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 : 06.11.2019

Coram : Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal Nos. 6,8, 9 to 12 of 2019

Pacifica (Chennai Project) Infrastructure Pvt.Ltd. ... Appellant in A No.6,8,9 to 12

Vs

1. Tmt.Shanthi Ramachandran ... (A.No.6/2019)
2. Thiru M.P.Murugaiah ... (A.No.8/2019)
3. Tmt.Mary Stella ... (A.No.9/2019)
4. Thiru S.Nagalingam ... (A.No.10/2019)
5. Thiru Ananda Narayana ... (A.No.11/2019)
6. Thiru A.Jayakumar ... (A.No.12/2019)

... Respondents

The appellant of the above appeals have preferred these appeals against the respondents under Sec.44 of the Tamil Nadu Real Estate Regulatory Authority Act.

Facts of the case in brief:

2. The promoter is the appellant in all the above appeals. The allotees in all the appeals are respondents. The allottees preferred complaint before the Regulatory Authority in Form-M. In the above complaints the allottees have stated that out of total cost, 80% of the same has been remitted to the promoter and the promoter had assured to handover the flats by June 2015 with a grace period of 6 months i.e. December 2015. But the construction has not been completed and the flats are not fit for habitation.

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Hence the complainant came forward with these complaints directing the promoter to register the project under TNRERA and also for the direction of handing over of flats.

3. The appellant objected the complaints on the ground that the projects were completed structurally on or before implementation of TNRERA. Hence it is exempted from registration. The said exemption from RERA registration was also notified under TNRERA official website. After contest, the Regulatory Authority found that the appellants' project is an ongoing project and directed the appellant to register the project under RERA. Aggrieved upon that, the appellant preferred these appeals on 11.4.2019 . In all the appeals the appellant appeared through their counsel Mr.Stephen C Kumar and Mr.K.S.Srinivas. The respondents in Appeal Nos.6,8,9,10 & 12 appeared through their counsel Tmt.Sudha Ramalingam on 22.7.2019. The respondent in Appeal No.11 even though received the notice from this Tribunal failed to appear and called absent on 21.8.2019. The respondent in Appeal No.10 appeared through their counsel Mr.R.Damodharan. On 13.9.2019 the counsel for the appellant in all the cases filed memo for withdrawal of appeals. The respondents, those who have appeared through their counsels were objected for the same and they have filed a common counter. Having heard the arguments of both sides and objections raised by the respondents with regard to withdrawal memo and having stood over for consideration till this day, this Tribunal delivered the following:

COMMON ORDER

Contention of the appellant :

4. According to the appellant they have stated that they have submitted application before the Regulatory Authority, Chennai to register the Project Auram Villa Pride Tower, Block A1 and Block B1, Pudupakkam. The matter is pending disposal. Hence the appellant is not willing to prosecute the above appeals. Therefore the appellant sought for dismissal of the appeals as not pressed.

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Contention of the respondent:

5. According to the respondents they have stated that the appellant have attempted to gloss over and conceal the facts that they have not applied to register Block-D though they have sold flats in Block-D to several homebuyers including one of the respondents herein. The appellant deliberately omitted and failed to mention that they did not intend to register Block-D in the earlier hearings whilst undertaking to comply with the order of the RERA to register the project. The appellant failed to comply the order of the RERA dated 8.2.2019. Now the appellant has tried to unilaterally change the scope of the project and selectively apply for registration of only Blocks –A1 and B1 all the while representing before this Tribunal that they had complied with the order of RERA, applied for registration and that their application for registration was under process. The respondents further stated that this memo for withdrawal of the appeals only in order to evade accountability and monitoring undertaken by the Hon'ble Tribunal regarding the status of the registration and their failure to apply for registration of the 'D' Block. Further it is stated that the appellant has wasted valuable judicial time by filing these appeals and withdrawing the same in order to avoid accountability. Moreover the appellant by filing these malafied appeals has wasted the time of the respondents as well as caused them significant monetary losses including legal costs. The respondents have further had to expend significant amounts of time and efforts for the past 4 months in dealing with the appeals. The appellant cannot be allowed to withdraw the appeals without any consequences. Further the respondents prayed this Tribunal to monitor the case and ensure that the appellant registers the entire project and also sought for direction to pay exemplary costs to the respondents for the losses and expenses incurred by them in the light of these appeals.

Point for consideration:

6. Whether the objections raised by the respondents for withdrawal of the appeal is tenable?

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Point :

7. According to the appellant in all the cases since the appellant in the above matter has submitted application before the TNRERA, Chennai to register the project AURAM Villa Pride Tower Block A1, Block B1, Pudupakkam. The matter is pending disposal. Hence the appellant is not willing to prosecute the above appeals and for dismiss the above appeals as not pressed.

8. The respondents objected these appeals on the ground that the appellant have attempted to gloss over and conceal the fact that they have not applied to register Block-D. Further, the RERA Authority has directed the appellant on 08.02.2019 to register the entire Phase-1 and Phase-II of the Pride Tower Project. Now the appellant unilaterally changed the scope of the project and selectively apply for registration of Blocks A1 and B1. It is against the order of the RERA. Due to the filing of the appeals the appellant not only wasted the time of the respondent but also the valuable judicial time. The appellant cannot be allowed to withdraw the appeals without any consequences and also sought for exemplary costs. These are the objections raised by the learned counsel for the respondents vehemently.

9. The complainant/allottees preferred complaint in Form 'M' before the RERA for registration of project. The appellant took a plea that already project has been completed and exempted from registration. It was also mentioned in the website of the RERA. Again on perusal and legal inspection, it was found that the project was not completed. Hence the RERA ordered the registration of the project. Aggrieved upon that, the respondents preferred these appeals in April 2019. On 13.09.2019, the appellant came forward with these memo for withdrawals. In the memo itself, the appellant has stated that he sought for registration of Block A1 and Block B1. The respondents objected that entire project was ordered to be registered. Hence partial registration is not permissible. Hence withdrawal of appeals cannot be permitted. This is a specific contention on the side of the respondents.

10. The aggrieved person namely, the appellant preferred these appeals according to the Section 44 of the RERA. These appeals were preferred as an aggrieved person. Now the appellant himself wanted to comply the order of the RERA. So he wants to withdraw the appeals himself. The Tribunal cannot compel the appellant to proceed. If the appellant without filing the memo for withdrawal he simply failed to proceed with the appeal and failed to appear for the hearing, the consequences will be dismissal of the appeal for default. In such circumstances also the only remedy available to the respondents is for seeking dismissal of appeal for costs.

11. Now also for voluntary withdrawal also the respondents are rightly seeking for costs. But the respondents further sought for monitoring the project by the Appellate Tribunal. It is against the scope of the Appellate Tribunal. It is the duty of the Appellate Tribunal to analyse the legality of the order of the RERA. In this case, the appellant himself accepted the findings of the RERA and wish to comply the same and he became an un-aggrieved person. So there is no appeals pending if withdrawal is permitted. In such circumstances only available remedy to the respondents as per law is that they are entitled to approach the RERA by invoking Section 63 of RERA. Section 63 runs as follows:

> ***"Penalty for failure to comply with orders of Authority by promoter" – If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority".***

12. The available remedy contemplated under Section 63 of the RERA Act itself and it has to be implemented by the RERA authority itself. This tribunal has no reason to monitor the project registration. Hence the objections raised by the respondents with regard to monitoring the registration of project is not sustainable.

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13. Regarding costs of the appeals and wastage of time are concerned these appeals have been preferred on 11.04.2019 and the respondents appeared entrance on 22.07.2019. On 13.09.2019 the appellant filed memo for withdrawal. Hardly two hearing in between the date of appearance and date of withdrawal memo. So, there is no long delay caused by the appellant due to these appeals. Hence the claim of costs for the meager two hearings by the wasting of judicial time and respondents time is reasonable. Hence the respondents are not entitled to costs, since the appellants has already taken steps for complying of the RERA order. The respondents have liberty to apply by way of execution and can approach the Regulatory Authority for their grievances regarding partial registration also in compliance of the order of the RERA under section 63 of the RERA Act. In such circumstances, when there is a remedy for their grievances before the Regulatory Authority, the respondents cannot object the withdrawal and for the costs. Therefore this Tribunal comes to a conclusion that the objections raised by the respondents are not tenable. The point is answered accordingly.

14. In the result, the withdrawal memos filed by the appellants are recorded and the appeal Nos.6,8,9,10, 11 and 12 are dismissed as withdrawn and 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 6th day of November 2019.

Sd/- xxxx
ADMINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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