
No.33, 1st Floor, Chatrapathi Sivaji 2nd Street,
Shanmuga Nagar,
Chitlapakkam,Chennai – 600064

...Appellant in Appeal No.3/19
... Complainant in CCP No.103/18

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

...Appellant in Appeal No.4/19
... Complainant in CCP No.104/18

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– Vs –

M/s. Marg Properties Ltd.,
Marg Axis,
4/318, Rajiv Gandhi Salai,
Kottivakkam, Chennai – 600 041.

... Respondent in Appeal 3/19
... (Respondent in Complaint CCP103/18)

The Managing Director,
M/s. Marg Properties Ltd.,
Marg Axis,
4/318, Rajiv Gandhi Salai,
Kottivakkam, Chennai – 600 041.

... Respondent in Appeal 4/19
... (Respondent in Complaint CCP 104/18)

M/s. Ralph V.Manohar & R.Ramana,
Advocates – for Appellant
Dr.S.Padma & G.Muniyandi,
Advocates – For Respondents

On appeal against the order passed by the adjudicating Officer dated 5.2.2019 in CCP Nos.103 & 104 of 2018

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As both the appeals have arisen out of a common order passed in CCP Nos.103 & 104 of 2018 on the file of the Adjudicating Officer, Tamil Nadu Real Estate Regulatory Authority by virtue of an order dated 5.2.2019. Both these appeals filed against the order are taken up together and a common order is passed in this appeal. Both the appellants in both appeals are represented by the Advocate Mr.Ralph V.Manohar and similarly the respondent for both the appeals are represented by the Advocate Mrs.Dr.S Padma.

COMMON ORDER

1. Both the appeals were taken up together. The appeal has been filed challenging the order passed by the Authority dated 31.1.2019. The main grievance of the petitioners are the Adjudicating Officer has dismissed their complaints mainly on the ground that there was a complaint pending before the Consumer Redressal Commission (State Consumer Redressal Commission) for an identical relief when the complaint is initiated before the RERA Authority. According to him, the dismissal by the Adjudicating officer is not in accordance with law because he had stated in the complaint, his willingness to

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withdraw the complaint pending before the Hon'ble State Consumer Redressal Commission even at the time of filing of the complaint itself before the Adjudicating Officer. Unfortunately even according to Appellant's Counsel, by mistake the application for withdrawing the complaint has been filed belatedly. Now that the complainant has also been permitted to withdraw by the consumer Court, he will be left with no other option for recovering the amount. Therefore his grievance is the appeal has to be allowed and matter has to be remitted to Authority to decide afresh giving him one more opportunity. Admittedly the two complaints namely CC No.253/15 and CC No.295/2017 were pending before the Consumer Dispute Redressal Commission filed by the Appellants. He would only contend that the delay in getting the application withdrawn should not be a bar for him to contest.

2. The counsel for the Respondent Dr.Padma mainly brought to our notice that the very application for withdrawal of the consumer court cases were filed only after the dismissal of the complaint by the Adjudicating Officer. The Adjudicating Officer passed an order in both the cases on 5.2.2019. Whereas the application for the memo for withdrawal was filed before the State Consumer

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Commission, as regards to CC 295/17 filed by A.R.Ravishankar on 9.2.2019 and in respect of CC No.253/2015 filed by Y.Ravishankar on 27.2.2019 respectively. The Counsel for Respondent mainly pointed out that the Adjudicating Officer has passed an order dismissing the complaint even as early as on 5.2.2019, whereas the memo filed before the Consumer Commission is on 9.2.19 and 27.2.19 respectively.

3. Therefore here is a case where a litigant is doing an act which is nothing but commission shopping. Furthermore, having lost in one Commission, he should not go to other Commission. Perusing the matter further, where as even on the date of filing of petitions before the Adjudicating Officer, he was very much aware of the pendency of the cases which he has informed in the court and having solemnly affirmed that he would withdraw he has done it only after the disposal of the cases. To add fuel to fire, the Respondent's Counsel further pointed out that the Order of Consumer Commission was passed in C.C. No. 295/2017 on 15-02-2019 and in the other case C.C. No. 253/2015 was passed on 05-03-2019. Even in that order, according to the Respondent, there was no mention about the permission to pursue the remedy under Real Estate Regulatory Authority Act. Therefore also

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under Section 71 of the Consumer Act, what was contemplated was not fulfilled by the Petitioners for entertainment of the appeal. Lastly the Counsel for Respondent also pointed out that as far as the appeal is concerned, both the appeals were filed before this Appellate Tribunal on 21.02.2017, whereas the memo was filed for withdrawal of the case in C.C. No. 253/2015, with regard to Appeal No. 4 / 2019, before the Consumer Commission itself was filed only on 27-02-2019, six days after filing of the appeal itself which he has wantonly and willfully filed such an application which is against law. Therefore when there is breach of law committed by the Appellants, the appeal has got to be dismissed with heavy costs.

4. Heard both sides. On perusal of the entire records, the Tribunal is very unhappy to note such things could happen. First of all, the complaint has been filed before the Adjudicating Officer in which it has been categorically stating that:

> "7. The Appellant further declares that the matter regarding which is complaint has been made is not pending before any court of law or any other Authority or any other Tribunals, except the Consumer Complaint in C.C. No. 295 of 2017 which is pending before the State Consumer Disputes Redressal Commission, Tamil Nadu, for the relief of refund of the sale consideration amount paid by the Appellant. In

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compliance with the proviso to Section 71(1) of the Act, the Appellant has filed an application seeking permission to withdraw the consumer complaint in C.C. No. 295 of 2015 before the State Consumer Commission and the consumer complaint will be withdrawn".

Identical statements are also made in Appeal No. 3 of 2019 in Column No.7

7. The Appellant further declares that the matter regarding which is complaint has been made is not pending before any court of law or any other Authority or any other Tribunals, except the Consumer Complaint in C.C. No. 253 of 2015 which is pending before the State Consumer Disputes Redressal Commission, Tamil Nadu, for the relief of refund of the sale consideration amount paid by the Appellant. In compliance with the proviso to Section 71(1) of the Act, the Appellant has filed an application seeking permission to withdraw the consumer complaint in C.C. No. 253 of 2015 before the State Consumer Commission and the consumer complaint will be withdrawn.

5. When the Petitioners have filed their complaint before the Authority, they were very well aware that the C.C. No. 253 of 2015 and C.C. No. 295 of 2017 were pending and they had clearly mentioned and as they were represented by Advocate, that under the Proviso to Section 71(1), he is liable to withdraw the complaint before the Consumer Commission and only thereafter he can proceed before the Authority. In fact when we read Column No. 7, the Petitioners have even stated that they have already filed an application seeking permission to withdraw the C.C. No. 253 of 2015 and C.C. No. 295 of

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2017 respectively. But what is the factual matter is that the main application was taken up for consideration before the Adjudicating Officer contested on the ground that an identical Petition is pending before the Consumer Commission. At the time of hearing of the appeal also the Learned Counsel has stated that he will be withdrawing the consumer complaints, but till date of final orders were passed on 05-02-2019, the above said CC No.253/15 and CC 295/17 were not withdrawn. Noting that the consumer case is not withdrawn even after the undertaking given in the petition and also even till the time of passing of order in complaints as dismissed. The relevant portion of the order passed by the Adjudicating Officer is as follows:

> "18. In view of the discussion and the circumstances of the case, it is held that it cannot be said that proviso of sub section of Section 71 of RERA Act provides any option to the Complainants to file complaints before this Authority without withdrawing the complaints before the Consumer Commission and the Complaints are not maintainable".

6. In this case it is pertinent that at the time of filing the complaint he had made a wrong submission before the Court namely that he has already filed an application seeking for withdrawal, whereas it is now clearly proved crystal clear that the very application for withdrawal itself was filed after the dismissal of the complaint by the

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adjudicating Officer in one case and in another case even after the filing of the appeal only. Further in the order of the adjudicating Officer he had also clearly pointed out that even during the course of the arguments before the Adjudicating Officer, the Advocate for complainant has submitted that he had filed the memo for withdrawal in the Commission that shows that he has again made a false statement at the time of argument in the month of January 2019. Therefore the Adjudicating Officer has clearly pointed out till the pronouncement of the case he has not produced any order to show that it has been withdrawn. Therefore rightly he has come to the conclusion that the pendency of the cases in both the commissions at the same time for the same relief is not legally sustainable which we also taking into consideration the factual aspect and the conduct of the parties in chasing the commission definitely is not provided in the Act.

7. Therefore the parties and Advocate was very well aware that the complaint before the Adjudicating Officer has already been dismissed as early as on 05-02-2019. Copy of the Order was delivered to them on 07-02-2019 where as the first memo for withdrawal before the

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Consumer Commission was filed in C.C. No. 295 of 2017 on 09-02-2019 and the second has been filed only on 27.02.2019. Now let us consider the memo filed on behalf of the complainant before the State Consumer Commission. Identical memo has been filed for both the cases.

8. From the cursory perusal of the memo, conveniently the Appellants' Counsel has only stated that when the complaint is pending before the Consumer Commission, the RERA Act was notified. He also states that thereafter the complaint was filed before the Authority. But he does not say that the complaint filed before the Authority has been dismissed as early as 05-02-2019. When the order copy itself was received by him on 07-02-2019, it is clearly suppression of facts. Time and again, Supreme Court and High Court have categorically stated that any suppression of the material facts is per se illegal.

9. Further if we analyze the memo, he does not state that he wants to file a case before the Authority or he wants to pursue the matter before the Authority as he is very much aware that the application has already been dismissed. Therefore conveniently he only says in the

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memo that he does not wish to proceed under the Consumer Protection Act and he simply wants to withdraw the complaint before the Consumer Commission. That is why when the Learned Counsel brought to us only the order copy of the Consumer Commission, this Appellate Tribunal specifically directed the advocate to produce the memo or affidavit filed by the Appellant before the Court for withdrawal to ascertain whether he has sought the permission of the Consumer Commission under Section 71(1) so as to continue his efforts before the RERA. Further even in the order of the consumer Commission, it only says that

> "Complainant present. Memo filed by the Counsel for complainant stating that he may be permitted to withdraw the complaint. Memo recorded."

As discussed earlier, memo is filed to that effect only. This clearly shows that the parties have been misled and they have been commission shopping especially after the dismissal of the cases before the Authority.

10. Further when we analyzed the records, the appeal is against the dismissal order of the Authority itself has been filed in the Appellate Commission as early as on 21-02-2019. Where as in the case bearing C.C.No. 295 of 2017

pertaining to Appeal No. 3 of 2019, the very memo for withdrawal itself was filed before the Consumer Commission only on 27-02-2019 i.e., six days after filing of the appeal. Even at that time, when he has approached this Court on the Appellate side, what is the necessity for him to file a memo for withdrawing the case. This is a serious lapse on the side of the parties which this Appellate Tribunal cannot accept. When we take Section 71(1) proviso,

> "71. 'Power to Adjudicate' – (1) for the purpose of adjudging compensation under Sections 12, 14, 18 & Section 19, the Authority shall appoint in consultation with the appropriate government, one or more Judicial Officer as deemed necessary, who is or has been a District Judge to be an Adjudicating Officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.
>
> Provided that any person whose complaint in respect of matters covered under Section 12, 14, 18 & Section 19 is pending before the Consumer Disputes Redressal Commission or Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of the Act, he may, with the permission of such Commission or Commission, as the case may be, withdraw the complaint pending before it and file an application before the Adjudicating Officer under this Act."

11. Mere reading of the proviso categorically states that when a consumer court case is pending on or before commencement of this Act, he may, with the permission

of such commission or commission, as the case may be, withdraw the complaint pending before it and file an application before the Adjudicating Officer under this Act which means he should withdraw first and then proceed with the case after filing an application before the Authority. He must first withdraw and subsequently with the permission from the Consumer commission and proceed before the Real Estate Regulatory Authority which he has not done. He has allowed the order to be passed and thereafter filed an application for withdrawal. Hence the modus operandi by the appellant is in violation of proviso to sec.71 (1) of the RERA Act 2016.

12. Therefore the appeals have got to be dismissed and we confirm the Order of the Adjudicating Officer. As already pointed out as the matter is dismissed on the maintainability question by the Adjudicating Officer, have not gone on the merits of the other point.

13. In the result, both the appeals are dismissed. No costs. The common order of the Learned Adjudicating Officer in CC No.253/15 and 295/2017 dated 5.2.2019 is confirmed.

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This order dictated to stenographer and pronounced in open Court transcribed and computer typed by her on 25th day of April 2019.

Dated at Chennai on this the 25th day of April 2019.

CHAIRPERSON

ADMN. MEMBER JUDL. MEMBER

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