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 17.12.2020

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

Appeal No. 51 of 2020

1. M/s. Medhika Infrastructures
   Represented by its Sole Proprietor Mrs.S.Tamilselvi

... Appellant

-Vs-

1. Mrs.Santhakumari,
2. Crescentz Homes and Infrastructures Private Limited
   Represented by its Director,
   Mr.Zubair Ahmed Thajudeen
3. Altimiz Infrastructures Limited
   Represented by its Director,
   Mr.Zubair Ahmed Thajudeen
4. M/s.Crescentz Square
   Represented by its Partner,
   Mr.Jalal Ahmed

... Respondents

This appeal has been preferred against the order of the Adjudicating Officer in I.A.No.105/2019 in C.C.P.No.261/2019 dated

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20.03.2020 and taken on file on 08.09.2020 and came up for final hearing on 30.11.2020 in the presence of Mr.R.Selvakumar, Counsel for the Appellant and M/s.Raj Jhabakh, Preeti Mohan, R.S.Pornima, Counsels for the 1st respondent. Notice to 2nd and 3rd respondents is dispensed with. 4th respondent called absent. Having heard the arguments of both sides and having stood over for consideration of this Tribunal till this date and deliver the following:

ORDER

1. The 1st respondent in this Appeal preferred a complaint in C.C.P. No.261/2019 for refund of advance amount with interest, compensation and for costs, against the respondents 2 and 3 in this appeal. During the pendency the 1st respondent herein, preferred a petition to implead the appellant herein as 4th respondent in the complaint since the appellant herein took over the project as a new promoter. Hence the 1st respondent sought for impleading the appellant herein as a necessary party. After contest the Learned Adjudicating Officer allowed the petition by ordering to implead the appellant herein as a 4th respondent. Aggrieved upon that the appellant herein preferred this appeal.

2. The 1st respondent/complainant along with her husband had booked a 2BHK units two at Vandaloor and paid a sum of Rs.17,13,460/-. Subsequently, the complainant cancelled one unit and amount was adjusted and transferred to the account of another unit. Later, Mr.Zubair Ahmed, who is the Director of the 2nd respondent company in this appeal,

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conveyed that they may not go ahead with the execution of the project and suggested the complainant to opt for a similar sized unit in the residential project developed by the 3rd respondent in this appeal. Then the complainant accepted the offer and flat no.F3 was allotted. After that as there was no progress in this matter the husband of the 1st respondent herein met Mr.Zubair Ahmed and conveyed his decision to cancel the booking and sought for refund of the amount with interest. But the said Zubair Ahmed assured that he shall arrange for the execution of the agreements immediately. Even then not complied the promise made by him. Hence the 1st respondent came forward with the complaint for refund. Originally the complaint was filed against the 2nd and 3rd respondents herein alone. Then 24 allottees of that project preferred complaints before the Tamil Nadu Real Estate Regulatory Authority and the authority has passed order. In that order the project was transferred to the new promoter namely the appellant herein. Hence the 1st respondent herein came forward with the petition to implead the appellant herein and the 3rd respondent herein as necessary parties. The Learned Adjudicating Officer accepted the plea of the 1st respondent and allowed the petition. Aggrieved upon that order the appellant has preferred this appeal.

3. The Learned counsel for the appellant herein would contend that the Learned Adjudicating Officer has not considered the facts narrated in paragraph 5(h) of the counter filed by the appellant and there is no privity of contract between the appellant and the 1st respondent. Furthermore, the 1st respondent has come forward with the relief under section 18 only and

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it can be adjudicated against the 4th respondent in this appeal alone. How far, the arguments put forth by the appellant side is tenable has to be analyzed.

4. Points for consideration:

1. Whether the appellant herein is a proper and necessary party for the complaint in C.C.P.No.261/2019 pending before the Adjudicating Officer?

2. Whether the appeal deserves to be allowed?

Point No.1:

5. Admittedly, the respondents 2 to 4 have not complied the promise made by them with the allottees. Hence allottees were constrained to file a petition before the Regulatory Authority in C.Nos.370 to 391, 396 and 397/2019. In the above said complaints the Learned Regulatory Authority has passed a specific order in para No.11 to 13 which runs as follows:

> ***" 11. The 6th respondent being the new promoter shall be required to independently comply with all the pending obligations under the provisions of the Act, Rules and Regulations made thereunder and pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.***
>
> ***12. The Registration already granted is extended upto 30.11.2021 as the project completion date. The new promoter shall operate a dedicated escrow bank account for the project for which the new Developer shall seek approval of the Authority by submitted a letter from the Manager of the concerned Branch in the prescribed format. The balance amount remaining in the dedicated project***

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escrow Bank Account opened by the earlier promoter shall be transferred by the earlier promoter to the new project Bank Account of the new promoter.

13. With these directions, the complaints stand closed."

As per the above said order it is crystal clear that the appellant herein was recognized as a new promoter and shall be required to independently comply with all the pending obligations and also pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees. In addition to that the appellant and other 33 allottees entered into Tripartite agreement in which in page number 4 and 5 it has been specifically agreed as follows:

"And Whereas the Parties to the 1st Part upon the knowledge of lapsed project and incomplete construction had requested the Party of the 3rd Part of its willingness to continue the project of construction of the A-Block in terms with the RERA rules and regulation and also the rest of the Apartments comprised in Blocks, B,C,D, E and F over the property situated in S.F.No.446 of Kumarapalayam Village out of the funds and expertise of the Party to the 3rd Part for which the party of the 2nd Part has no objection and the same has been mutually agreed between the parties.

2. ***The party to the 3rd Part shall apply for a fresh Registration from the Tamilnadu Real Estate Regulatory Authority with respect to the entire project including the completion of buildings in the lapsed project and the Party to the 2nd Part shall render its fullest of co-operation in effecting such registration for which the Parties to the 1st Part has consented to."***

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As per the above said Tripartite Agreement the appellant herein is required to complete the buildings in the lapsed project for which the 3rd respondent herein shall render full co-operation. The above said terms reveal that there is an obligation on the part of the appellant towards the allottees who were connected with the project namely Crescentz Homes and Infrastructure Private Limited, Altimiz Infrastructure Private Limited and Crescentz Square. On the side of the 1st respondent to prove the prima facie case as the appellant is a necessary party and to prove the privity of contract between the 1st respondent and the erstwhile promoter have produced flat allotment letter and acknowledgment which were issued by Crescentz Square, the 4th respondent herein. The privity of contract between the appellant and the 4th respondent is an admitted fact. On the side of the appellant the Learned counsel would vehemently contend and insisted the clause no.8 of the tripartite agreement which runs as follows:

> ***"The party to the 2nd part hereby undertakes that parties to the 1st part and party to the 3rd part or the land owners would not be liable in any manner whatsoever"***

As per the above clause the 2nd part namely Crescentz Square, the 4th respondent herein, has undertaken regarding the liability towards 1st and 3rd part. The appellant herein has filed the counter before the Adjudicating Officer but the appellant has not disclosed what are the terms and what are the amounts received etc., between the appellant and 4th respondent. It can be ascertained only by way of evidence. The liability of the 4th respondent herein can be fixed only after ascertaining the terms between the

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appellant and the 4th respondent. Now the 1st respondent has come forward with the petition to implead the appellant as a necessary party to the proceedings only to get a binding adjudication. Mere arraying as a party in the legal proceedings will not cloth with any right or liability against that party.

6. The 1st respondent herein pleaded that she booked a 2BHK unit at Vandaloor but it was changed to Coimbatore property at the instance of the 4th respondent herein and payment of booking advance to the tune of 20% of the sale consideration was proved by documentary evidence. So the plea of the 1st respondent with regard to party impleading petition is prima facie proved. On the side of the appellant and the 4th respondent they have not produced any piece of paper or evidence to prove their plea prima facie. In such circumstances the appellant herein, who is a new promoter as per the order of the RERA, is also directed to complete the entire project, hence the appellant is a necessary party to this proceedings and the appellant can in no way be prejudiced by impleading in the proceedings. The point No.1 is answered accordingly.

Point No.2:

7. The Learned Adjudicating Officer has allowed the petition. Against that order the appellant preferred this appeal on the above grounds and that grounds are not sustainable as found in point No.1. In such circumstances, this Tribunal finds that there is no merit in the appeal and the same is liable to be dismissed. The point No.2 is answered accordingly.

8. In the result the appeal is dismissed. No costs. The order of the Adjudicating Officer in I.A.No.105/2019 in C.C.P.No.261/2019 dated 20.03.2020 is confirmed. The 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 17th Day of December, 2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

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