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 : 27.01.2020

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

Appeal No.07 of 2019

Pacifica (Chennai Project) Infrastructure
Pvt. Ltd.,and Sylvanus Builders & Developers Ltd.,
Nr. SRR Engineering College, Rajiv Gandhi Salai (OMR)
Padur, Chennai – 600 103. ... Appellant

Vs

1. Thiru.C.R.Chenthirkumaran
2. C.Dhanalakshmi ... Respondents

This appeal came for final hearing on 10.01.2020 in the presence of senior Counsel Mr.Parthasarathy for the appellants, the respondents who are the complainants in the original complaint withdrew their complaint before the TNRERA and the authority has permitted the withdrawal of the complaint by the complainant and directed the promoter to register the project before the RERA. Aggrieved upon, the appellant has preferred this appeal. Even though notices have been send by post they were returned as left and even after paper publication the respondents have not appeared and called absent. Having heard the arguments of the Learned Senior Counsel and having stood over for consideration of this Tribunal till this date and deliver the following order:

ORDER

2. The respondents/complainants originally filed a complaint before the authority for the relief of refund of all the money paid towards the Villa along with the interest and to penalize the promoter for non compliance with the provision of the RERA and also for non compliance with the registration requirements.

3. According to the complainants they have entered into an agreement of sale on 23.05.2013 to purchase undivided share of land in which the Villa is situated and a construction agreement dated 23.05.2013 for the construction of the Villa in Aurum Villa bearing No.176, measuring 2117 sq. ft situated at Pudupakkam Village, Padur Village, Thiruporur Taluk, Kanchipuram District. The total sale amount was fixed for the Villa as Rs.81,70,756/- only. This amount was payable in installments. The period of completion was stated as 15 months from the date of execution of the agreement. The complainants paid Rs.1,00,000/- on the date of booking. They have paid on 11.04.2013 Rs.9,00,000/-, on 22.04.2013 Rs.10,77,742/-, on 03.04.2014 Rs.30,00,000/-, totally Rs.50,77,742/-. Since promoter failed to complete the construction, then the complainants proceeded to meet Mr.Samuel Prabad, Head of the Operations, wherein the complainants sought an explanation for the inordinate delay and since no such explanation was forthcoming the complainants expressed their interest to terminate the agreement entered with the promoter and eventually on 29.09.2016 send an email expressing same in writing. Since the construction of the Villa was not completed even after 15 months of delay from the promised date of hand over, and there was no action initiated by the promoter the complainant was constrained to issue notice to the promoter on 10.03.2017 for cancellation of the agreement and demanded refund along with the interest. The complainant did not receive any response to this communication and therefore proceeded to send a follow up notice on 15.05.2017 and demanding refund amount along with compensation. Then the promoter replied on 31.07.2017 by stating that the delay in construction was due to the act of God. Hence the complainants filed this complaint for the above said reliefs. Subsequently they have settled the matter and the complainants wanted to withdraw the complaint. While ordering the complaint

for withdrawal the authority by invoking the RERA provisions, since it is an on-going project had directed the promoter to register the project with RERA. Aggrieved upon the said order of the authority the promoter has came forward with this appeal.

4.The appellant/promoter has come forward with this appeal on six grounds namely, that the 'Aurum Villa' Phase I' project is completed project under rule 2(h)(iii) of TNRERA Rules, this project has been exempted as it has been already completed and executed prior to the implementation of RERA Act and Rules and this project is already declared as completed project by the competent authority, appreciating the protection and preservation of the rights of the genuine developers as envisaged by the legislature while enacting the RERA Act and the order was passed without jurisdiction, facts and events of the case and legal submission with regard to the facts were not considered.

Points for consideration :

1. Whether the appellant's project is a completed project or an ongoing project on the date of implementation of the act ?
2. Whether the completion certificate relied by the appellant can relieve the appellant from the clutches of the rule 2(h) (iii).
3. Whether the appeal is deserved to be allowed ?

Point No.1:

5. According to the appellant the Aurum Villa Phase-I Project is completed as per the Rule 2(h)(iii) of TNRERA Rules 2017. In support of this contention on the side of the appellant they have relied on the completion certificate issued by the Pudupaklkam 1st Grade Panchayat, Thiruporur Panchayat Union, Kancheepuram District. The above said certificate finds place in page Nos.121 and 122 of the typeset of the appellant. In the above said certificate, in the reference column, the President has relied 4 items which are as follows:

"Ref: 1. DTCP Planning Permission No.2749/2013 dated 22.05.2013

2. MLPA Planning Permit No.1011/2011 dated 18.06.2013

3. Pudupakkam Panchayat Building Permit No.61/2013 dated 15.07.2013

4. Request letter for CC by Sylvanus Builders and Developers Ltd. dated 15.09.2016".

6. The appellant has also relied the website of the DTCP – Status of the file with DTCP under 2(h)(iii) of Tamil Nadu Real Estate Rules 2017. In the above said list, the appellant's project is mentioned as Sl.No.77 of page No.145 of typeset in which the status mentioned as follows:

"378 villas, EWS Block, 120 No. Villas all over completed as per approved plan. Interior work under process".

7. In the reply notice dated 31.07.2017 of the appellant, in para No.6, page No.179 of typeset it has been stated as follows:

"The completion of respective villa was wantonly delayed but the certain natural calamities under act of God. It is pertinent to note that under clause-12 of Construction Agreement dated 23rd May 2013, executed between our clients, it was categorically mentioned and agreed between them that the effect of force majeure events shall not be construed as delay in delivery and to that extent our client stand immune against such delay which is beyond the control of our client".

8. Now let us analyse whether the above said three proofs relied by the appellant are acceptable for the completion of the project. Now let us go to the Rule No.2(h)(iii):

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".

9. As per the above said Rule 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. While applying for completion certificate before the President of the Pudupakkam Panchayat the appellant has not produced the certificates contemplated in the Rule2(h)(iii) namely certificate of the Architect or Structural Engineer/licensed surveyor associated with the project supported with photographs. The President of the Panchayat relied upon DTCP planning permission, MLPA Planning Permit, Pudupakkam Panchayat Building permit. But the President of the Panchayat has not relied with the certificate of the Architect or Structural Engineer/licensed surveyor associated with the project and photographs. These are the mandatory requirement for completion certificate as per Rule 2(h)(iii). The President has also not insisted that certificates and he simply relied on the planning permit and building permit. Whether building has been completed or not for which no reference was cited by the President of the Pudupakkam Panchayat. Moreover, the DTCP website extract clearly shows that interior work is under process. So as per the DTCP website also the work is in progress. In the reply notice of the appellant dated 10.03.2017 in para-6 also they have clearly and categorically admitted that and denies that completion of respective villa was wantonly delayed, but certain natural calamities under act of God. As per the reply notice, the delay caused is only due to act of God. The respondent issued notice with regard to delay and cancellation of agreement. He issued notice on 10.03.2017 and further in May 2017 he issued another notice and claimed compensation also. Then only the appellant issued reply notice on 31.07.2017 by stating reason as act of God for the delay.

10. The completion certificate issued by the Pudupakkam Panchayat President is certainly not reliable since Rule 2(h)(iii) of RERA Rules 2017 was not followed. Hence the above completion certificate is not reliable and acceptable as per the above said provision. The other 2 proofs namely website entry and reply

notice not supported the case of the appellant and furthermore they proved that the project was not completed. Hence the project of the appellant is not a complete project and it is only an ongoing project on the date of the implementation of the RERA Rules 2017. The point is answered accordingly.

Point No.2 :

11. In Point No.1, it was decided that the completion certificate issued by the President of the Pudupakkam Panchayat is not accepted and reliable. So their certificate alone is not sufficient to come to a conclusion that the project has been completed. In this regard this Tribunal has already decided elaborately about the completion of project in ***appeal No.1 of 2018 dated 23.05.2018 in Y.Ravishankar vs Ms.Marg Properties Ltd. and Another :***

> ***"Section (2)(h) defines ongoing project in the rules. When it is under a CMDA area, it is covered under section 2(h)(ii) and when it is outside the Chennai Metropolitan Area, it comes under section 2(h)(ii), when the rules have been notified in June 2017, the developer has to intimate the Deputy Director (Town & Country Planning) within 15 days from the date of notification of the rules whether the construction is structurally completed. The rule also specifies what is the meaning of structurally completed construction. It says "construction is structurally complete 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 by photographs". Therefore it is mandatory very clear in the rule that for structural completion, all the columns, beams and slabs have to be erected and should have been certified by the Architect or structural engineer. With this when we analyse the provisions of the act, namely, section 2(e), definition of an apartment, which clearly says that "any immovable property including one or more rooms or enclosed spaces located on one or more floors or any part thereof in a building or in a plot of land, used or intended to be used for any residential or commercial use, such as residence, office. The intension of the legislature is very clear that the property should be in a usable condition by the allottee. The Rules also have stated that atleast the slabs, columns, beams should have been completed.***

If we also take into considerations the objects and reasons of the Act, the Act has been enacted mainly to infuse transparency, ensure accountability towards allottees and protect their interest. It also imposes certain responsibility on both the promoter and the allottee, mainly to establish a fast track dispute resolution mechanism. Therefore the intention of the legislature is to have a workable solution for any difficulty faced by an allottee. This can be done only if a project is registered under the authority. In fact when we also take into consideration, the Rile 2(2n) where the definition of real estate project is given, it actually says the development of the building includes the common areas, the development works, all improvements and structures thereon and all easement rights and appurtenances belonging thereto which will clearly indicate that the legislature's intention in the Act is to say that the project should have been completed in all respects.

Under the Act, it is very clear that the end product namely the flat is a usable commodity. It does not contemplate the promoter to say that they have only completed a portion of it."

As per the above said conclusion of this Tribunal, completion of project means that the property should be in an usable condition by the allottee. The end product namely the flat is a usable commodity.

12. Now let us analyse the case in hand in accordance with the above findings. The appellant only relied the completion certificate issued by the Pudupakkam Panchayat. But the Pudupakkam Panchayat President has relied on only 2 planning permit and one building permit. The above said completion certificate is not based upon the rule contemplated under Rule 2(h)(iii) of the RERA Rules 2017. But the intention of the legislature regarding completion of the project is concerned it should certified only by the Architect or Structural Engineer/licensed surveyor associated with the project supported with photographs. None of the certificates of the above said persons and photographs were not relied by the President of the Panchayat and moreover he has not whispered anything whether he saw the certificates or photographs. The intention of the legislature is that the completion can be declared only by the technical persons or those who are associated with the project. Relying the certificate alone, the President can be competent to issue completion certificate. The technical persons have not

declared that the appellant's project has been completed. In these circumstances, the completion certificate relied by the appellant is not reliable and the said completion certificate is not sufficient to relive from the clutches of Rule 2(h)(iii). Apart from the factual aspects as pointed out earlier, even as pointed out in the earlier Judgment in Appeal No. 1/2018, the mere issuance of a Completion Certificate by the competent authority is not sufficient. In view of the fact, Rule 2(h)(iii) only contemplates completion of beams, structures and columns. But the Act has very clearly stated under Sections 2, 2(n), 2(e), 2(z)(n), categorically that the project should be completed which is the ultimate product should be in a livable nature, namely, the flat or villa or any other building should be in a usable nature. In this case, it is clearly pointed out that even as per the admission, the completion of project is not over. Therefore the mere alleged adherence by the Appellant to Rule 2(h)(iii) cannot override the Act, as the Act prevails over the Rules. In earlier another case also, this tribunal has categorically held that mere issuance of the Completion Certificate is not enough. In ***Appeal No.2 of 2018 - Marg Properties Ltd Vs T.M.Arunachalam*** it was upheld that :

> ***"Therefore the intention of the legislature was only for the parties to have a workable usable commodity namely a flat which cannot be construed as an incomplete flat. As per the Act, it even states that the property is intended to be used as a residential or commercial use such as residence or office or shop. Therefore the alleged mere completion of structure or beam cannot connote to the actual users entitlement."***

The Tribunal has every authority to go into details and even in the case of grant of completion certificate, still not accepted the same when it finds out that the project is not a completed project. In this case, the Authority has also clearly stated that interior works is under process and they have not complied with the mandatory requirements as contemplated under the Rules. Therefore the Authority is very clear in its finding that it is only an 'ongoing project'. The point is answered accordingly.

Point No.3 :

13. The learned Regulatory Authority while passing order by permitting the complainant to withdraw his compliant and implement the provisions of the RERA Act

by letter and spirit. Usually if the complaint is withdrawn by the complainant, instead of simply dismissing the complaint as withdrawn and upheld the provision of the RERA Act, since the appellant has not completed the project as per provisions contemplated in the Act. Having found that the appellant's project is an ongoing project has rightly directed the appellant to register the project under RERA. Merely because a complainant withdraws his complaint, does not take away the right of the Authority to issue directions as the Authority has also a power to issue notices even suo moto under Section 35 in regard to the complaints under Section 34 or any other matters. That being so, Authority is well within its limits even after the closure of a complaint, when the builder has not complied with any mandatory requirement of registration under the Act, has powers to issue necessary directions. Further having found out that the project is still an 'ongoing project', definitely the Authority has got every right even after accepting the withdrawal of the complaint, can still direct the registration of the project which is mandatory requirement under the Act. There is no infirmity on the findings of the Regulatory Authority and the grounds put forth by the appellant in the appeal are also not sufficient to interfere with the findings of the Regulatory Authority. Hence this Tribunal comes to a conclusion that this appeal is not deserved to be allowed. The point is answered accordingly.

14. In the result this appeal is dismissed. No costs. The finds of the Regulatory Authority in C.No.141 of 2018 dated 7.02.2019 is confirmed.

This order is dictated to the Stenographer, transcribed and computer typed by the Stenographer and corrected and pronounced by us in the open court on 27th January 2020.

Sd/- xxx
CHAIRPERSON

Sd/- xxx
ADMINISTRATIVE MEMBER

Sd/- xxx
JUDICIAL MEMBER

Verified by RealEstate