BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 10-02-2020

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

APPEAL NOS. 62 & 63 OF 2019

M/s. Alliance Mall Developers Co. Pvt. Ltd,
Rep. by its Chairman ... Appellant

-Vs-

Tamil Nadu Real Estate Regulatory Authority
(TNRERA) ...Respondent

Both appeals are filed on 27-09-2019 and came up for final hearing on 08-01-2020 in the presence of M/s. Ralph V.Manohar, Mahendar Bhansali, R.Ramana & K.Lekkha, Advocates for the Appellant. Both the appeals are filed against the grant of registration restricting the period till 2022 only. Both appeals are taken up together. Common arguments were heard. The Respondent being the Regulatory Authority, having heard the arguments of Appellant and having stood over for consideration till this day and this Tribunal delivered the following :

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COMMON ORDER

1. The appellant obtained a planning permission dated 22-02-2017 proposing to develop 540 apartments spread over three towers of basement, plus stilt + 18 storey each. Originally the planning permit was valid for 3 years after amendment to Section 50 to Tamilnadu Town & Country Planning Act. The validity of the planning permission has been extended up to 5 years from the date of issue. The appellant was granted permission by the Coimbatore Municipal Corporation on 12-03-2018. Though the permission was granted, the appellant could not commence the construction. According to him, GST, demonization and slump in the real estate market were the reasons for not commencing the construction. Under the Town & Country Planning Act, even after the 5 year period, on an application, he can get further extension of 3 years of the building plan approval subject to certain conditions. According to him, if that is obtained, the validity period would be up to 21-02-2025.

2. The appellant applied for necessary grant of registration of RERA under Section 3 of the Real Estate Regulation and Development Act, 2016 on 25-04-2019. As per this application, he filed an affidavit under Section 4 (2) (1) (c), stating that his completion period would be in respect of Tower A : by 21-02-2025, for Tower-B : 30-09-2022 , for Tower-C : 31-03-2023. The appellant has fixed these dates taking into consideration that he can get the necessary validity of the plan approval extended under the Act till 2025. But the Learned Authority while granting the registration under RERA act, without considering this fact has granted registration of this

project restricting the validity of registration only till 21-02-2022 in respect of the 1st project named as 'AMDCPL, Prozone – Palm Phase-I' in TN/11/ building/0081/2019 dated 29-05-2019 and in respect of the other project named as 'Prozone – Palms– Phase 1B' in TN/11/Building/0082/2019 dated 29-05-2019. According to the appellant, the grant of registration dated 29-05-2019 fixing the date of completion and validity of registration by 21-02-2022 is an impossible task. The appellant cannot complete any of the phases in the project within the said time stipulated by the Authority. As it is not in consonance with the declaration given by the appellant, the order passed by the Authority is legally not sustainable. He would also contend that in respect of another builder, the Authority has also given a project completion as 30-09-2023 in the planning approval given to that particular company in the year 2017 which is more than 5 years. Therefore he should also been considered for this. Hence the appeal.

3. We have heard the appellant counsel in detail.

4. As the respondent is only the Authority which passed the order, no separate notice is required to be sent. We have seen all the papers. Appellant has also filed an application in M.A. No. 16 of 2020 for production of the documents pertaining to Planning Permit granted to the other company wherein extension of Planning Permit was granted by the local planning authority and the registration certificate of the project issued in Form-C. These documents, according to him were not available at the time of filing of application before the Authority and he has obtained

certificate copies, which has been produced here. The application is allowed.

5. The main contention of the advocate in the affidavit filed along with the application for registration, they have specifically stated that for completion of project tower-wise, they need time as follows, namely, Tower-A : by 21-02-2025, Tower-B : 30-09-2022, Tower-C : 31-03-2023. Taking into consideration, they can get the validity extended up to February 2025 as per the Tamilnadu Town & Country Planning Act. This they would mainly contend considering the prevailing market condition and size of the project and also taking into consideration that it took at least one year even for the grant of the permission from the local authority even though the CMDA has approved the Planning Permission in year 2017 itself and the Coimbatore Municipal Corporation actually granted the permission only in March 2018. Even thereafter, because of the economic slow-down, they could not start the project till now. That being so, they will have hardly 28 months to complete the project. Hence they have given the finishing date up to 2025 of course taking into consideration of the available extension period of 3 years beyond the 5 year period. In this connection, he would also mainly point out that the authority when granting permission in **"clause 4 has specifically stated that the registration shall be valid till 21-02-2022 unless renewed by the Real Estate Regulatory Authority in accordance with "Section 6 read with Rule 7 of the Act"**. According to him in respect of another company, in the order passed in respect of registration TN/01/Building/102/2017 dated 09-10-2017, in the respect of the very

same clause 4, it is stated from that apart from the above said clause 4, one more point is added that "**you are requested to apply planning permit afresh after expiry of the housing permit**". His only grievance is such a instruction is not available in his order as he would not be able to complete the project within 2022. As per the time granted in the registration, later on it will lead to multiplicity of problems. Therefore he would contend that the registration period should have been granted only in accordance with the affidavit or in the alternative at least with an entry that he may be entitled to apply for extension.

6. On a careful analysis of entire papers and the arguments of the counsel, the only grievance of the appellant is restriction by the registering authority up to 2022 only. According to him under section 4(2)(c) & 4(2)(l)(c) of the Act extracted below :

> (c) an authorized copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
>
> (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorized by the promoter, stating :-
>
> (A).....
> (B).....

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be:

The builder is entitled to fix a time as per his calculation and after coming in to force of the RERA Act, dehors any agreement even between the builder and the buyer, a fresh date can be fixed by the builder for completing his project. When that right is exercised by the builder under normal circumstances, the authority would go only by the date as fixed by the builder. When we analyze this aspect, no doubt section 4(2)(l)(c) categorically states that in the declaration, the builder can stipulate within which time he undertakes to complete the project or phase thereof as the case may be. In this connection we are fortified by the Hon'ble Division Bench of Bombay High Court in the case of **M/s. Neelkamal Realtors Suburban Pvt. Ltd., and Another** – Vs – **Union of India and Others** case where the validity of the RERA Act was questioned and elaborate judgment has been passed by the Hon'ble Bombay High Court. Some of the paragraphs categorically answers the present question to analyze the order passed by the authority. In the Judgment, the stand of the Union government extracted in paragraph 71 :

71. It is clarified on behalf of the Union of India that this declaration of period within which a promoter undertakes to complete a project under RERA in the case of ongoing projects is independent of the date that may have been stipulated under existing agreements for sale. The authority has the discretion either to grant or reject registration and, therefore, must be regarded as having discretion to reject a period put forward by the promoter that is manifestly unreasonable.

7. Therefore it is made clear by the government before the court that the authority has every discretion to reject the period as put forward by the promoter if it is found unreasonable. The Hon'ble Judges taking into consideration the declaration as given under section 4(2)(l)(c) has stated as follows in paragraph 93;

> 93. It was submitted on behalf of the petitioners that under Clause (C) of Section 4(2)(i) a declaration has to be given by the promoter in respect of the time limit during which the promoter would complete the development work. This is a voluntary act to be performed by the promoter as he has to mention the period for completion of construction. Considering the scheme of RERA, we find that in case the promoter mentions unreasonable period to complete construction, certainly the authority would not register such an application of the promoter and issue necessary directions to the promoter, taking into consideration the facts of each case. We, therefore, do not find any arbitrariness in making the promoter to disclose a time-line at the time of getting registration of the ongoing projects. Such a declaration by the promoter would bind him to complete the remaining work which was pending, may be, for years together, without fault of the allottee.

8. As regards the power of the authority, they have very clearly stated that "**it is left to the wisdom of the concerned, which is expected to deal with facts of each case whilst discharging its obligation in implementing the provisions of RERA in letter and spirit**". Therefore the authority definitely has got unfettered right to look into the matter independently, dehors the time as stipulated by the builder to strike the balance and pass an order. When dealing under Section 6, which is a provision which grants power to the authority even to extend the time beyond the period as stipulated by the builder, though subject to one year,

how far the authority can deal with the situation has all been clearly spelt out by the Hon division bench. There also, they have clearly pointed out,

Section 6 reads as under :-

Explanation – For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

The first proviso to Section 6 has been challenged by the petitioners as being contrary to Articles 14 and 19(1)(g) of the Constitution. Under the said provision, it is prescribed that the authority may in "**reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year. The authority is bound to provide hearing to the parties while dealing with an application for extension**". The learned senior counsel appearing for the petitioners submitted that this provision restricts the freedom of trade and business and mandates that promoter shall complete the real estate project under whatever circumstances and in case they fail to complete during the **"period prescribed in the initial declaration under Section 4(2)(l)(c), then the maximum period of one year could be provided by the authority to complete the project.**"

105. Under the scheme of RERA, we find that provisions of Sections 6,7(3), 8 and 37 are required to be considered and understood in a way to advance the purpose for which such provisions are made by the Parliament. On behalf of the UOI, it was submitted that once the court holds or declares first proviso to "Section 6 to be directory and not mandatory", then it would open floodgates for some promoters or section of allottees to

create "litigation, obtain stay/injunction orders and get the project delayed". The entire purpose of the law would get frustrated. Purposefully a limited period of extension was prescribed under Section 6 of RERA. On behalf of the UOI, learned ASG submitted that the promoter need not be apprehensive about provisions of Section 6 as there are sufficient provisions under the RERA which will take care of interest of the promoter.

106. We are of the view that just because law prescribes aggregate period of extension of one year, a provision need not to be held to be arbitrary and constitutionally invalid. We find that such provisions can be harmoniously construed to strike a balance so that interest of genuine / non defaulting promoters is protected. We do not view this provision to be one-sided. RERA is enacted to regulate private section transaction of sale and purchase. Bearing this in mind, we would like to approach this issue to find answers. We find that the answers are inbuilt under the scheme of the RERA itself."

9. Even when dealing under Section 8, the power vested in the authority is discussed in detail.

"109. In case the promoter establishes and the authority is convinced that there were compelling circumstances and reasons for the promoter in failing to complete the project during the stipulated time, the authority "**shall have to examine as to whether there were exceptional circumstances due to which the promoter failed to complete the project".** Such an assessment has to be done by the authority on case to case basis and exercise its discretion to advance the purpose and object of RERA by balancing rights of both, the promoter and the allottee. **"In such exceptional cases, the authority would be entitled to allow the same promoter to continue with the subject project for getting the remaining development work complete as per the**

directions issued by the authority. It shall not be interpreted to mean that in every case a promoter who fails to complete the project under the extended under Section 6 would get further extension as of right".

"117. Having a careful scrutiny of the relevant provisions of the RERA, its object and scheme and considering the submission advanced, we have harmoniously construed the provisions of Section 6,7,8 and 37 of RERA. We hold that in case the authority is satisfied that there are exceptional and compelling circumstances due to which promoter could not complete the project in spite of extension granted under Section 6, then the authority would be entitled to continue the registration of the project by exercising powers under Sections 7(3), 8 or 37 of the RERA. Such powers shall be exercised on case to case basis. We hold that while exercising powers in this regard, the authority shall be bound to hear the promoter, allottee or associations of allottees, as the case may be. In deserving cases the authority would be even entitled to consult the appropriate Government. The authority, while dealing with such cases, shall be bound to pass a reaoned order.

The construction placed by us on these provisions shall not be construed to mean that in every case of failure of promoter to complete the project within the extended time as prescribed under Section 6, the promoter shall be entitled as of right to seek further extension."

From this it is very clear that the Judges have categorically pointed out that even in the case of the extension granted under section 6, if the promoter in exceptional cases without any fault of his, has not completed the construction, then the authority is empowered to continue the registration of the project by exercising the powers under sections 7(3), 8 or 37 of RERA, the only restriction is that the authority in those cases shall decide on a case to case basis after hearing all the parties concerned including the allottees. Therefore merely restricting the period till the validity of the pp

approval will not in any way hamper the promoter where as it only make it plausible for the people to understand and book the flats and see that it is completely handed over in time and to avoid builder building without necessary plan approval.

10. On a very careful reading of the Judgment, which is also referred by the appellant counsel on these paragraphs, one thing is very clear that the authority on deciding the grant of registration of the project has got every right to go into the details as provided by the promoter and on a careful analysis of the entire submissions, the authority can either grant, reject or even modify or restrict the registration. But in so far as rejecting the application, they cannot do so without giving a hearing. Whereas for granting, even without a hearing, they can always grant it. Restriction is only a part of the grant.

11. Now when we analyse the order of the authority, the authority has taken into consideration of the validity of Planning Permit . under Tamilnadu Town & Country Planning Act, originally a planning permit is valid only for a period of 3 years. Subsequently an amendment was passed in section 50 extending the time of initial grant of permit from 3 years to 5 years. The Act further provides even after the initial grant of 3 or 5 years, the promoter can further seek one more extension of 3 years. Therefore in so far as the Tamilnadu is concerned, a builder can get the plan approval maximum for a period of 8 years only. If he does not complete, then he has to apply afresh. Even in respect of grant of further extension of 3 years, there are certain conditions to be complied with by the promoter

namely, the builder has to pay the necessary requisite fees for the extension and before that he should have constructed the building till that time without any deviation, which is a mandatory condition for him to get extension of 3 years. Therefore as per the law in Tamilnadu, no builder can do a project without proper approval or planning permit. Neither he could commence the project without the planning approval. In fact the Hon'ble High Court of Bombay has clearly stated that even for applying registration, the builder should have completed all the formalities including the grant of necessary planning permit. Now when we consider Section 4(2)(c) of the Act which clearly specifies for applying for registration, the promoter has to produce necessarily an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with laws as may be applicable for the real estate project mentioned in the application. It also further specifies that when the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority from each of phases has to be necessarily produced. Therefore this clause specifies that for starting a project, there should be a valid plan approval and if it is in phases also, there should be a valid plan approval. In this particular case, the builder wants to say that he will complete the project indifferent phases in different periods. Of course taking Tamilnadu law into force, when he starts the 2nd phase in respect of the flats, the original approval would not be valid unless he gets the extension. That is why even adhering to the very section in the Act, the authority thought it fit to restrict the approval / registration only to the date of validity of the approved plan. At the same time, it also implies that when he seeks for

extension of the planning approval, automatically he can seek such extension showing the bona fides of the promoter.

In this case, as the original permit is granted in the year 2017, as per the amended Act, the validity of Planning Permit is only up to 2022. Necessarily the authority constituted under the Act cannot say that the builder can continue to build even after the expiry of the planning permit period. Therefore the authority definitely taking into facts of each case, issue necessary direction including restriction of registration up to the period of planning permit. The builder need not be afraid that it is restricted only to that period. Because the law provides that apart from the period of 5 years, under law, he can seek for extension for another 3 years subject to certain conditions. If within the period of 2022, he applies for the necessary extension, he can always come before the authority seeking the period extension. His apprehension regarding Section 6 that even the period is extended, it is only for one year also is not restricted as Hon'ble High Court of Bombay has clearly stated that in reasonable circumstances, without default on the part of the promoter, based on the facts of each case and for the reason to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year. And they have further clearly held that taking the arguments of Government of India and Additional Solicitor General, the promoter need not be apprehensive of the provisions of Section 6 as there are sufficient provisions under RERA which will take care of the interest of promoter. Further RERA is enacted to safeguard the interest of not only the buyers but also the genuine non-defaulting promoters. All these answers are in-built under the scheme of

RERA itself. In fact further they have concluded in Paragraph 109 that in under Section 7(3), the authority shall have to examine whether there were exceptional circumstances due to which the promoter failed to complete the project and such assessments has to be done on case to case basis and exercise this discretion to advance the purpose and object of RERA by balancing rights of both the promoters and allottee. Therefore the mere apprehension that restricted period of registration may affect his business when he may not be able to complete the project on time, tomorrow, the allottees may come against him after the period, cannot be advanced at all. It is always open for him even at the time of entering into the agreement with the allottees, as according to him, till date he has not started the project not because of the planning permit, not because of the registration but because of the economic slump, he could very well add a clause that he will complete the project in the particular year after getting the necessary extension. Only then the buyers will also be aware of their right which will ensure the proper execution of the project by the builder.

12. In this connection, we now deal with the permit granted to another company. In that order, it also clearly states that you have to apply afresh after the expiry. This is what is clearly explained about. It is a legal right for the applicant to seek for extension. But in that order, in the initial stage of RERA, the time period is fixed as per the affidavit, of course with a safeguard that necessary application has to be filed. At that point of time, when earlier application was filed before the authority on 09-08-2017 for the other company, full authority was not formed. The Rules under the Act was promulgated in Tamilnadu on 22-06-2017. Even the Division Bench

Judgment of Bombay High Court was pronounced on 06-12-2017 much later of the order. The nuances and intricacies of the Act, at that point of time were not developed. Probably the authority, at that point of time has thought it fit to grant time as per the request of the builder, but at the same time made sufficient restrictions/precautions by inserting the words "necessary approval/applications need be made after the expiry". Therefore the intention was clear even at that point of time that the registration could be valid only if there is a valid permit. In that view of the matter, the order by the then authority cannot be construed as wrong. Even there we do not find any discrepancy as necessary safeguard has been incorporated in the order. In the present case, the authority taking into consideration of the legal nuances and with full authority considered the legal requirements of the Act, rightly have restricted the time limit. Hence the argument of the learned counsel is not accepted. We do not find any infirmity in the order of the authority restricting the time period during the grant of the registration after exercising due discretion and the right of the authority and we do not want to interfere with the reasoned order of the authority.

In the result, both the appeals are dismissed. No costs.

This Order is dictated to the Typist directly, typed in the computer by him, corrected and pronounced by us in the open court on 10-02-2020.

Sd/- xxxxxxx
CHAIRPERSON

Sd/- xxxxxxx
ADMINISTRATIVE MEMBER

Sd/- xxxxxxx
JUDICIAL MEMBER

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