BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamilnadu, Puduchery, Andaman & Nicober Islands)

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

Dated the 4th day of July, 2019

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

APPEAL SR. No. 310 of 2019

M/s. Asvini Foundations,
Represented by its Partner Aarti Razee,
Having Site Office at No.14,
Velachery-Medavakkam Main Road,
Sembakkam,
Opp. to Alpha Matriculation School,
& Residing at
144, Ruby Block, Tiara,
Flat No.D3 & D4, Corporation Road,
Perungudi, Chennai-600096. ...Appellant

- Vs-

1. M.Ravi,
S/o S.Mahadevan,
1A, Ramaniyam Aarudra,
Habibullah Road,
T.Nagar, Chennai-600017.

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2. M.Kannan,
S/o S.Mahadevan,
10/7, Lalitha Manor, Second Floor,
Kasthuri Estate, 2nd Street,
Poes Garden,
Chennai-600086.

3. M/s. ICMC Corporation Limited,
No.36, Industrial Estate,
Ambattur,
Chennai – 600058,
Rep. by its Director M.Ravi, S/o S.Mahadevan.

4. M.Michaelsamy,
S/o Madalamuthu,
2C/N A, Annai Nagar 1st Street,
Tiruchirapalli-1.

5. K.G.Ramasamy,
S/o D.Govinda Udayar,
23, Amman Nagar,
Tiruchirapalli-21.

6. Kalyani Rani,
W/o M.Ravi,
1A, Ramaniyam Aarudra,
No.15, Habibullah Road,
T.Nagar, Chennai-600017.

7. R.P.Shanmugam,
S/o Singara Thevar,
1A, Ramaniyam Aarudra,
No.15, Habibullah Road,
T.Nagar, Chennai-600017.

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8. G.Antonysamy,
S/o A.Gnanaprakasam,
Door No.21, Malligaipuram Thottam,
Tiruchirapalli-1.

9. A.Gopal,
S/o Apavoo Pillai,
Door No.7/2/23B,
Netaji Street, Ariyamangalam,
Tiruchirapalli-10.

10. R.Raju,
S/o G.Rathinam,
No.2, Indira Nagar,
Near Collectorate, Thaadi Combu Road,
Dindigul – 624004.

11. M.Veerakumar,
S/o Matchi Naidu,
No.145/Na, Ward No.30,
Thirumalai Samy Puram,
1st Street, Dindigul – 624003.

12. K.Raman,
S/o Kaaliannan,
No.12, Selva Nagar, Tiruchirapalli-1.

13. S.Shobana Devi,
W/o R.Sathyamurthy,
No.19, Lotus Lake View Apartments,
Flat No. 3F2, 3rd Floor,
AECS Layout Brooke Field,
Bangalore-37.

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14. M.Ramani,
S/o S.Mahadevan,
No.1, Eight Street,
Shanthi Nagar, Adambakkam,
Chennai-600088.

15. G.Murugesan,
S/o D.Govinda Udayar,
29/1, Amman Street,
Amman Nagar, Tiruchirapalli-21.

16. Dr.S.Sridevi,
W/o M.Ramani,
No.7, Shanthi Nagar 8th Street,
Adambakkam, Chennai-600088.

17. The Akila Heights Owners Association,
S1, Star Homes Apartments,
Erikkarai Street,
Sembakkam, Chennai-600073.
Represented by its President.

...Respondents

Heard on 19-06-2019
Delivered on 04-07-2019

M/s. T.M.Naidu & Co., Advocates - for Appellant

ORDER

1. The Appeal was posted for maintainability on the ground that the Appellant being one of the partners in the promoter firm,

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the order of the authority is binding on the firm and accordingly it would be binding on the Appellant also. Next important point raised in the return was that the Appellant has stated in the grounds that there are some litigation pending in the courts regarding revenue sharing and partnership dispute. In that view of the matter, how the appeal is maintainable.

2. The Appellant was represented by its Learned Counsel. At the hearing on 19-06-2019, the Appellant's counsel mainly submitted that there was a mistake in filing the appeal not on the original order dated 31-01-2019 but on the consequential order dated 13-02-2019. According to him, in the consequential order the original order is also referred. In that view of the matter, the appeal is correct. Secondly he would also state that the court can modify, alter or amend even the prayer. Therefore this technical defect, if any, may be eschewed.

3. He would mainly contend that there is a dispute in between the partners and the alleged sharing ratio in the partnership has been done behind their back. They are disputing the change in the partnership and profit sharing ratio which is the subject matter in a civil suit which is pending. In that view of the matter, the partnership firm cannot be directed to comply with any order or directions of this tribunal. He would also further contend that the Authority below has directed the owner of the property to register the project which will go against their individual rights.

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In that view of the matter, as an affected person, the Appellant has got every right to file this appeal.

4. He would further contend that the pendency of the civil suit should be taken into consideration by the Authority as the very profit sharing ratio between the parties are in dispute. In that view of the matter, when the matter is pending in the civil suit, this Authority has no jurisdiction to pass such an order especially ordering for registration of the project. By directing one of the parties to register, definitely the Appellant's rights are affected. In that view of the matter, he has a right to prefer this appeal.

5. Heard the Learned Advocate for the Appellant.

6. The facts are very simple. The project needs to be registered as it is an 'Ongoing Project' which is an admitted fact and it has not been registered till the filing of the case. The profit sharing ratio as per the original partnership has also been agreed and accepted even by the Appellant as per the facts stated in paragraph 5(b) of Memorandum of Appeal. According to that, the Appellant Aarti Razee is entitled to 10% of the profit. During the pendency of this project, differences arose between the partners. The Appellant now alleged that in view of an alleged subsequent Supplemental Agreement dated 05-05-2017, which she did not accept, has caused all these problems. Therefore she has already gone to the civil forum. At the outset, this Tribunal

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feels that going to civil court has nothing to do with the registration of the project done under the Act. That is purely an internal dispute between the parties. Whereas registration is a mandatory requirement under the Act in respect of a project which is admittedly an 'Ongoing Project'. Apart from this, the Appellant clearly admitted that 90% of the stakeholders have categorically stated before the Authority that they have no objection for the project being registered by the owners of the flat. On that view of the matter, it is rightly pointed out by the office that how can a partner, who has got only 10% share, can go against the wishes of the other partners, when admittedly in this particular case, the project is already registered with the Authority. The order has already been complied with. This coupled with the fact that the Appellant has not chosen to actually challenge the impugned order dated 31-01-2019 where as she has only challenged the consequential order dated 13-02-2019. Therefore also, the appeal cannot be entertained as rightly pointed out by office. Above all these things, the Appellant cannot have any grievance and she is not in any way aggrieved by the registration of the project as the Act contemplates to safeguard the interests of both the promoters as well as the buyers. In that view of the matter also, the Appellant would be in a better position only if it registered. And in this case, as the registration is already over, there is nothing more to defend by the Appellant at this stage.

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The Legislature intended to enact the Real Estate (Regulation and Development) Act 2016 to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building as the case may be or sale of real estate project in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. The Appellant claim no way communicated with the purpose for which the Act was enacted. Further the Real Estate Act dealt with the welfare of the promoter and purchasers and does not dealt with internal profit sharing dispute between the partners.

7. In this connection, it has to be mainly pointed out that the dispute between the partners should only be decided in accordance with the Partnership Act. It is admitted by the Advocate that they have not filed any suit for dissolution of partnership nor they have issued any notice for dissolution of partnership. It is also admitted by the Appellant that she has already taken steps for appointment of Arbitrator by filing an application under Section 9 of the Arbitration Act in O.P. No. 1162 of 2018 and in the meanwhile the landowners who have the planning permission in their name wanted the registration to be done and they have given a complaint before RERA bearing Complaint No. 162 of 2018. Subsequently the Appellant herein had filed a suit bearing O.S. No. 32 of 2019 before Sub-Court,

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Tambaram seeking for declaration of the unregistered Development Agreement dated 31-05-2010 and another declaration to cancel the Power of Attorney in favour of the 3rd Defendant dated 16-06-2017 and also declare the cancellation of Power of Attorney executed by the Plaintiff in favour of the 4th Defendant dated 16-02-2017 and to declare that Plaintiff is liable to be compensated a sum of Rs.3500/- per day for the alleged loss of business. When admittedly there are civil suits as well as Arbitration petition is pending, those disputes cannot be brought into the purview of the Real Estate Regulatory Authority. The question which is concerned with the Authority is only in respect of registration of the project which has already been done. In view of those civil matters, rightly the Authority has come to a conclusion that the project needs to be registered for safeguard of the purchasers as well as the promoters. Furthermore, the Appellant cannot be treated as an aggrieved person as her rights are not affected merely because the project is registered under the Act. Therefore we do not find any reason to interfere in the objections made by the office.

8. Hence the office objections are upheld. The appeal is rejected at the maintainability stage.

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This order is dictated to Typist and computer typed directly and pronounced in open court on 04th day of July 2019.

sd/- Mr.Justice B.Rajendran
CHAIRPERSON

sd/- Ms.Leena Nair
ADMN. MEMBER

sd/- Mr.N.Balasubramanian
JUDL. MEMBER

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