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 27.09.2021

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

Appeal No. 41 of 2020

Dr.Vandana Parvez ... Appellant

-Vs-

1. IVR Hotels & Resorts Private Ltd.,
2. IVRCL Limited
3. Kotak Mahindra Investments Limited
4. Kotak Mahindra Trusteeship Services Limited
5. Kotak Investment Advisors Ltd
6. E.Sudhir Reddy
7. E.Sunil Reddy
8. R.Balarami Reddy .... Respondents

This appeal was taken on file on 10.02.2020 against the order of the Adjudicating Officer in S.R.No.0278/2018 in un-numbered CCP No. / 2019 dated 10.12.2019 and came up for final hearing on 01.09.2021 in the presence of Appellant, who is party-in-person and the 1st respondent through its counsel M/s.Thriyambak J. Kannan, Rohan Cherian, Arushi Naresh Hegde, O.Solaiappan

E.N.Hareepriya & G.Annapooranias and respondents 3 to 5 appeared through their counsels M/s.N.Ramakrishnan, P.Neethikumar, Mabel Celestina Thomas & S.M.Kothai Muthu Meenal, Respondents 2, 6 to 8 even though served notice they have not appeared. 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:

ORDER

1. The appellant/complainant preferred a complaint against the promoters/respondents before the Adjudicating Officer in S.R.No.0278/2018 in un-numbered CCP No. /2019 dated 10.12.2019 for the relief of compensation against the respondents. Regarding the maintainability of the complaint the Adjudicating Officer considering the written argument as well as oral argument of the complainant and documents and came to a view that notices to be sent to the respondents and they also to be heard on the question of maintainability of the complaint. Hence ordered notice to respondents. After the appearance of the respondents 1 and 3 to 5 the complainant filed written submission on 15.11.2019 and the case was posted for written submission of respondents on 27.11.2019. On that date no representation for the complainant, the respondents' counsels were heard and orders pronounced on 10.12.2019 by holding that the complaint is maintainable only against R1 and ordered to return the complaint to the complainant for proper presentation of the complaint in the prescribed form N with only necessary party as respondent and relevant averments for decision by this forum within 10 days from this order failing which this complaint stands rejected. Aggrieved upon the same the complainant preferred this appeal. For

easy understanding the parties are referred as per their original rankings as purchaser/complainant and promoters/respondents.

2. According to the complainant IVR started advertising about its Aavisa Project in leading English and Tamil dailies as well as over the internet, with tall claims of promoting it as a premium residential complex with world class amenities including a Golf Course, club house, hotels, hospitals and schools etc. at its site in Santhavelur Village, Sriperumbudur Taluk, Kanchipuram District. They also assured the complainant and her family, membership to use the Golf Course being developed by them as a part of the project. In fact, the project was marketed as part of a master plan with 'State level environment impact assessment'. These apart, they also emphasized that the investors of samten housing being promoted with DTCP Approvals and parcels of land bearing S.Nos. 425/4A, 425/4B etc totally measuring about 52 acres at Santhavelur Village, Sriperumbur Taluk would have the right to use the Mediterranean style Golf club being constructed and made operational by the company. Believing what she had seen and had to be true she agreed to purchase plot No.262 (House no.20) in the above said S.No. measuring 1980 sq. ft. for a total sale consideration of Rs.15,84,000/-. Then, she was compelled against her wishes to agree and enter into a construction agreement to get her villa built by them measuring about 2150 sq. ft. at the rate of Rs.2100 sq. ft. excluding the statutory dues or charges payable to the Government towards all the expenses incurred for obtaining sanctions and approvals for construction of building, charges payable towards WAT, service tax and for TN electricity board connections. IVR quoted a total of Rs.60,99,000/- for the land and the villa in Samten B housing within the Aavisa project. On 9.12.2011, the complainant entered into sale agreement and paid a

sum of Rs.4,00,000/- towards advance and then on 26.12.2011 the complainant paid Rs.11,84,000/- and got executed the sale deed for the land.

3. On the very same day, i.e., 9.12.2011 she was forced to execute a construction agreement for the construction of the villa on plot no.262 measuring about 2150 sq. ft. for total cost of Rs.45,15,000/-. So far she has paid a sum of Rs.56,47,500/- for which receipts have been issued. During the construction the complainant observed cracks on the newly casted roof of the said villa through which rain water was oozing into the floor of the villa. The said defect was intimated to the representatives of the company. But grievances were grossly neglected. Most of the common facilities/amenities namely golf course, club house, hospitals, golf academy, Multi-cuisine restaurant, schools etc are lying incomplete or not initiated at all. Around June 2015, the complainant also took temporary possession of her villa to furnish and provide essential house hold consumer durables deemed essential for living in it. However, after the completion of the interior work when the region experienced rains, the complainant was shocked and disappointed to face the outcome of the substandard quality of construction and materials used by the promoters of the project from multiple stand points. As per the construction agreement the time limit for handing over of the possession was fixed to be 18 months. Even then the promoters failed to complete the project as promised. Hence, the complainant was constrained to file a complaint for compensation under the ground of delay in handing over and defective construction due to sub standard quality of construction materials etc. and for mental agony etc and claimed compensation to the tune of Rs.5,27,35,600/-. The Learned Adjudicating Officer returned the complaint for some queries for which the complainant filed written submission

and after hearing the complainant the Learned Adjudicating Officer came to a view that notices to be sent to the respondents to decide the maintainability of the complaint. After contest the Learned Adjudicating Officer directed to return the complaint for proper presentation in Form 'N' with necessary parties. Aggrieved upon the same the complainant preferred this appeal with number of citations regarding necessary parties.

4. Points for consideration:

1. Whether the appeal deserves to be allowed or not?

Point No.1:

5. According to the complainant, she is the purchaser and the 1st respondent is the promoter and other respondents who are the investors and they entered into joint venture agreement to develop residential townships and commercial complexes in the project land measuring 700 acres situated at Santhavelur, Chittoor, Pappankuzhi village, Kanchipuram District, hence all the respondents are promoters. The complainant/purchaser purchased a plot from the 1st respondent and entered into construction agreement and paid entire amount except pending stage payment. In the mean time the purchaser noted and find fault and defects in the construction and to redress the grievances and for compensation she came forward with the complaint. The above said complaint before taken on file the issue regarding necessary parties was decided and held that the complaint was not in proper form.

6. The complainant would submit that without entertaining the complaint the forum has decided the maintainability of the complaint and the necessary parties to the complaint and it is inconsistent. Further would submit that she has submitted the complaint in form N as contemplated in the Act itself. Therefore the

complainant sought for allowing the appeal by setting aside the order of the Adjudicating Officer.

7. The learned counsel for the respondents would submit that the complaint itself is bereft of particulars for the adjudication of the issue. Furthermore, the complainant and the 1st respondent entered into sale and construction agreement and they are having binding contract between them and the other respondents are in no way connected with the agreement hence they are unnecessary parties. Hence the learned Adjudicating Officer rightly held that except the 1st respondent other respondents are unnecessary parties and directed the complainant to represent the complaint with proper particulars in proper form. Therefore the appeal has to be dismissed.

8. Perused both side contentions. On perusal of the order of the Adjudicating Officer dated 10.12.2019 in paragraph No.7 the finding is as follows:

> ***"It is held that the complaint is maintainable as such only against the first respondent company, a legal person to be represented by his managing director or any directors carrying on business of the company and not against any other respondents."***

In paragraph No.8 the finding is as follows:

> ***"The first respondent is at liberty to raise all the defences available to them as promoter under the RERA Act after the complaint is entertained by the Forum."***

In paragraph No.9 the finding is as follows:

> ***"Considering all the above circumstances, the complaint is ordered to be returned to the complainant for proper presentation of the complaint in the prescribed Form N with only necessary party as respondent and relevant averments for decision by this Forum within 10 days from this order failing which this complaint stands rejected"***

9. Out of the findings in three paragraphs in paragraph No.7 the finding with regard to respondents 2 to 8 and paragraph No.8 with regard to respondent No.1 and paragraph No.9 consolidating the paragraph Nos. 7 & 8 for return of complaint. The specific contention of the complainant is the order is inconsistent. As per paragraph No.8 the complaint itself is not entertained. Without entertaining the complaint there is a finding regarding respondents 2 to 8. Without entertaining the compliant maintainability of the complaint against R1 and non maintainability of the complaint against other respondents were decided. Finally in concluding paragraph the complainant is directed to represent the complaint only with the respondent No.1. How far the finding is sustainable has to be analyzed on the basis of the available documents on record.

10. The complainant filed typed set No.8 as annexure No.28 at page No.141 to 198 regarding joint venture agreement between the respondents in which at page No.146 at para 'B' it has been stated about the project which runs as follows:

> ***"The promoters and the investors propose to jointly develop residential townships and commercial complexes (the project) on contiguous places and parcels of land admeasuring 700 acres situated at Santhavelur, Chitoor and Pappankuzhi village, District of Kanchipuram, Sub-Registration District of Wallajabad in the state of Tamil Nadu acquired or to be acquired by specified entities (as defined hereafter), in multiple phases (the property), the description of the property has been more particularly set out in Schedule 1-A".***

11. The above said document relied by the complainant is the prima facie proof for impleading the other respondents. On the side of the respondents 3 to 5 they have not denied the above said document. They have contended only about the privity of contract between the complainant and the 1st respondent as per the

construction agreement. In the order itself the above said document of the complainant, namely the joint venture agreement which was relied by the complainant to prove her plea as a prima facie, was not looked into and discussed regarding impleading of respondents 2 to 8.

12. As per the para No.8 of the order the compliant is not at all entertained. But in para No.7 it has been specifically held that the complaint is maintainable as such only against the 1st respondent. So as per the para No.8 the complaint is entertained. In para No.9, consolidating the para Nos.7 & 8, decided and directed the complainant to represent the complaint in the prescribed Form 'N' with only necessary party as respondent. The Learned Adjudicating Officer has already expressed his view regarding who are the parties to the complaint to be arrayed as respondents and directed to return the complaint for proper presentation in Form N.

13. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 itself prescribed Form N. In which 8 columns were prescribed after the verification of the complainant. On verification of the original complaint presented by the complainant to the Learned Adjudicating Officer it is seen that the complainant presented the complaint through Form 'N' on 01.10.2018 then subsequent dates namely 29.05.2019 and 10.06.2019 date seals were affixed. The complainant has filled all the 8 columns with elaborate narration of facts and events and claimed compensation to the tune of Rs.5,27,35,600/-. In the above said complaint the complainant arrayed respondents 1 to 8 and claimed compensation against the respondents. On 25.10.2018 the office has returned the complaint for answering four queries. Out of which queries No.1 and 2 regarding respondents 3 to 8 as how they are entitled to be added as a party? The remaining queries are with

regard to whether the project is the ongoing project and when possession was taken over by the complainant? As per the endorsement the complainant represented on 10.06.2019 with delay excuse petition and it was allowed then after hearing the complainant the Learned Adjudicating Officer came to a conclusion that notice has to be sent to the respondents and after appearance of the respondents and after hearing both sides the impugned order was passed.

14. Before entertaining the complaint, who are necessary parties to the complaint was decided and after passing orders in the complaint, the complaint was returned by an impugned order. Now we have to analyze whether the impugned order is legally sustainable.

15. The entertaining of complaint by the Adjudicating Officer is dealt with under Section 71 and 72 of The Real Estate (Regulations and Development) Act, 2016. The procedure for entertaining the complaint before the Adjudicating Officer is contemplated by the Tamil Nadu Real Estate Regulatory Authority in the Tamil Nadu Real Estate Regulatory Authority (General) Regulations, 2018. In the above said Regulation in Chapter VI to VIII specifically dealt with entertaining of complaint. It is relevant to mention the relevant chapter which runs as follows:

CHAPTER VI

10. Complaints before the Adjudicating Officer:

(1) Whereas, the Rule 38 of Tamil Nadu Real Estate (Regulation & Development) Rules, 2017 read with Section 31 of Real Estate (Regulation & Development) Act, 2016, prescribes the manner of filing complaints, for adjudging compensation under Section 12, 14, 18 and 19 of the Act, before the Adjudicating Officer and the manner of holding an enquiry. Provided that those complaints which are numerous and based on similar facts and praying for same relief sought against the single promoter, all those complaints shall be clubbed and disposed in common proceedings.

(2) Any aggrieved person may file a complaint in the prescribed FORM–N with adequate copies to be served upon each respondent with the Adjudicating Officer for compensation under Section 12, 14, 18 and 19 of the Act read with the Rule 38 and Regulations made thereunder, save as those provided to be adjudicated by the Authority, which shall be accompanied by a fee of Rs.5,000/- remitted through online. The aggrieved person has to submit his application along with supporting documents by registered post or in person in office within 10 days from the date of filing on-line, in case of Tamil Nadu and 15 days in case of Andaman & Nicobar Islands.

(3) The application shall be presented either in person by the applicant himself or through an authorized representative as contemplated under Section 56 of the Act. Necessary vakalat or Memo of authorization duly attested with affixture of applicable court fee stamp as well as Advocate Welfare Fund stamp, as the case may be, on it shall be filed. And such authorization shall contain the address of the representative with particulars enrolment No. or Registration No., e-mail id, mobile no. etc. for proper communication. The original of such letter of authorization shall also be produced for verification at the time of filing for verification and return.

(4) The applicant shall also pay the Authority a sum of Rs. 600/- through online towards postage charges: Bank: Indian Bank, CMDA Branch Current Account No: 65430 57988 Name: Tamil Nadu Real Estate Regulatory Authority (TNRERA) IFSC Code: IDIB000I010

CHAPTER VII

11. Procedures before the Authority and Adjudicator: In respect of all complaints before the Authority and the Adjudicating Officer, the procedures mentioned below in this Regulations No.12 to 17 upto chapter X shall be followed and adhered.

CHAPTER VIII

12. Presentation, Scrutiny and Numbering:

(a) Pagination of the complaint filed before the Authority/Adjudicating Officer shall be in continuous manner beginning from the complaint along with annexures.

(b) Initialing alteration: Every interlineations, eraser or correction or deletion in any complaint or document shall be initialed by the party or his authorized representative.

(c) Every complainant is required to affix his or her signature shall state his or her name in capitals near his or her signature and initial or sign at the bottom of the each page.

13. Endorsement and Scrutiny:

(a) The person, in charge of the receipt of the complaint or any other documents, whenever any complaint is filed or any other documents is received, would immediately affix the seal of the authority with date. At the time of receipt of complaint, it is the duty of the concerned clerk to verify whether the requisite number of copies along with necessary index and on such receipt, the concerned clerk will sign on the first page in the main sheet as well as in the copies and assign Current No. for every complaint and pass it for scrutiny to the officer concerned.

(b) The scrutiny officer of the Authority shall, on receipt of the complaint from the Receiving branch, scrutinize the same as expeditiously as possible but not beyond 7 working days from the date of receipt.

Provided if, for any reason, the scrutiny is not completed within the above period, the same shall be immediately reported to the designated officer, who shall take prompt steps to complete the scrutiny and or extend the time.

(c) On scrutiny of the complaint, if it is found to be defective or incorrect in conformity with the provisions of the Act or Rule or Regulations thereunder, the Authority will return the paper for compliance in the proper form granting 15 days time for the complaints made in Tamil Nadu and 20 days for the complaints made in Andaman & Nicobar Islands or such time as the Authority prescribes. If the complaint is not duly represented with all compliance within the time granted, it may be treated as a complaint not in conformity and shall be posted before the Authority or the Adjudicating Officer as the case may be for dismissal for default. In such event, the complaint fee shall be forfeited. There shall be no bar for the complainant for filing afresh one

after complying the requirements only within a period of 90 days from the date of such dismissal.

(d) Complaint fee paid through online with the complaint shall be entered immediately on the receipt in the Register and the same should be initialed by the cashier or Accounts Officer and the Section Officer on every day. The official in charge of Cash Section and Section Officer shall after verifying the entries in the prescribed Register along with D. Ds. put their initials in the relevant columns in the said Register as token of acknowledgement.

(e) Court fee stamps affixed in the vakalat or Memorandum of Authorisation shall be checked and after cancellation of the same with the seal of the Authority shall be accounted in the Court Fee Register.

14. Registration and Numbering:

(a) Every complaint filed under Section 31 of the Act and under Rule 37 after checking and scrutiny shall be numbered as Complaint No. and registered in the appropriate register maintained in this behalf.

(b) Every complaint filed under Section 31 of the Act read with Section 12, 14, 18 and 19 of the Act and under Rule 38 after checking and scrutiny shall be numbered as Compensation Claim Petition No. (CCP. No.) and registered in the appropriate register maintained in that behalf.

(c) Interlocutory Application filed along with the Complaint instituted or thereafter shall be numbered separately as I.A.No.

16. As per Regulation No.13 (c) if the complaint is not properly represented what is the consequences is specifically narrated in the Regulation itself the relevant portion is as follows:

> ***If the complaint is not duly represented with all compliance within the time granted, it may be treated as a complaint not in conformity and shall be posted before the Authority or the Adjudicating Officer as the case may be for dismissal for default.***

17. In this case the complainant represented the complaint on 10.06.2019 without answering for the queries and simply endorsed as complied and

represented and sought for personal hearing before the Adjudicating Officer and on 02.07.2019 the complainant filed reply for the queries dated 25.10.2018 by way of written arguments and the complaint was also heard and passed orders on 10.07.2019 with regard to impleading of respondents 2 to 8 and found that complaint is maintainable against R1 alone and directed to return the complaint.

18. As per the above Regulation if the representation is not in conformity with the provisions of the Act it should be posted before the Adjudicating Officer for dismissal for default. But in this case the above said Regulation was not followed. Instead of that rights of the parties are decided before entertaining the compliant by returning the compliant for representation. Nowhere in the above Regulation has stated about the returning of complaint. In such circumstances the returning of the complaint after passing of the order before entertaining the complaint is legally sustainable has to be analyzed. For which the answer is available by way of precedent in the following verdict of the Hon'ble High Court which is reported as follows:

AIR 1953 All 609

Tula Ram vs Bhajan Singh

3. In this case the plaint was presented to the learned Munsif within time and he received the plaint and endorsed on it an order in his own hand on the back of the document. After having done so he should not have returned it to the lawyer concerned. When the court receives an application and passes an order thereon it becomes a part of the record of the court and it cannot be returned to counsel or to parties. The learned Munsif might have refused to accept the plaint but having taken it and written on the back of it an order that it was presented that day, he should not have returned the document to the lawyer concerned.

4. In this view of the matter the revision must be allowed and the order of the learned Munsif returning the document to the lawyer set aside. The plaint having been presented to him within time on 22-8-1947, it must go back for trial according to

law. I notice, however, that a court-fee stamp of only Rs. 5/- was paid on the plaint. I direct that the courtfee should be realised according to the provisions of the Court-fees Act.

19. In the above referred case the plaint was presented to the learned Munsif at his residence at 9.30 p.m. by the vakil for the plaintiff. On receipt of the plaint the Learned Munsif passed an order by stating that presented to me at 9.30. p.m. at my house. I do not think it proper to accept it at this late hour and therefore refused to accept it and returned it back to the said vakil. Against that order this revision has been filed before the Honble High Court of Allahabad. The Honble High Court held that when the court receives an application and passes an order thereon it becomes a part of the record of the court it cannot be returned to counsel or to parties hence the order of the Learned Munsif was set aside and the plaint having been presented to him within time it must go back for trial according to law.

20 As per the above verdict of the Hon'ble High Court the returning of complaint after passing of the order in the complaint by the Adjudicating Officer is legally not sustainable. Furthermore, for entertaining the complaint whether prima facie case is made out in the complaint alone has to be looked into. After entertaining the complaint the rights of the parties have to be decided on the basis of the natural justice. Therefore this Tribunal comes to a conclusion that the impugned order is liable to be set aside and the appeal is deserves to be allowed. The Point No.1 is answered accordingly.

21. This complaint for compensation was preferred on 1.10.2018. Nearly for the past 3 years this complaint is in S.R. stage and not yet entertained as a complaint for adjudication. As per Section 38(2) of the Real Estate (Regulations and Development) Act, 2016 the Authority shall be guided by the principles of

natural justice and, subject to the other provisions of this Act and the Rules made there under, the Authority have power to regulate its own procedure. The preamble of this Act insists for speedy dispute redressal. At this juncture, this stage is continues the purpose of this Act will be defeated. Each and every stage of the proceedings in the complaint the procedures contemplated in CPC need not be followed and by applying the principles of natural justice in terms of Section 38(2) of this Act, the claims and rights of the parties can be consolidated and decided in the final decision of the complaint, to implement the Real Estate (Regulations and Development) Act, 2016 in letter and spirit.

22. In the result, by allowing this appeal, the order of the Adjudicating Officer in S.R.No.0278/2018 in UN CCP No. of 2019 dated 10.12.2019 is set aside. The Adjudicating Officer is directed to entertain the complaint on file and adjudicate the complaint by giving sufficient opportunities to both sides and dispose the complaint on merits within 3 months. No costs. Connected Miscellaneous application is 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 27th Day of September 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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