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 : 22.05.2020

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

Appeal No.70 of 2019

1. M/s.Devinarayan Housing Board and Property Developments Pvt. Ltd.,
2. N..Nandakumar
3. V.Srinivasan ... Appellants / Developers

Vs

1. Mr. Manu Karan
2. Mrs. Archana Karan ... Respondents / Home Buyers

This appeal came up for final hearing on 13.03.2020 in the presence of M/s.N.Karunanidhi, T.Thiyagarajan and V.S.Subramanian for appellants and M/s. Legal Empire for respondents. Having heard the arguments of both sides and having stood for consideration till this day and this Tribunal delivered the following :

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ORDER

1) The appellants, who are Developers, are respondents in the complaint and the respondents, who are the Home Buyers, are the complainants. For easy understanding, both of them are referred as per their original designation as Home Buyers and Developers hereinafter.

2) The Home-Buyers and the developers entered into a Sale and Construction Agreements on 20.07.2017 with regard to the property comprised in R.S.No.102 of 116, Uruur Village, T.S.No.8, Block No. 39, Door NO.5, Jayaram Avenue, Vannanthuruai, Sastrinagar, Chennai – 600 020 measuring an extent of 5935 sq. feet bounded on the north by house in D.No.157 on Selva Vinayagar Avenue, East by House in D.No.7, South by Jayaram Avenue Road, West by house in D.No.3 within the above four boundaries a 3 bed room residential apartment on the 3rd floor measuring 2835 sq. ft of built up area with common area and undivided share measuring 1483 sq. ft out of above 5935 sq. ft the building to be known as "Devi Narayan's Saisagar, together with two covered car park. The cost of apartment was fixed at Rs.3,30,00,000/-. The time for handing over possession was 30.08.2017 after receipt in full of all payments, with a specific clause to do any interior work at the choice of home buyers. Out of the said amount home buyers had paid Rs.3,06,00,000/- and the balance was only Rs.24,00,000/-. Deducting the TDS, Stamp duty, Registration charges, interest, cost of charge of scope in work comes to the tune of Rs.66,35,000/-. So as per calculation the developers have to refund to the home buyers to the tune of Rs.42,35,000/-. Even then the developers failed to hand over

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possession. Hence the home buyers called upon the developers by legal notice for registration of apartment and refund.

3) On receipt of notice the developers denied the allegations and claimed the possession of home buyers as illegal and also demanded Rs.9,21,356/- from the home buyers. Hence the home buyers came forward with the compliant for the relief of compensation and cost.

4) After appearance before the Adjudicating Officer, the developers took a defence as complaint itself is not maintainable since before the Real Estate Act came into force, the project has been completed and completion certificate also issued. Further more the developers denied the allegation with regard to the claim of costs and expenses and demanded from the home buyers a sum of Rs.9,21,356/-. The Learned Adjudicating Officer hearing the pleas of the home buyers and developers came to the conclusion that the developers shall pay to the home buyers a sum of Rs.13,31,644/- towards compensation and Rs.25,000/- for litigation expenses and directed the developers to pay the same within 30 days from the date of receipt of the order. Aggrieved upon that the developers preferred this appeal.

5) The Learned counsel for the developers / appellants would submit that the Learned Adjudicating officer failed to note that the word 'or' used under Section 3(2)(a) of the Act should be read disjunctively and not conjunctively. Further more it has taken into consideration the use of the word 'and' instead of 'or' shows to bring the appellant within the ambit of the Act. The similar persons who had entered into an

Agreement of Sale with the 1st Appellant have been put in possession and all the works that have been alleged by the home buyers has been completed. There is no complaint of any shortfall from any other person except the home buyers herein. But the Adjudicating officer failed to consider this aspect. The Home buyers who are in illegal possession of the flat without paying balance sale consideration as well as construction cost and also without getting the registration for UDS of land but these aspects were not taken into consideration by the Learned Adjudicating Officer. On the side of the developers, it has been alleged that the application for issuance of completion certificate was submitted by the appellant as early as on 10.2.2016 as admitted by CMDA and therefore this project does not come under the definition of 'Ongoing Project' as stipulated under the Tamil Nadu Real Estate Rules, 2017 and further does not require registration with TNRERA, as per Serial No. 88 in the list of completion certificates applied prior to 22-06-2017, the above said fact was not taken into consideration by the Learned Adjudicating Officer. Hence the appeal has to be allowed.

6) According to the Home buyers / Appellants the project of the developers is an 'On going project' on the commencement of the Act since completion certificate was issued only on 19.02.2018 i.e. after 18 months from the date of commencement of Act. Further more the project of developers exceed the limit of 500 sq. mts. and not liable for exemption from registration before RERA. After elaborate discussion on both sides and documentary evidences, the Learned Adjudicating Officer came to a correct conclusion and there is no infirmity in that order. Hence the appeal has to be dismissed.

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7) From the above grounds and the defence put forth by the Home buyers the following points are raised for consideration:

a) Whether the project of the developers on the date of coming into force of Section 3 of the RERA Act is an ongoing project ?

b) Whether this appeal deserves to be allowed ?

8) Point (a) :

The Learned counsel for the developers would submit that the project of the developers does not come under the ambit of the Real Estate Act. Hence the complaint before the Adjudicating Officer itself is not maintainable. This is the foremost argument of the Developers. According to the Home Buyers, the foremost main plea with regard to Section 3 of Real Estate Act commencement date, 01.05.2017, on that date, the developers have not applied for completion certificate. Hence the project of the developers is an on going project on the date of commencement of the Act, Section 3. So the compliant is maintainable. Now let us discuss the points raised by the both sides counsel regarding maintainability of the complaint.

9) The developers have come forward with this appeal with 14 grounds. Out of 14, Ground No.1,3,13 and 14 are only formal. Ground No.2, 4 and 7 with regard to jurisdiction. Ground No.8 and 9 are with regard to interpretation of the word 'OR' in Section 3 (2) (a). Ground No.6 and 10 with regard to other apartments sold by the same developers. The ground no. 11 and 12 are with regard to possession of home buyers without paying balance sale consideration and without

registration of UDS amounts to illegal possession. Now let us discuss groundwise :

10) The Learned counsel for the appellant has vehemently put forth the arguments with regard to the word 'OR' used under section 3(2)(a) of the Act should be read disjunctively and not conjunctively and the Learned Adjudicating Officer consider the use of word 'AND' instead of 'OR'. It is incorrect according to the developers. The Learned Adjudicating Officer in his Order in para no. 7 (c) has stated as follows :

> *"Admittedly the project has only 4 dwelling units and the land developed under the project is to an extent of 5935 square feet i.e. 551.38 square meters. Since the extent of land exceeds 500 square meters, the exemption under the section 3(2)(a) is not applicable to the project in dispute".*

11) The Learned Adjudicating Officer considered the developing area exceeds 500 square meters and came to a conclusion that the project of the developers comes under purview of section (3). But the Learned counsel for the developers would submit that in section 3(2)(a) the word used 'OR' has to be read disjunctively and not conjunctively. First of all, we have to find out the difference between above said two words.

> "As adjectives, the difference between disjunctive and conjunctive is that disjunctive is not connected, separated while conjunctive is relating to a conjunction".

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Section 3(2)(a) runs as follows :

"Registration is not required for the project which should not exceed 500 square meters or the number of apartments proposed to be developed does not exceed 8 inclusive of all phases."

12) The development of construction of four apartments within the area of 2585 square feet which is equal to 551.37 square meters. More than 500 square meters area of land proposed to be developed by the developer for which under Section 3 of the Real Estate Act, registration is required. Regarding area of the development is concerned, it exceeds 500 square meters. Hence registration is mandatory. Further more, in section 3(2)(a), after the word 'OR', the number of apartments proposed to be developed does not exceed eight inclusive of all phases. In such circumstances with the available materials as per section 3(2)(a) the first part the developer's project exceed 500 square meters. Hence it comes under the purview of Section 3 of Real Estate Act. If developer disclosed particulars with regard to the second part of the section 3(2)(a) regarding other phases and if the Learned Adjudicating Officer failed to consider the same, it can be easily inferred that the Learned Adjudicating Officer failed to consider the same. Without disclosure of facts on available materials and facts the Learned Adjudicating Officer came to a conclusion on the basis of the word 'OR' employed in the section 3(2)(a) as disjunctively

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and not conjunctively. So the plea of the developer is not sustainable. Even otherwise as rightly pointed out by the homebuyer, the Act only clearly states that 'if any one of the criterion is fulfilled, then necessarily it will come under the purview of Act. In fact being a beneficial legislation, we have to take into consideration a wider and inclusive interpretation so as to bring everything within the fold of the Act. So when one of the criterion, namely the total area exceeds 500 sq. mts, automatically, they will come under the purview of the Act. Therefore there is no ambiguity at all in the interpretation regarding the usage of 'either' and 'or' in the Act.

13) The next grounds no. 6 and 10 with regard to the other Home buyers, the other home buyers have not complained against the developers. This kind of argument is not sustainable because the dispute with regard to third floor apartments of the developer is between the home buyer and developer in this case alone. We are not concerned with other home buyers. So the other home buyers have not made any complaint against the developers is not the ground to strengthen the case of the developers.

14) The 5th ground of the memorandum of appeal is a peculiar one in which it has been stated that the application for issue of completion certificate was applied by the appellant as early as on 10.02.2016 as admitted by the CMDA which was much before the implementation of the Act and therefore this project would not come under the definition of on going project as

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stipulated under Tamil Nadu Real Estate Rules, 2017 and therefore does not require registration before TNRERA and further more, the developers project was listed in the 'on going project' listed by the TNRERA as serial no.88 in the list of completion certificate completed prior to 22.06.2017. How far this ground is true is to be analyzed.

15) The developer have produced completion certificate which is attached with typed set at page no.26 and 27 in which as reference no.2, it has been specifically mentioned as "completion certificate application from Thiru. Srinivasan dated 31.05.2017". Further the completion certificate issued by the CMDA on 12.02.2018, a letter was issued by CMDA to the 3rd Appellant in which in reference no.2 it has been specifically mentioned as your application for completion certificate dated 31.05.2017.

16) In the proof affidavit of the developers, namely the 2nd appellant, Mr.N.Nandakumar in para no.12 stated that " I submit that regarding to averments in para 14, I submit that building was complete in all aspects, pending receipt of completion certificate from CMDA, which was applied during May 2017. The developers nowhere in their written documents have not stated about the application for the issue of completion certificate filed before the CMDA on 10.02.2016. In the proof affidavit itself which was filed before the Adjudicating Officer, the Developers have categorically admitted that they have filed application only in May 2017. So the date mentioned in ground no.5 as 10.02.2016 is not true. Hence this ground is also not sustainable. The next ground regarding

possession as per the developers the home buyers are in illegal possession.

17) In this case, the developer filed application for Completion Certificate only on 31-05-2017. The Real Estate Act, Section 3 came into force on 01-05-2017. So on the date of implementation of Section 3, no application for Completion Certificate was filed and pending before the CMDA. Moreover it was filed after 30 days after the Act came into force. Another argument put forth by the learned counsel for the developers is that on 31-05-2017, Rule is not in force. So Section 3 only is applicable on 31-05-2017. As per Section 3, no completion certificate was issued and even not applied for the same by the developers. The defence of the developers, namely, delay on the part of the CMDA and on the side of the home buyer in completing the interior works are not contemplated in the Real Estate Act and Rules. In the Construction Agreement itself, both parties agreed as Clause 9(b) at Page No.6 of Construction Agreement, it has been specifically agreed that :

> *"b) the ALLOTTEE has to obtain prior permission of the developer if the allottee with to perform any prayer in the said apartment prior to the date of handing over of possession or to take up any interior works which the allottee may require to be completed prior to the taking over the possession of the said apartment, subject to the condition that any damage during such interior works being undertaken by the allottee will be rectified at the cost of the allottee."*

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In the above clause 9(b), it has not been whispered anything with regard to Completion Certificate.

18) So, taking over of possession of apartment arise only after issuing of completion certificate. Getting Completion Certificate is the bounden duty of the developer and the home buyer has no business in it. Moreover interior decoration is no way a hurdle to get completion certificate, because if the construction is completed and duly authorized by Structural Engineer, it is sufficient to get completion certificate. Furthermore, the delay in doing interior work is not a ground to apply for completion certificate by the developers.

19) The next defence of the developers is that the apartment was structurally completed and unsold apartment and others took possession of apartment. If really the apartment is completed as alleged by the developers, what is the necessity for entering into a Construction Agreement? They can straight away enter into an Agreement for Sale at outright purchase. So this defence is not sustainable and it is no way helpful to strengthen the case of the developers as his project is not an ongoing project.

20) As per section 3 of Real Estate Act, no completion certificate was issued. The remaining grounds 1,3 and 14 are only formal. In any angle, the project of the developers on the date of Section 3 of Real Estate Act, 2016, came into force on 01-05-2017 is an ongoing project since completion certificate was not issued on that date and it was issued only on 19-02-2018.

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21) Already this Tribunal gave a finding with regard to 'ongoing project'. The verdict of this Tribunal in Appeal No. 1/18 which find place in the Tribunal website itself. In the above case, this Tribunal interpreted Rule 2(h)(ii) along with Section 2(e) and 2(zn) of the Act at pages 14 and 15 of the Judgment which runs as follows :-

> *"With this when we analyze the provision of the Act, namely Section 2(e) definition of 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 there of in a building or in a plot of land,* ***used or intended to be used for any residential or commercial use such as residence or office****".....*
>
> *"In the rules it has been specifically mentioned that completion of all columns, beams and slabs have to be erected and certified by architect or structural engineer. Whether in this case, the Respondent has completed the project either as contemplated under the Act or at least as contemplated under the Rules? Of course the Act prevails over the rules.*
>
> *"Under the Act, it is very clear that the end product namely the flat is a usable commodity....."*

By following the above finding of this Tribunal, now this Tribunal comes to a conclusion that the requirements under Rule 2(h)(ii) was not complied by the developers on the date of coming into force of Section

3(1) of the TNRERA Act and the developers project is an 'ongoing project'. The point is answered accordingly.

22) Point No.(b) :

In Point No.(a), it was decided that the developer's project is an ongoing project. Moreover the Learned Adjudicating Officer gave a finding with regard to the compensation and litigation costs. The developers/appellant have not questioned the finding with regard to the compensation awarded by the Learned Adjudicating Officer, without questioning the finding there is no need or necessity to give a finding by the Appellate Authority, since the above said finding of the Learned Adjudicating Officer regarding compensation and costs impliedly admitted by the developers/appellants, hence this appeal does not deserve to be allowed. The Adjudicating Officer has also taken into consideration the amount to be paid by the Homebuyer to the Developer and in fact had ordered Rs.9,21,356/- being payable by the Homebuyer to the Developer. Hence the Adjudicating Officer has even further given a direction to deduct this amount from the amount payable by the developer to the homebuyer. In any view of the matter, the amount awarded is very reasonable and correct and there is no reason to interfere in the order. The point is answered accordingly.

23. Both the developer and the home buyer preferred separate appeals A. No. 70 of 2019 and A. No. 39 of 2020 respectively. Both the appeals were heard jointly and both the appeals are posted for orders today. Since the relief for both appeals differed, separate orders are pronounced today. The home buyers preferred two complaints, one for registration of project before Regulatory Authority and another one

before Adjudicating Officer for compensation. In both the complaints, the developer took a plea of maintainability of complaints. In appeal also, same plea of maintainability raised by developer and in both appeals, it is decided that the complaints are maintainable.

In the result the Appeal No.70 of 2019 is dismissed. No costs. The order of the Learned Adjudicating officer in C.C.P.No.46 of 2019 dated 27.08.2019 is confirmed.

This order is dictated to the Stenographer, transcribed and typed in the computer by her, corrected and pronounced by us in the open court on 22nd day of May, 2020.

sd/- XXXX
CHAIRPERSON

sd/- XXXX
ADMINISTRATIVE MEMBER

sd/- XXXX
JUDICIAL MEMBER

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