BEFORE THE TAMILNADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)
(Tamilnadu, Puducherry, Andaman & Nicobar Islands)

Under the Real Estate Regulation And Development Act, 2016

Dated : 24-03-2020

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

Appeal No. 74 of 2019

M/s.Alliance Villas Private Limited,
Rep. by its Managing Director
Manoj Namburu ...Appellant

- Vs -

Mr.Rajesh ...Respondent

This appeal was taken on file and posted for hearing the appellant on 29.11.2019 for admission and appeal was admitted and this appeal came up for final hearing on 10.03.2020 in the presence of Mr.P.H.Manoj Pandian, M/s. AAV Partners, Advocates for the appellants and M/s. T.Raghavan & T.R.Sudarsanan, Advocates for the respondents and having heard the arguments of both sides and having stood over for consideration of this Tribunal till this date and deliver the following:-

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ORDER

2. The allottee/respondent preferred complaint before the Adjudicating Officer for the refund of sale consideration, interest and for compensation against the appellant/promoter herein. The appellant herein failed to appear, even after receipt of the summons, hence the Learned Adjudicating Officer passed order by setting exparte the promoter and passed the order on merits. Aggrieved upon that, the promoter preferred this appeal.

3. The Learned counsel for the Appellant would submit that, even though the summons were served, that was not brought to the attention of the Appellant due to miscommunication between the officers and the employee. Hence, the non-appearance of the Appellant in the court below is neither willful nor wanton but solely due to a miscommunication and misinformation which has been done by their office. Furthermore, he would also contend that in view of the ex-parte order against them, especially on a wrong representation in regard to the calculation and the liability of the purchaser to pay the GST, the Order is creating hardship and irreparable loss to the company. Further the said order got published in the newspaper especially stating that the purchaser is not liable to pay GST, whereas as per the GST Council Meeting held in New Delhi on 19-03-2019, an option has been given to the builders in respect of ongoing projects, either to pay the tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects which have not been completed by 31-03-2019 and if the option is not

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exercised, the new rates shall apply under the new scheme, to switch to 5% without ITC. But the Appellant has chosen to go with the old scheme of 12% with ITC and accordingly the customers will be charged 12% GST as per government norms which was totally suppressed which resulted in the ex-parte order. Unless an opportunity given to the appellant to contest the case on merits, a vital legal point could not be raised. Further the Respondent has only voluntarily relinquished the right and sought for the cancellation of the flat, therefore they are not entitled to any relief claimed in the application.

4. Further he would also contend to show his bona-fides that as per the direction of this Hon'ble Tribunal, they have already deposited 30% of the entire amount with the tribunal ordered by the court below. In view of the same also, they would only claim that he may be given a chance to contest the case on merits, allow the appeal and set aside the order passed by the court below.

5. The Learned counsel for the Respondent would submit that the Appellant cannot be permitted to take advantage in respect of a wrong interpretation of the existing GST rates applicable to the project in issue which has been duly decided by the Adjudicating Officer. The cancellation was not due to the termination by the Respondent unilaterally but it was only due to the appellant who has charged GST rates against the statutory norms of the government. Therefore it cannot be construed that the Petitioner has withdrawn from the purchase. As per section 18(1)(b) of RERA Act, the builder is liable to

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pay the amount along with the interest. It is the fault of the appellant in not appearing in the lower court. For the publication in respect of the order, the Respondent cannot be blamed. Hence sought for the dismissal of the appeal.

6. The point for consideration in this Appeal is whether the appeal is to be allowed or not?

7. Admittedly the order passed by the court below is an ex-parte order. It is also admitted by the Appellant that the notice of the complaint was duly served on them. He would only contend that there was only a miscommunication in the office, the hearing date was not properly communicated to the authorities concerned to engage an advocate and contest the matter on merits. For the fault committed by the officials of the company, the management has to blame themselves. In this regard, they would categorically submit that for merely because of the mistake of an employee, the valuable rights of defence available to them cannot be taken away. In that view of the matter also, they plead that they must be given an opportunity to contest the case on merits.

8. Above all these things, they would mainly contend that this is a legal matter pertaining to the imposition of the GST in respect of a flat, whether it is payable by the buyer or the seller. According to them, an option was given by the Central Government in its GST Council Meeting held in New Delhi on 19-03-2019 for choosing the GST slab in respect of an 'ongoing project'. As they have chosen the earlier method,

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the payment of GST at the rate of 12% which is to be reimbursed from the purchaser, the claim of the Complainant cannot be maintained. Where as, contra, the Respondent would mainly contend that the interpretation made by the builder is totally wrong and it is for the builder to pay the amount. Of course, merit has to be decided only by the court below. Though in setting aside the ex-parte order, we normally do not go in to the merits of the case. This is a legal issue which is raised by the Appellant.

9. Now considering the reason for their absence in the court, they have only clearly admitted that it is a mistake on their part especially one of their staff from not informing about the service of the summons and the hearing date. Actually they have come to knowledge about the case only on seeing the papers publishing the order passed by the court below. No doubt, it is a mistake of the staff of the company, but as stated, they have been duly served and on the 1st service of the summons itself, they have been set ex-parte. Taking all these into consideration and also taking into consideration that already the Appellant has deposited 30% of the total amount as awarded by the court below, this court feels that the Appellant should be given an opportunity to contest the case on merits. The Appellant should contest the case on merits immediately without delaying any further. As the Respondent is safe-guarded in respect of his payment by 30%, this court feels that the entire ex-parte order needs to be set aside.

10. At the same time the inconvenience caused to the respondent has to be taken into account. In view of the same, this

Tribunal comes to a conclusion that an opportunity has to be given to the appellant to putforth his case on merits. Hence this court is inclined to allow this appeal on terms.

11. In the result this appeal is allowed on payment of costs of Rs.5,000/- payable to the Tamil Nadu Chief Minister's Relief fund (for Corona Virus) by the appellant on or before 08-04-2020 failing which the appeal will automatically stands dismissed. In view of the same, the Order passed by the Adjudicating Officer in C.C.P. No. 189 of 2019 dated 22-11-2019 is set aside and the matter is remitted back to the Adjudicating Officer for final disposal. The Appellant is directed to file counter if any, within 15 days from the date of receipt of the copy of this order and should be ready for completing the enquiry as per the direction of the court below without asking any further adjournments. In view of the order being set aside, it is made clear that the 30% of the amount deposited with the Tribunal will be kept in the fixed deposit account of the tribunal, till the disposal of the C.C.P. No.189 of 2019 and the amount will be paid to the party concerned in accordance to the order to be passed by the Adjudicating Officer.

This Order is dictated to the Typist and typed in the computer by him, corrected and pronounced by us in the open court on 24.03.2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

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