BEFORE THE TAMIL NADU REAL ESTATE APPELATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Island)

(Under the Real Estate Regulation and Development Act 2016)

Dated : 31.10.2019

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

Appeal Nos. 53,54 and 56 of 2019

1. Colonel. C.M.Unnithan ... (A.No.53/2019)
2. Capt. Nagarajan Vasudeva Rao ... (A.No.54/2019)
3. Commander.N.Koteeswar ... (A.No.56/2019)

... Appellants / Complainants

Vs

Army Welfare Housing
Organization (AWHO)
Rep. by its Managing Director
South Hutments, Kashmir House,
Rajaji Marg,
New Delhi – 110 011. ... Respondent / Respondent

These appeals were preferred by the appellants under Sec.44 of the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 against the order of the Regulatory Authority dated 21.05.2019 for the relief of setting aside the orders of the Regulatory Authority in CCP No. 291,294, 293 of 2019 respectively and direct the respondents to register the project with RERA.

2. These appeals were presented on 9.7.2019 and came up for final hearing on 14.10.2019. For the appellant in Appeal No.53 of 2019, appeared as party in person and the appellants in Appeal No.54 and 56 of 2019 respectively, the appellant in 53 of 2019 as Power of Attorney appeared and the respondents appeared through their

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Counsel G.A.Baskara Rajan and G.Panneer Selvam. Having heard the arguments of both appellants and respondent's Advocate and they have stood over for consideration of this Tribunal till this day and this Tribunal delivered the following:

COMMON ORDER

Facts of the case in brief:

3. The appellants in all the three appeals are the complainants in the three cases before the Regulatory Authority. In all the above three cases the respondents are one and the same. The respondent is the promoter and builder which is an Army Welfare Housing Organization (AWHO) is a registered society and claimed to be a 'no profit no loss organization'. The above said society has purchased wet land and started constructing 852 Dwelling Units in 6 towers, each tower having 31 floors above ground level. The related amenities fully self financed and were paid in advance by the serving soldiers and retired persons of Army, Navy and Air Force. The proposed site is situated at Thazambur-DLF Link Road, Thazambur Village, Chengalpattu Taluk, Kancheepuram District. The project commenced construction on 26th May 2012. The probable completion date was December 2015.

4. The appellant Unnithan in Appeal No.53 of 2019 registered for two bed room apartment on 19.11.2012. Out of total cost of Rs.51,38,465/- so far he paid Rs.49,13,500/- which amounts to 95.6% of the total cost. Subsequently on 12.09.2018 the appellant was asked to pay another 3% of the balance 5% + Rs.2,20,000/- as advance for car park and the same was also paid on 18.10.2018.

5. The appellant Nagarajan Vasudeva Rao_in Appeal No.54 of 2019 registered for two bed room apartment on 19.11.2012. Out of total cost of Rs.34,78,731/- so far he paid Rs.33,16,000/- which amounts to 95% of the total cost. Further on 10.09.2018, he was asked to pay another 3% of the balance 5% + Rs.2,20,000/- as advance for car park and the same was also paid on 24.10.2018.

6. The appellant Koteeswar in Appeal No.56 of 2019 booked a four bedroom apartment on 20.11.2012 and out of total cost of Rs.60,25,117/- so far he paid Rs.57,49,100/- which amounts to 95% of the total cost. Further on 10.09.2018 he was asked to pay another 3% of the balance 5% + Rs.2,20,000/- as advance for car park and the appellant has paid Rs.1,80,754/- along with Rs.2,20,000/- on 21.10.2018.

7. According to the appellants, common facilities like Swimming Pool, Club House, Sewage Treatment Plants, Gymnasium are all still incomplete. Podium was not made. The respondent's project Dinesh Vihar project is also not mentioned in the exemption list on the TNRERA website. The respondent did not get the inspection done by the local body within the stipulated time for exemption and the same was not addressed to CTCP along with a copy of the inspection report. Further the respondent has also sought exemption from registration under RERA. For which the Principal Secretary to Government of Tamil Nadu, Housing and Urban Development & Chairman, TNRERA, in his letter dated 13.11.2017 found that the respondent's project is an ongoing project and directed to register under RERA within 15 days from the date of this letter but the respondent has not complied with. Hence the appellants came forward with complaints in Form 'M' before the Regulatory Authority. The TNRERA did not even grant an opportunity to present the case along with all relevant supporting documents before passing the order. The Authority has passed an order dated 21.05.2019 and found that the project has been structurally completed under Rule 2 (h)(iii) of TNRERA and hence exempted from registration with TNRERA. Hence the complaint is closed. Aggrieved upon that the appellants came forward with these appeals.

The respondent's case in brief:

8. The Army Welfare Housing Organisation is working and developing various housing projects throughout India on no profit and no loss basis. It is mainly for the welfare of the Army Personnel. As per the rules, whenever there is a dispute between the organization and the allottee, it should be referred to the Chairman of the AWHO, who in turn will appoint a Sole Arbitrator under the provisions of Arbitration and

Conciliation Act and whose award shall be final and binding on both the parties. The Arbitration proceedings shall be held in Delhi only regardless of where the property under dispute is. Without exhausting the remedy by complaining his issues to the Chairman of the organization the allottee has come before Real Estate Regulatory Authority and Tribunal.

9. The disputed project approval was obtained on 10.05.2013 and Panchayat approval has been obtained and it is further extended till 26.04.2018 for construction of 6 blocks of residential buildings consisting of two stilts and 29 floors each, totally 850 dwelling units. During March 2017, the respondent have completed all the towers roof slab work and majority of finishing work such as main door fixing, tiles, granites has been completed except some ancillary work such as swimming pool, podium etc which are only amenities to the project

10. The respondent have applied for inspection of the project by Block Development Office on 18.05.2017 and for issue of property assessment. As per RERA notification the respondent has to submit the proof for completion of project within 15 days. Since the project is developed by the respondent, all the correspondence submitted to any competent authority has to be vetted by the respondent from New Delhi Head Quarters. For vetting and submitting the same, the respondent Chennai site office was not able to complete the process within 15 days. So, the respondent has submitted the reply on 10.08.2017. Moreover the respondent project has been designed as shear wall concept, where all the walls and roof slab will be casted monolithically, so when last slab was casted the building will be enclosed fully. Accordingly the signed document from Architect and Structural Consultant has been received on 14.03.2017 and 24.04. 2017. Initially, the file was not accepted by RERA Authority for exemption. However, the respondent again took up case with Government stating that all six residential towers and club houses have been completed as per the drawings before April 2017 and requested for condoning the delay in submission of documents and straight away approached RERA. Accordingly TNRERA vide their letter dated 28.08.2018 considered their request for condoning delay. The appellant filed a complaint with TNRERA in April 2019 and the RERA passed final order on 21.05.2019

by stating that the project has been structurally completed under Rule 2(h)(iii) of TNRERA rules and hence exempted from registration with TNRERA.

11. The respondent further submitted that the respondent completed structural related work well before RERA notification and informed the BDO office for issue of property assessment, the same has been inspected by the concerned authority and assessment order has been issued on 11.10.2017 itself for payment of property tax. The project has got delayed due to various reasons like Chennai floods of 2015, Cyclone Vardha in 2016, shortage of sand, transporters strike, shortage of labour etc which are beyond the control of the respondents and the same have been intimated to allottees from time to time through website and emails. Hence respondent sought for dismissal of the appeals.

The contention of the appellant side :

12. The appellant in A.No.53 / 2019 put forth his arguments for himself and on behalf of other two appellants in Appeal Nos. 54 and 56 of 2019 as their Power of Attorney. The appellants would submit that they came forward with the complaint for registration of the respondent's project. Without giving an opportunity to put forth their case the RERA authority simply closed the complaint. It is against natural justice. Further would contend that the respondent failed to complete the project on or before 22.06.2017. Hence it is an ongoing project. The non completion of project is also admitted by the respondent. In such circumstances the findings of the RERA is not according to law. Further would contend that the exemption already claimed by the respondent was denied by the RERA in its order dated 13.11.2017. RERA has also directed the respondent to register the project. Against that order no appeal has been preferred. Since the respondent failed to register the project and the regulatory authority also not taken any steps, the appellants are constrained to file the complaint before RERA. Even though the appellants disclosed about the previous order of the Principal Secretary dated 13.11.2017 the RERA has failed to consider the same and exempted the respondent from registration under RERA. It is not according to law. Hence the appeals have to be allowed.

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The contention of the respondent side :-

13. The Learned counsel for the respondent would submit that the respondent's project is no profit no loss organization and its project was commenced for the welfare of the army people. The respondent has not invested anything for the purchase of land, etc. The allottees depositing the amount in piecemeal towards that project and the respondent started the construction. Due to natural calamities and situation beyond the control of the respondent, delay caused in completing the project. The above said facts were brought to the knowledge of the Government and it was also brought to the knowledge of the appellants then and there after convincing, it has exempted the respondent from registration under RERA. Further would contend that the Head Quarters of the respondent is situated at Delhi. Each and every activities of the respondent's project have to get sanction from the Delhi Head Quarters. Due to administrative delay caused, the delayed completion of project. There is no motive on the part of the respondent in completing the project. Now the project has been completed and possession of the apartments also handed over to the allottees. Further more there is a conciliation provision in the allotment letter itself to redress the grievances between the allottees and the respondent but the appellant without invoking the arbitration proceedings straight away he invoked the provision under RERA. It is against the mutual understanding between the appellant and the respondent. Considering the facts and the real situation, the RERA has come to a correct conclusion and there is no infirmity. Hence the appeal has to be dismissed.

14. Points for consideration:

1) Whether the opportunity denied for the appellants before the RERA to present their case is true?
2) Whether exemption granted to the respondent by condoning the delay is tenable?
3) Whether the appeal deserves to be allowed?

Point No.i :

15. According to the appellant the respondent commenced the project for providing shelter to the Defence people on payment of cost by the allottees. As such the allottees paid to the tune of 98% out of the total cost. Even then the flats have not been delivered to the allottees. The RERA came into force on 22.6.2017. During that period, the respondent have not completed the project. The respondent have also applied for exemption from the RERA Act. But, the Principal Secretary and Chairman of RERA found that the respondent's project is an ongoing project and it is not exempted from registration. The above said order is dated 13.11.2017. After that considering their request for condoning the delay in furnishing the certificate from the Architect/Engineer accepted the project is structurally completed project as per the letter of TNRERA dated 28.8.2018. Even after that, the respondent failed to deliver the apartments to the allottees. Hence the allottees approached the RERA to seek for registration of the respondent's project by way of form-M on 1.4.2019. The final order was passed on 21.5.2019. In between that period i.e. from 1.4.2019 to 21.5.2019 no notice was served to the appellants regarding personal hearing. In the above said order it has been specifically stated that the respondent's project has been structurally completed under 2(h)(iii) of the RERA Rule 2017 and hence exempted from registration with RERA. Accordingly the complaint is closed. The appellant has produced copy of the letter TNRERA/369/2017-150 dated 13.11.2017 which is sl.no.'f' in the list of enclosure in form-M of the appellant. Without considering the above said letter and without assigning any reason for the finding as exempted from RERA registration, the Authority has passed order on 21.5.2019. If opportunity had been given to the appellant to put forth their case certainly there is a chance for the appellants to bring the previous order of the RERA Authority dated 13.11.2017 to the notice of the RERA. Even if they come to a conclusion that already the respondent's project was exempted and the RERA can hear the appellants by way of admissibility of the complaint, but without hearing the appellants before the RERA the opportunity denied to the appellants is certainly against the principles of natural justice. Point No.i is answered accordingly.

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Point No.ii :

16. According to the respondent their project has been designed as shear wall concept, where all the walls and roof slab will be casted monolithically so when last slab was cased, the building will be enclosed completely. Accordingly the signed documents from Architect and Structural consultant have been received on 4.3.2017 and 24.4.2017 respectively and initially the file was not accepted by RERA Authority for exemption. When the respondent again took up the case with Government stating that all the six respondent's towers, club house have been completed as per drawings before April 2017 and requesting for condoning the delay in submission and consider the project for exemption from RERA registration. Accordingly delay was considered and condoned and accepted the project as structurally completed project. The above said facts were narrated by the respondent, in their counter, but no proof was filed to substantiate their claim. The RERA Rules contemplated under Rule 2(h)(iii) runs as follows:

> ***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".***

17. The RERA Rules 2017 notified and came into force on the 22nd June 2017. From 22.6.2917 within 15 days they have to intimate to the local Planning Authority and the Director of Town and Country Planning Authority. In turn the DTCP will make public the list of such projects in their official website. Admittedly there is no such intimation as stated supra. The respondent clearly and categorily admitted that they have submitted the reply on 10.8.2017. That is after 15 days. In Rule 2(h) there is no provision for any

exemption. In this aspect this Tribunal already decided in Appeal No.1 of 2019 with regard to exemption. The relevant portion in the above said judgment in respect of the very same respondent is as follows:

> ***Army Welfare Housing Association vs Brig. T.S.Dharmadeeran and others***
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> ***"Once their project has not been granted an exemption they cannot now plead before the Authority to seek an exemption under Rule 2(h)(iii), this Tribunal, on earlier occasions, have categorily held that even when an exemption is granted under 2 (h)(iii) if the building 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 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 3.7.2018. Furthermore there is no provision contemplated under RERA Act to exempt the appellant from registration under the RERA on the ground that the appellant is the non profitable 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 appeal. Further it is pertinent to point out here TNHB who construct flats are not exempted from the purview of the Act".***

18. Regarding exemption the respondent alone has stated in its counter, but in the final order the Regulatory Authority has not assigned any reason for the grant of exemption. The Regulatory Authority also has not stated under which provision exemption was granted to the respondent's project is also not found place in the impugned order. In such circumstance as per the earlier order passed by this tribunal in Appeal No.1 of 2019, the order of the Regulatory Authority is not according to law and it is not legally correct. The point is answered accordingly.

Point No.iii :

19. According to the appellants, the RERA did not even grant an opportunity to present their case along with all relevant supporting documents before the final order was passed. In point No.i, it was decided that petitioner was not heard. The objects and reasons for the enactment of this Real Estate Act 2016 is to ensure the sale of plot, apartment of building, or as the case may be, or sale of real estate project, in an

efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal.... etc.

20. In the preamble of the Act the specific words transparent, speedy are employed for the purpose of efficient implementation of the act. In this case the respondent itself applied for the exemption. The RERA Authority denied the request of the respondent and directed the respondent to register the project within 15 days from the date of receipt of that letter which is dated 13.11.2017. After that the respondent has not taken any steps for registration of the project. The respondent also has not handed over the flats to the appellants. Hence the appellants was constrained to file a complaint before the RERA for registration of project by the respondent. The above, complaint was preferred on 01.04.2019 without hearing the complainant, order was passed by the authority on 21.05.2019 by stating that the respondent project has been structurally completed. Hence exempted from registration with TNRERA. As per the letter of the RERA dated 13.11.2017, it was found that on inspection report of the DTCP that the building is partly completed/not yet started. Accordingly, the respondent project falls under the definition of 'On going project'. The RERA rules came into force on 22.06.2017. The letter of the then Chairman TNRERA dated 13.11.2017 from the date of notification within 15 days the respondent has not applied for exemption. In the official website also the respondent's project does not find place. In such circumstances how the respondent project was exempted from registration and when it was completed for which there is no explanation or reasoning was adduced by the authority. The order of the regulatory authority is a one line order and more over it is not a speaking order.

21. In the appeal in common counter filed by the respondent in which in para no.5 he has stated about the exemption by condoning the delay in furnishing the certificate from the architect and engineer and accepted the project as structurally completed. As per the letter of the RERA dated 13.11.2017 and the letter of the CTCP the building is partly completed on the date of the letter i.e. 13.11.2017 the building is not completed. In such a situation, how it is possible to complete the building. There is no answer in the order of the RERA. The order of the RERA dated 13.11.2017 and

21.05.2019 are self contradictory. In such a situation the RERA is ought to have given an opportunity to the appellant to put forth his defense. If opportunity had been given certainly the appellant would have brought about the letter dated 13.11.2017 to the knowledge of the present RERA. In such situation the ground put forth by the appellant cannot be brushed aside. There is no specific power to condone the delay in submitting the report beyond the 15 days as contemplated in the RERA rules Rule 2 (h)(iii). So, this tribunal comes to a conclusion that there is a force in the argument of the appellant's side and there is a merit in the case of the appellants to interfere with the findings of the RERA. Hence this tribunal comes to a conclusion that the appeal deserves to be allowed.

22. In the result, this appeal is allowed and the order of the TNRERA is set aside and the respondent is directed to register the project within 15 days from the date of receipt of this order. No costs.

This order was dictated to the Stenographer, transcribed and computer typed by the Stenographer and corrected and pronounced by us in the open court on the 31st day of October 2019.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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