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 22.12.2021

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

Appeal Nos. 35 to 37 of 2020

A.No.35 /2020

M/s.Akshaya Pvt. Ltd.,
Rep. by its Managing Director ... Appellant

-Vs-

C.Saravanan .... Respondent

A.No.36 /2020

M/s.Akshaya Pvt. Ltd.,
Rep. by its Managing Director ... Appellant

-Vs-

Raja Kaliyamurthy .... Respondent

A.No.37 /2020

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M/s.Akshaya Pvt. Ltd.,
Rep. by its Managing Director ... Appellant

-Vs-

Krishnamurthy Natarajan .... Respondent

All the three appeals were taken on file on 10.01.2020, 31.01.2020 and 31.01.2020 respectively and came up for final hearing on 29.11.2021 in the presence of M/s. Mani Sundargopal, T.Sathiyamoorthy and Shree Aadya.S, Counsels for the appellant. The respondents in A.Nos. 35 and 36 of 2020 appeared through Advocates M/s.Ralph V. Manohar, R.Ramana and K.Lekkha. The respondent in A.No.37/2020 appeared in person. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

COMMON ORDER

1. These appeals have been preferred against the order of the Regulatory Authority in C.No.169/2018 dated 7.11.2019, C.No.166/2018 dated 28.11.2019 and C.No.170/2018 dated 28.11.2019 by the promoter. The respondent/home buyer preferred a complaint against the appellant/promoter for the relief of registering the promoters' project 'Today' with the Regulatory Authority and if the promoter fails to register the project to punish the promoter by imposing penalty and C.No.166 and 170 of 2018 came forward with the relief of register the blocks B,C and D project with Regulatory Authority. After contest the Regulatory Authority directed the promoter to register the project B,C and D blocks wit Regulatory Authority and directed to

handed over possession after completion within the stipulated time. Aggrieved upon the same the promoter has preferred three separate appeals. In all the three appeals the appellant is the promoter and respondents are the home buyers. For easy understanding in these appeals herein after the appellant is called as promoter and the respondents are called as home buyers. The appellant/promoter has preferred this appeal on the following main grounds:

- The structural completion being just one of the activities in the development of the real estate project, should alone be taken into consideration for the purpose of deciding on the entitlement for exemption from registration.
- The structural completion is required only in respect of buildings, for the purpose of seeking exemption from registration and would not include the structural completion of the common areas.
- If the structural completion is replaced with overall completion the very concept of the possibility of grant of an exemption in respect of certain ongoing projects, provided under the Act would itself be rendered otiose.
- Introducing a new subject, namely the structural completion of the common areas also, would be contrary to the principles of interpretation of statutes and is unsustainable in law.
- While the project which is not structurally complete as per the Rules and the judgment of the authority, the project cannot be exempted from registration.

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- The primary object of Rule 2(h) (iii) is to evolve a criteria for grant of exemption under specific circumstances.
- The project is deemed to have been structurally completed even though the podium of the basement, car park has not been structurally completed.

2. The learned counsel for the appellant would submit that the learned Regulatory Authority without considering the above said grounds and came to a conclusion by expecting completion of project in all respects and it is against TNRERA Rules, 2(h)(iii). Therefore, these appeals have to be allowed.

3. The learned counsel for the respondents and the respondent party in person would submit that the learned Regulatory Authority after elaborate discussion and considering the entire material on record and came to correct conclusion and there is no infirmity in that findings. Therefore these appeals have to be dismissed.

4. Point for consideration:

1. Whether these appeals are deserve to be allowed or not?

Point:

5. According to the promoter they have entered into sale and construction agreement with the home buyers and the promoter agreed to

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deliver and hand over possession of the fully constructed apartment/flat within 42 months commencing from Bhoomi Pooja (18.1.2013) i.e., before July 2016 with a grace period of 3 months for the construction of apartment at Thaiyur Village, Kelambakkam, Chengelpet Taluk, Kanchipuram District, in the project 'Today' with M/s.Akshaya Private Limited. The promoter has informed the home buyers that the project would be completed by September 2019. In clause 11 of the construction agreement dated 25.6.2016 in which the promoter has agreed that in the event of any delay in handing over the property the promoter undertakes to pay a rental compensation to the home buyer to the tune of Rs.3000/-, Rs.5000/- and Rs.7500/- per month respectively depends upon the size of the apartments subject to the delay not being attributable to the reasons mentioned in the agreement and also subject to the home buyers having effected all their payments on time as stipulated in Annexure 1 of this agreement without any default or delay. Therefore the home buyers are entitled to payment of rental compensation of delay. Further, the promoter has made structural completion of the building as contemplated in Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. Therefore, the question of registration of the project does not arise.

6. The learned counsel for the appellant had submitted written arguments before the Regulatory Authority for the above three appeals connected complaints, in which reasons for the non registration of the project are as follows:

a) The proviso to section 18(1)(b) entitles a complainant interest for the every month of delay at such a rate as may be prescribed i.e., 8.70 + 2 % = 10.70% as on date, thereby causing an onerous liability on the promoter.

b) If any of the home buyers seeks withdrawal from the project, the amount paid by the home buyer will have to be returned with same interest.

c) Payment of compensation as per provisions of Section 18 is much higher than the rental compensation which alone was factors in deciding the cost of the apartment.

d) If the promoter is compelled to pay compensation as per Section 18, it will result in drastic adverse impact on its financial position, which will in turn seriously affect the progress of the project.

The above said four factors namely payment of the interest, refund and compensation result in adverse impact on the promoter is a root cause for the refusal of the promoter to register the project and seeking shelter under Rule 2(h)(iii) as a shield.

7. Now, in the appeal the learned counsel for the appellant would change the pattern of arguments by interpreting and differentiating the words employed in Rules 2(h)(ii) 'buildings' and 2(h)(iii) 'construction' and the word buildings does not find a place in 2(h)(iii) hence mere structure

completion alone is sufficient to invoke exemption from registration of the project under Section 3(1) of the Real Estate (Regulation and Development) Act, 2016.

8. The learned counsel for the home buyers would submit that even under Rule 2(h)(iii) as the promoter has not completed basement car park and podium in the interconnecting areas of common basement car park have not been erected hence 2(h)(iii) is not applicable.

9. Perused both side contentions. On perusal the contention raised by the appellant side is that in the outside Chennai Metropolitan area mere structural completion namely columns, beams and slabs alone is sufficient to claim exemption under 2(h)(iii) and in Chennai Metropolitan area all the buildings in the projects have been structurally completed to invoke exemption under Section 2(h)(ii). How far the arguments are sustainable has to be analyzed.

10. Before going to discuss the merits of the case the relevant provision has to be looked into and the same is extracted as follows:

The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017

2. (h) "Ongoing project" means, a project where development is going on and for which completion certificate has not been issued but excludes such

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projects which fulfill any of the following criteria on the date of coming into force of sub-section (1) of section 3 of the Act:-

(i) .. ..

(ii) the projects in Chennai Metropolitan Area for which application for completion certificate has been filed with Chennai Metropolitan Development Authority subject to furnishing certificate from the architect/licensed surveyor/structural engineer associated with the project to the effect that all the buildings in the projects have been structurally completed i.e. all the columns, beams and slabs have been erected supported with photographs. Chennai Metropolitan Development Authority will issue, completion certificate for those projects in compliance with Completion Certificate norms prescribed. In Completion Certificate filed cases, if the Completion Certificate is rejected by Chennai Metropolitan Development Authority for violation of norms, such projects will be intimated to the Real Estate Regulatory Authority and will be bound for registration with Real Estate Regulatory Authority. The details of all projects where Completion Certificate application has been filed with Chennai Metropolitan Development Authority prior to notification of these rules will be disclosed to the public by publishing the list of all such projects on the website of Chennai Metropolitan Development Authority and Real Estate Regulatory Authority immediately after notification of these rules.

(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.

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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.

The projects in Chennai Metropolitan area all the buildings of the projects have to be structurally completed as per 2(h)(ii).

The projects outside Chennai Metropolitan area, if the construction is structurally completed as per 2(h)(iii) it is enough.

11. On the side of the appellant the learned counsel emphasized the word 'buildings' and vehemently put forth the difference between two provisions and the absence of the word 'all the buildings' in 2(h)(iii) is the concession given to the outside Metropolitan area to claim exemption by completing the construction structurally. In this case the promoter has completed structurally all the buildings except the basement car park and podium not structurally completed even then he is entitled for exemption.

12. In the Real Estate (Regulation and Development) Act, 2016 the word building is defined in Section 2(j) which runs as follows:

Section 2 (j) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;

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13. As per the above definition any structure or part of a structure intended to be used for residential etc. In the Metropolitan area as per 2(h)(ii) all the buildings in the project have to be structurally completed. But in the outside Metropolitan area admittedly the word building is not employed instead of that the word 'if' is employed as a condition. For the word structure the meaning is given as all the columns, beams and slabs. All the three items are plural. It means that all the columns, all the beams and all slabs. That is why the word 'if' is employed. Now let us see the full meaning of the word 'if the construction is structurally completed' means that all the columns, all the beams and all the slabs in the project if constructed fully it can be treated as structurally completed. In this case admittedly structural incompleteness of the basement car park and podium cannot be construed as 'construction is structurally completed'. Therefore, learned Regulatory Authority came to a correct conclusion in paragraph 51 of its order that technically it does not qualify to be a structurally completed project entitled for exemption from registration under Rule 2(h)(iii). Therefore this Tribunal comes to the conclusion that the arguments put forth by the learned counsel for the promoter is not sustainable.

14. On the side of the appellant they have given reasons for not willing to register their project on the following reasons:

a) Payment of higher rate of interest @ 10.70%.

b) Refund of sale consideration with same rate of interest.

c) Payment of compensation higher than the rental compensation

d) Payment of compensation under Section 18 leads to adverse impact on financial position and leads to project delay.

Hence the promoter seeking shelter under Rule 2(h)(iii) as a shield.

15. The above stated reasons are the concocted and created reasons without knowing the impact of the consequences of the Act. The above said reasons are the background for the enactment of Central Legislation. The background of this Real Estate bill 2013 clearly spells out the reasons behind initiating the Legislation. The background of the Act is as follows:

REPORT

Background

The Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha on 14th of August 2013. The Bill contains the Statement of Objects and Reasons which spells out the reasons behind initiating the legislation by way of this Bill. It inter alia states as follows-

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or

building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance he interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter. and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

* * *

16. Even though the above said bill was introduced in the year 2013 it conceived as an Act passed by the Parliament only on 10.03.2016. Originally the model Act was drafted in the year 2009 after hectic steps taken by the Legislators this Act received the assent of The President on 25.03.2016 and came into effect on 1.5.2016 and 1.5.2017 respectively. The preamble of this Act is to ensure sale of plot or apartment or real estate project in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector which runs as follows:

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

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17. The home buyers entered into sale and construction agreement with the promoter on 25.06.2014. The promoter agreed to hand over possession before July 2016 with grace period of 3 months i.e., October 2016. Till August 2018, the promoter failed to hand over possession, the home buyers were constrained to approach the Regulatory Authority. In 2019, during the pendency of the case the promoter has committed to complete all the blocks in a phased manner by September 2019. A copy of the letter has been circulated to all the complainants. It was also admitted by the promoter in his counter at Para No.18 "Recently, the respondent has informed the complainant that the project would be completed by September 2019 ". Further the promoter has stated in his counter as follows: "Therefore, it is stated that as per the said clause 11 the customers are entitled to payment of rental compensation for delay in handing over as per the terms of the said agreement."

18. As per the above statement the promoter has clearly taken a stand that he will complete the construction as per his choice and will and pleasure till then as per clause 11, the home buyers ought to receive the amount as compensation given by the promoter. The home buyers are not having any right to question the same. This is the answer of the promoter. That is why The Real Estate (Regulation and Development) Act, 2016 came into picture. Now, the promoter is seeking shelter by way of shield under Rule 2(h)(iii). Already the Hon'ble Madras High Court has ruled in CMSA No.22 of 2019 dated 15.09.2020 which is as follows:

Subashini Thulasiram vs M/S.Spr & Rg Constructions Pvt.

24.As rightly pointed out by the learned senior counsel appearing on behalf of the appellant, it is well settled law that the parent Act will prevail over the rules and there cannot be any rules contrary to Act. Assuming that Rule 2(h)(ii) gives some relief to the 1st respondent, it is in contrary to Section 3 of the Act. When the Act has come into force on 01.05.2017, the first respondent should have complied with. The principle that the subordinate legislation cannot be in violation of the Act is supported by following decisions of the Apex Court:

1.Ramesh Mehta Vs. Sanwal Chand Singhvi reported in 2004 (5) SCC 409.

2.Global Energy Ltd., Vs. Central Electricity Regulation Commission reported in (2009) 15 SCC 570.

The State Government Rule 2(h)(ii) is contrary to Section 3 of the Act and therefore the first respondent cannot take advantage of the same and claim exemption from registration.

19. As per the above verdict of the Division bench of the Hon'ble High Court of Madras the finding of the Regulatory Authority is correct and there is no chance for interference. Furthermore, the promoter even after promise to complete the project within September 2019 the project of the promoter is not completed even in that time. Even then the promoter failed to complete the project and searching the ways and means to relieve from the clutches of The Real Estate (Regulation and Development) Act, 2016. Hence it is not acceptable and permissible under the Act. Therefore this Tribunal comes to a conclusion that there is no force in the arguments

hence there is no chance to interfere in the findings of the Regulatory Authority. The point is answered accordingly.

20. The learned counsel for the appellant sought to bring out a distinction between the use of the word 'building' in Section 2h(ii) and 2h(iii). Further he mainly would rely upon the definition 2(j) where the building is defined. According to him the completion of the building would only mean the portion which they occupy for residential purpose. Whereas the complaint now is the non completion of the underground or the basement car park and the podium thereon, which according to him would definitely not form part and parcel of the structural building namely the house or the flat as such. He would also further point out that in this particular case as they have completed the building as such and not as in the earlier case as decided by this Court wherein only the beams and columns of the buildings have been constructed. Thus he would like to differentiate between the two rulings of this Tribunal that mere non completion of the underground car park or the podium cannot be a reason to come to a conclusion that they have not completed the project itself. In that angle only he is specifically pleading that this project cannot be treated as an ongoing project. Furthermore, he would content that the total area of the project is 8,11,164 sq. ft. Out of this the area covered for the building is only 1,37,900 sq. ft. The balance area of 6,73,264 sq. ft is admittedly an open area consisting of roads, parks, landscapes, etc., In fact the foot prints of the buildings in the said projects are only 17% of the entire project area. Taking this into consideration the complaint of the complainant regarding the

temporary unavailability of the basement car park cannot be considered an inconvenience or a hindrance for the effective occupation and utilization of the apartment for the intended purpose. In other words he would contend he satisfies the requirement of the Section in the Act namely 2(zn) whereby he has demonstrated that there was no hindrance for the buyer to occupy that. In this connection he would also point out that excepting the very few members out of the 1,239 apartment allottees as many of them have already occupied and taken possession of the property this finding of the court below that it is still an ongoing project is not legally sustainable. He would also further point out that the rules as framed in Tamil Nadu makes a distinction in the definition of an ongoing project where even a construction with only columns and beams would deem to be a complete construction whereas in this case even as per the inspection report of the very Authority itself dated 30.11.2018 the flats have been almost completed. Hence also the project cannot be construed as an ongoing project. Above all these things he would also contend that even as per clause 8.3 of the agreement when the parties have agreed to develop the project in phased manner the present complaint for registration is not maintainable especially when they are almost completed though little belatedly, the occupiable portion of the building as per the undertaking given to the court.

21. All these arguments though would tend to say that they have completed the building as a usable commodity as rightly pointed out by the

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respondents they have the underground car parking or the podium which is mandatory for the occupants to have their car parks and to reach properly to their house which is not been completed would definitely mean an include the project to come within the meaning of the ongoing project. This also is substantiated by the judgment of the Hon'ble High Court in ***Subashini Thulasiram vs M/S.Spr & Rg Constructions Pvt. In CMSA No.22 of 2019 dated 15.9.2020.***

22. From the arguments of the learned counsel we understand that they have completed the project namely the construction of the building and other amenities belatedly. They have also handed over many number of houses/flats to the allottees. At the same time we have also found out the completion of the building is after the enactment of the Act. Though it was specifically pleaded that the DTCP has granted exemption in their website accepting it is a completed project. The Authority has specifically come to a conclusion that the actual completion was done after the coming into force of the Act. The Authority has not accepted the grant of exemption in the website of the DTCP after the advent of the law. We have now discussed in detail that the project is an ongoing project hence we are directing them to register the project. This direction is given mainly to implement the Act in letter and spirit. At the same time the builder cannot take an umbrage under the provision that his original approval dated back to the year 2012 he has a five year period in the approval thereafter he has got an extension as per law for an another three year that means the extension comes to an end in October 2020 because of this period

being over can the project be not registered which question was looming over in our mind. No person can take advantage of his own wrong committed. Here the builder would not be allowed to go scot free from taking the idea if the approval period of eight years is over the project cannot be registered. To avoid such intention to circumvent the Rule we would direct the Authority to order giving this reason take into consideration in this peculiar circumstances. The answer is very simple the builder has to register and the authority to take into consideration the period of litigation pending before the Appellate Authority. In fact the litigation commenced before the authority way back in 2018 itself. The order was passed in November 2019 had it been registered at that point of time they had a approval intact. The appeal has commenced in 2020 during the pendency of the appeal there was a stay. Now by virtue of the order passed today the appellant cannot go scot free without registering to avoid any such complication we direct the Regulatory Authority namely RERA to register the project taking into consideration the period of litigation namely 2018 till 2021 has to be excluded if that is excluded the approval continues. Apart from this as rightly pointed out the entire building is now over even the complaint was only non completion of the basement car park and the podium. Merely because of small portion which was not completed the builder should not later on take advantage and refuse registration. Hence we give a direction both to the builder to seek for registration and the authority to register inspite of the fact the extension period has come to an end in October 2020.

22. The promoter has promised to complete the blocks B, C and D of the project 'Today' within September 2019. But the promoter failed to comply with the promise. Therefore, the learned Authority directed the appellant to register the blocks B, C and D of the project 'Today' with the Authority. Taking into consideration the argument of the appellant counsel that they have completed the building portion of the project and also the magnitude of completion of 1239 apartments out of which excepting a few of the complainants when many of them have already occupied the flats but implementing the Real Estate Act in letter and spirit this Appellate Authority is granting three months time to register the project.

A.No.35 of 2020

24. In the result, this appeal is dismissed with costs. The order of the Regulatory Authority in C.No.169/2018 dated 7.11.2019 is confirmed and the appellant/promoter is directed to register the B, C and D blocks of the project 'Today' within 3 months with the Authority and also direct the Authority to register the same to ensure the protection of the interest of the consumers as and when they submit the papers.

A.No.36 of 2020

25. In the result, this appeal is dismissed with costs. The order of the Regulatory Authority in C.No.166/2018 dated 28.11.2019 is confirmed and the

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appellant/promoter is directed to register the B, C and D blocks of the project 'Today' within 3 months with the Authority and also direct the Authority to register the same to ensure the protection of the interest of the consumers as and when they submit the papers.

A.No.37 of 2020

26. In the result, this appeal is dismissed with costs. The order of the Regulatory Authority in C.No.170/2018 dated 28.11.2019 is confirmed and the appellant/promoter is directed to register the B, C and D blocks of the project 'Today' within 3 months with the Authority and also direct the Authority to register the same to ensure the protection of the interest of the consumers as and when they submit the papers.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 22nd Day of December 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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