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 : 06.01.2020

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

Appeal No. 10 of 2020

M/s.Amarprakash Property Management Services Pvt.Ltd,
Rep by Authorized Signatory
Mr.R.Surendar ... Appellant/Respondent

Vs

Temple Waves all Blocks Flat Owners Welfare Association,
Rep by its Vice President
Mr.K.Subramanian Pillai ... Respondents/Complainants

The appellant preferred this Appeal against the interim order passed in C.No.444 of 2019 on 29.11.2019. The appellant appeared through counsels Mr.D.Ravichander and Mr.D.Dinesh Kumar. Having heard the arguments of the appellant's counsel on the admissibility of the appeal on 06.01.2020, passed the following:

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ORDER

1. The appellant company and the respondents entered into individual agreement just the day before the handing over of the keys. The appellant company being property management service and the appellant company is not a promoter. The appellant is charging exorbitant charges without furnishing the details of the expenses. All the promised amenities are not provided till date, such as RO water, cleaning of the floors, 24/7 security in all blocks and over and above the labourers are not paid their salary hence many have left. The respondents also face arrogant behavior of the Customer Relationship Manager and other staff. Since the allottees protested to pay the maintenance charges due to the above mentioned irregularities, the appellant has implemented the lift access card system and issued card to few who have paid their maintenance up to date and by such act made others who have not paid and protesting to forcefully pay without going for legal proceedings against the defaulters. The appellant had sent a mail just a day before the issue of access card that they are implementing from the same day midnight. Those who have attended the office in shifts and come late in night had to climb the steps on odd hours. Hence the respondents approached the RERA by this complaint and sought for termination of the maintenance agreement and also restrained the appellant from implementation of restriction of lift access facility. In addition to that, the respondents also sought for interim order to restrain from order for implementation of access card and allow all the owners and residents to use the lift without any restriction.

2. After the appearance of the respondents the Authority has directed the respondent not to deny the access to the lifts till final orders are passed by the Authority by way of interim orders and also directed to file counter and post the case for 12.12.2019. Aggrieved upon that, the appellant came forward with this appeal and sought for to set aside the interim order of the Authority and also sought for to strike of the complaint in C.No.444/19 as not maintainable.

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3. The learned counsel for the appellant put forth this argument on the basis of the maintainability of the complaint itself. The learned counsel also would submit that the appellant is not a promoter or real estate agent or allottee. Hence it cannot come under purview of section 36 of the RERA Act.

4. The appellant sought for relief to set aside the impugned interim order dated 29.11.2019 and to strike off the complaint itself as not maintainable. These are the main reliefs in the appeal. The appellant has not at all put forth his case before the Authority. The case is posted for the filing of counter on 12.12.2019. Before putting forth his case before the Authority and hurriedly he rushed to this Tribunal and also sought for relief regarding maintainability.

5. Regarding maintainability the appellant has got opportunity to put forth his case before the Authority and get redressal before Authority itself. Without utilising that opportunity, preferred this appeal hurriedly. The Authority has passed interim order only on the basis of welfare of the residents those who are residing in the apartment which is a seven storied building. The Authority has also directed the appellant to remove the denial of access to the residents immediately with effect from 02.12.2019 and directed to report compliance to the Authority before 03.12.2019. Without complying the order of the Authority, the appellant came forward with this appeal.

6. When the matter was posted on 6.01.2020 the counsel of the appellant made the following endorsement:

"the appellant seeks permission to withdraw the appeal with liberty to approach the Authority for the issue of maintainability".

This Tribunal recorded this endorsement. Regarding maintainability question to be taken as a preliminary issue, it is for the Authority to decide the issue. Hence the appellant is permitted to withdraw the appeal.

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7. In the result, the appeal is dismissed as withdrawn with liberty to approach the Authority itself regarding maintainability question to be taken up as a preliminary issue it is only for the Authority to decide the same.

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 06.01.2020.

Sd/-xxx
CHAIRPERSON

Sd/-xxx
ADMINISTRATIVE MEMBER

Sd/-xxx
JUDICIAL MEMBER

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