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 06.01.2021

Coram : Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 52 of 2020

1. Evita Constructions Private Limited
   Represented by its Authorized Signatory
   Mr.A.Prabhakaran

2. Lucifier Constructions Private Limited
   Rep. by its Authorized Signatory
   Mr.R.Suresh ... Appellants

Vs

1. Mrs.Bhoomijha Murali
2. Mr.K.V.Murali ... Respondents

This appeal has been preferred against the order of the Regulatory Authority in C.No.479 of 2019 dated 03.09.2020 and was taken on file on 16.09.2020 and came up for final hearing on 17.12.2020 in the presence of M/s. P.Arivudai Nambi, S.Vijay Kumar, P.Senthil Kumar, Counsels for appellants and Advocate Mr.T.S.Vijayaraghavan, Counsel for the

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respondents. 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 respondents in this appeal are the complainants and the appellants herein are the respondents in the complaint before the Regulatory Authority. The parties in this appeal are referred as per their original rankings.

2. The complainants entered into an agreement on 09.05.2011 with M/s.Green Habitats Private Limited for the purpose of an undivided 314 sq. ft of land from and out of 2.25 acres land comprised in Survey Nos. 74/2A1, 74/2A2A, 74/2A3 and 74/2A2B, Senthamangalam Village, Chengalpet Taluk, presently in Chengalpet District for a sale consideration of Rs.1,89,970/- and on the same day entered into a Development agreement with M/s.Hiranandani Palace Gardens Private Limited (Erstwhile developer) for the construction of a residential flat measuring 1992 sq. ft in the 2nd floor in Tower 1 of block name "ChartWell' for a consideration of a sum of Rs.64,83,230/- and other charges namely corpus fund etc. to the tune of Rs.7,64,240/- and the total amount payable is Rs.74,37,440/-. It was also agreed by the erstwhile developer the possession of the property would be handed over in January 2013. Both the above said companies obtained project loan from the HDFC bank and paid the installments till 2012. Subsequently they were not able to

repay the installments hence the HDFC bank took proceedings under SARFAESI Act, 2002 and the mortgaged lands were auctioned in the year 2014 and e-auction was conducted by HDFC. The 2nd appellant herein became the successful bidder and the project was transferred by way of sale certificate. The 2nd appellant acquired the project in April 2014 and appointed the 1st appellant herein as its developer for the project and the 1st appellant sent mail communication to all the customers including the complainants. The complainants approximately paid 97% of the sale consideration of the flats to the erstwhile developers but they have not paid any single rupee to the appellants.

3. The only obligation of the appellants is to complete the incomplete structures. Therefore there was no privity of contract between the appellants and the complainants. The balance amount payable by the complainants to the appellants is Rs.11,20,562.89 for which the appellants requested by email in July 2016 to execute supplemental agreement but the complainants have completely neglected and ignored. The 1st appellant have completed six towers of 27 floors multi-storied building consisting of 500 apartments. The 1st appellant have structurally completed all other buildings including the complainants 'chartwell 204'. The 1st appellant applied for completion certificate after inspection by the DTCP authority they were exempted from registration and listed as Serial No.102 and status of the project is mentioned as structural work fully completed and consequently the 1st appellant's project is exempted. The 1st appellant has also obtained completion certificate for the building

named as Chartwell I and II from the special officer, Appur Panchayat, Kattangulathur Panchayat Union on 20.07.2018. In the meanwhile, the complainants have filed a complaint under section 31 of the Act before the Regulatory Authority in form 'M' as C.No.479 of 2019. The appellants have also filed their counter statement and thereafter Regulatory Authority decided to hear the maintainability of the complaint on 24.02.2020 preferred by the complainants. While so on 03.09.2020, the Regulatory Authority passed final order directing the appellants to register the project on or before 30.10.2020 and to execute the registered sale deed on or before 30.09.2020. Aggrieved upon that the appellants preferred this appeal.

4. During the course of appeal hearing on 23.09.2020, the appellants were willing to execute the undivided share of land and hand over the completed flat to the parties. On 28.10.2020, on the side of the complainants the counsel filed a memo regarding compliance of the earlier direction of execution of sale deed and possession also was handed over. At this juncture, the learned counsel for the appellants wants to argue the case regarding the direction of registration of the project. The learned counsel for the respondents would submit that their prayer has been complied.

5. On the side of the appellants they came forward with 14 grounds namely 'a' to 'p'. Out of that grounds a, b and p are all formal. Grounds c,d,e,j,k,l,o is with regard to completion certificate. Ground 'm' is

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with regard to privity of contract. Ground 'n' is with regard to Section 15 of the Real Estate Act. According to the appellants they have taken over the project from Hiranandhini Palace Garden. The respondents have entered into agreement for construction and obtained sale deed from them. They have also paid to the above said companies. They have not paid even a single pie to the appellants herein, hence there is no privity of contract between the appellants and the respondents. The next ground is with regard to Section 15 of the Real Estate Act. According to the appellants, the Real Estate Act came into force in the year 2016. The appellants had taken over the project from the erstwhile promoters in the year 2015 itself. So Section 15 of the Act is not applicable to appellants. Other grounds namely c,d,e,j,k,l,o are all with regard to the completion certificate and the disputed project is a completed project and exempted from the RERA registration. The learned counsel for the appellants vehemently put forth his arguments on the sole ground as the appellants' project is a structurally completed project the Regulatory Authority cannot direct the appellants project to be registered. It is unwarranted and moreover there is no prayer by the respondents in their complaint and their only relief is the direction to hand over possession and further it was also complied with. Under such circumstances the order of the Authority for the registration of the project is erroneous. The developer has obtained completion certificate from the competent authority and after inspection by the DTCP officials and the panchayat officials only they have issued the completion certificate. Further the appellants as the respondents before the authority have raised a plea of maintainability of

the complaint. But the authority has decided the case on merits without giving proper opportunity to the appellants and it is against natural justice. One V.Valliappan preferred a complaint against the 1st appellant before the Regulatory Authority in TNRERA/554/2017. The 1st appellant after appearance on notice filed reply after considering the complaint and reply the Regulatory Authority dismissed the compliant on the ground that the project is completed structurally as certified by DTCP and accordingly fall outside the ambit of Real Estate (Regulation and Development) Act 2016, accordingly the complaint was dismissed on 06.12.2017. But in this case the authority took a different view. In addition to that the learned counsel elaborately put forth the arguments by relying and distinguishing the judgments of this Tribunal.

6. The authority has also relied the judgment of this Tribunal in A.No.1/2018. But the facts of the case in the above appeal are entirely different from the case in hand. Hence the above said findings are not applicable to the facts of the case. The Learned advocate for the appellants has relied page no.16 and 17 of the (typed set) A.No.1/2018 which runs as follows:

> ***"Whereas in this particular case the respondent has himself admitted in the 1st objection to the complaint filed before the authority that in November 2017 in paragraph 2 very clearly that they have intimated the local authority by their letter dated 6.6.2017 that the project has been completed in respect of all the slabs, columns and beams except top two floors of block B and C which means that even in November 2017, they have not completed even the slabs, columns and beams of the project in two floors. Further, they have***

committed the very same objection in paragraph 5 (2) ' the structural works of A block is already completed and in the case of B and C blocks, only 3 floors slab is to be casted. The internal finishing of A block can be commenced immediately. The structural completion of B block will require 2 months and the structural completion of C block will require 3 months. Accordingly B and C blocks will require only 3 months commencing internal finishing' wherein they have categorically stated that 3 floor slabs have to be casted that means their admission is very clear that they have not completed the project. It could only be construed as only an on-going project even as per their own admission.

In the above A.No.1/2018 which was relied by the Learned Regulatory Authority in which there was a clear admission by the developer himself that they have not completed their project. Hence it was construed as an on-going project. But, in this case in hand, no such admission was made by the appellants and project were structurally completed to that effect certificates were issued by the competent authority hence the above judgment is not applicable to the facts of this case.

7. The next judgment distinguished by the learned counsel for the appellant is that A.No.2/2018 of the TNREAT in which also due to own admission the Regulatory Authority found that it is an on-going project. In this regard the learned counsel has relied page no.39 (typed set) of the judgment in A.No.2/2018 which runs as follows:

"Only on this bases and on the certificate of DTCP, the earlier fine of Rs.1,00,000/- for non-registration was withdrawn but even now, even as per their own admission till date, they have not completed which is the finding of the

Authority and also the acceptance of the Advocate and the party before the Appellate Tribunal"

In the above judgment also both the Authority as well as the Tribunal came to a conclusion as an on-going project on the basis of the admission of the developer as an on-going project. The case in hand is not identical to that case hence the above judgment is not applicable to the facts of this case.

8. The next case distinguished by the learned counsel for the appellant is A.No.5/2018 and relied page no.113 (typed set) which runs as follows:

"Therefore the next argument in regard to the definition in the Rule does not stand to scrutiny especially in this case when the parties themselves have admitted that they have not completed a portion of the project and has chosen to register the unfinished portion as an 'ongoing project' though by their imagination, by splitting the very phase of construction, into different stages namely constructed and non-constructed. The net result is their admission of the builder that they have not completed the project as per the approval either on the date of the coming into force of the act and ever as per the report by the authority concerned as the act and even as per the report by the authority concerned as per the direction of the real estate regulatory authority much after coming into force of the Act they have completed the project at all. "

In the above A.No.5/2018 also finding given by the Authority as well as the Tribunal on the basis of the admission. The facts of the case in hand is entirely different from the above said facts hence it is not applicable.

9. The next case distinguished by the learned counsel with regard to A.No.7/2019 and relied page nos.121 and 122 (typed set) which runs as follows:

> ***"The intention of the legislature is that the completion can be declared only by the technical persons or those who are associated with the project. Relying the certificate alone, the President can be competent to issue completion certificate. The technical persons have not declared that the appellant's project has been completed. In these circumstances, the completion certificate relied by the appellant is not reliable and the said completion certificate is not sufficient to relive from the clutches of Rule 2(h)(ii). "***

In the above A.No.7/2019 the finding given by the Authority as well as the Tribunal on the basis of the completion certificate. The facts of the case in hand is entirely different from the above said facts hence it is not applicable. The above said order in A.No.7/2019 was confirmed in the second appeal by the Hon'ble High court in CMSA No.31/2020 dated 02.12.2020 at page No.146 (of the typed set), which runs as follows:

> ***"Furthermore, the Tribunal took note of the entire factual details and clearly culled out as to how the president of the village panchayat, Pudhupakkam issued a false certificate without following the mandatory procedure under the Act. This will clearly demonstrate that the appellants were somehow trying to manage to get out of the rigor of the statutory provisions. Thus, we find that there absolutely no ground to interfere with the order passed by the Tribunal. "***

The Hon'ble High Court confirmed the order of the Tribunal on the ground that the village panchayat Pudupakkam had issued certificate without following the mandatory procedure under the Act. But in this case

in hand the DTCP Authority and Appur panchayat had issued completion certificate after proper verification hence the above said judgment of the Hon'ble High court is not applicable to the case in hand.

10. The last appeal relied by the Learned counsel of the appellant with regard to CMA No.2287/2019 dated 03.02.2020. The above said CMA was filed against the order of this Tribunal in A.No.5/2018 referred supra. The learned counsel has relied para no.26 (Page no.138 of the typed set) of the judgment which runs as follows:

> ***"After the Act came into force and on receipt of complaint, the Regulatory Authority directed the Commissioner, Town and Country Planning to inspect the project and give a report. The report of the Commissioner itself reveals that the project has not been completed. As per the report of the Commissioner, the claim of the appellant that it is a structurally completed project is not true and only to escape from the clutches of law and avail exemption under Rule 2(h)(iii) of the Rules, the appellant claimed 'Serene Kshetra as structurally competed one and it is not an ongoing project falling under Rule 2(h)(iii). In such circumstances, both the Regulatory Authority as well as the Appellate Tribunal, have scrutinized the entire materials placed before them and passed the order directing the appellant to register the project under RERA Act."***

In the above judgment related case the promoter falsely claimed completion certificate and later it was found as project not completed and certificate obtained falsely hence, the Hon'ble High court confirmed the orders of the Tribunal as well as Authority. But in this case in hand no such false certificate was obtained and only due proper verification by the DTCP officials certificate was issued hence the facts of the case is entirely

different from the case in hand. Therefore, this judgment is also not applicable to the facts of this case.

11. The Learned counsel for the appellant would submit that the Tamil Nadu Real Estate Rules 2017 came into force on 22.6.2017. The 1st appellant applied for exemption of their project on 04.7.2017 u/s 2(h)(iii) of TNRERA Rules The DTCP officials inspected the project site and after due verification they have forwarded their status report of the project to the TNRERA. Then TNRERA has published list of projects which are exempted under 2(h) (iii) on their website and it is mentioned as structural work fully completed. But the above said fact was not considered by the authority. Furthermore, the same RERA has exempted the same appellant in a complaint filed by one Valliappan by its order dated 6.12.2017 in TNRERA/554/2017 on the basis of the project completed structurally as certified by DTCP. But in this case the same certificate was not accepted by the Authority.

12. The learned counsel further would submit that the authority has relied section 15(2) of the Act. The 1st appellant obtained the project before the Act came into force i.e., on 28.03.2014 so section 15(2) is not applicable to the appellant's project.

13. Now let us discuss the main arguments of the Learned Senior counsel with regard to the term under rule 2(h)(iii) on-going project.

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Before going to discuss the same it is appropriate to mention the relevant provision which runs as follows:

> ***2. Definitions.-***
> ***(h) "Ongoing project" means, a project where development is going on and for which completion certificate has not been issued but excludes such 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) in layout projects i.e., where land is developed into plots, the roads and open spaces gifted to the local body concerned;***
>
> ***(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. 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.

According to the appellant TNRERA Rules 2017 came into force on 22.06.2017, the 1st appellant applied on 04.07.2017 for exemption for their project. The DTCP officials inspected and submitted status report and on the strength of that report the appellant project was exempted as serial No.102 of the RERA website. How far this contention of the learned counsel is tenable has to be analyzed on the basis of the latest verdict of Division bench of the Hon'ble Madres High court. The above said verdict was declared in the following second appeal:

C.M.S.A.No.22 of 2019

Dated: 15.09.2020

Subashini Thulasiram Vs M/s SPR & RG Construction Private Limited and Others.

(at page no.25 and 35 of the judgment)

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) give some relief to the first respondent, it is contrary to section 3 of the Act. When the Act has come into force on 1.5.2017, the 1st respondent should have complied

with. The principle that the subordinate legislation cannot be in violation of the Act is supported by

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.

Page No.35 of the judgment:

32. The Tribunal relied upon the statement of the appellant that appellant's sister had occupied the flat and the appellant admitted the completion of construction on 03.05.2017, and all these actions were done even before applying for completion certificate. Without obtaining completion certificate, the 1st respondent cannot offer or put the purchasers into possession of the property. Therefore, the said observations of the Tribunal are liable to be set aside. The findings of the Tribunal that the 1st respondent completed real estate project and applied for completion certificate before commencement of the Rules on 22.06.2017 and in conformity with the Section 2(z)(n) of the RERA Act have to be set aside for the simple reason that Rule 2(h)(ii) should be employed only by those developers who applied for completion certificate on the date of commencement of the Act on 01.05.2017 whereas the first respondent applied for completion certificate on 29.05.2017 after the Act came into force.

14. The above said second appeal arose from the verdict of this Tribunal in A.No.2 of 2019 dated 19.06.2019. This Tribunal relied the TNREAT Rules 2(h)(ii) and on the basis of the appellant's sister had occupied the flat and the appellant admitted the completion of construction

on 03.05.2017. But the Hon'ble High Court laid down the law that without obtaining completion certificate the 1st respondent cannot offer or put the purchasers into possession of the property therefore the said observation of the Tribunal are liable to be set aside. As per the above law laid down by the Honble Division Bench of the Madras High Court that the State Government Rule 2(h)(ii) is contrary to the Section 3 of the Act and further laid down that the exemption has been given only for those who have already applied or unable to get the completion certificate in view of the administrative or so many reasons attributable to the authorities.

15. Now let us discuss the contention raised by the Learned counsel for the appellant on the basis of the law laid down as above. In this case admittedly, as grounds of appeal no. 'k':

> ***"the first appellant applied on 04.07.2017 for exemption for their project along with all supported documents as required under Section 2(h) (iii) of RERA Rules, 2017."***

But the Rule 2(h) excludes such 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. In the same Rule in the later portion as (iii) ..... 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.

16. In the above said Rule in the prior portion it has been specifically mentioned as following criteria and the date of coming into force of sub section (1) of Section 3 of the Act. But in the later portion it has been specifically mentioned as within 15 days from the date of notification of these Rules ..... That is why the Division Bench has declared that the State Government Rule 2(h) (ii) is contrary to the Section 3 of the Act. Section 3(2)(b) runs as follows:

> ***Notwithstanding anything contained in sub section (1), no registration of the real estate project shall be required –***
>
> ***(a) .. ..***
>
> ***(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act.***

Section 3 came into force on 01.05.2017. The 1st appellant admittedly applied for exemption on 04.07.2017 i.e., after the Section 3 came into force. Claim exemption from registration of the project where the promoter has received completion certificate for a real estate project prior to the commencement of the Act. In this case, the promoter applied only on 04.07.2017. Hence on the date of commencement of the Section 3 of the Act the project of the 1st appellant is not at all completed and it is only an on-going project. Therefore the Regulatory Authority rightly concluded that the 1st appellant's project is the on-going project and directed to register the project. Therefore section 2(h)(iii) of TNRERA Rules 2017 is not applicable to the 1st appellant's project.

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17. The next contention raised by the appellant side is that before the Act came into force the appellant acquired the project from the erstwhile promoter i.e. in March 2014. Hence the Authority cannot invoke Section 15(2). Now let us discuss how far the contention is tenable. In the previous paragraph it was decided that the 1st appellant's project is an on-going project. Under the circumstances the authorities having ample power under section 15(2) to issue direction to the promoter.

18. The next contention with regard to the finding of the Authority of the 1st appellant against one Valliappan. The finding with regard to that case is not applicable to the facts of this case. Moreover the appellant has not produced any piece of paper regarding that finding and that finding will not bind upon this Tribunal. The learned counsel for the appellant have distinguished six judgments of this Tribunal as well as the Hon'ble High Court. But the above findings are before the verdict of Division Bench verdict. The latest verdict in this regard are 15.09.2020 Division Bench Judgment and 02.12.2020 Division Bench Judgment as referred above. In the latest 02.12.2020 judgment is also the law laid down by the Division Bench that the exemption certificate was falsely obtained by the appellant, hence not accepted. The 15.09.2020 Division Bench verdict is squarely applicable to the facts of this case and more over, it was delivered against the verdict of this Tribunal. Hence the law laid down by the Hon'ble High Court certainly bind upon this Tribunal and necessarily this Tribunal has to follow the Division Bench verdict regarding the definition on-going project.

19. The last contention raised by the appellant side is that when there is no prayer for the registration of project by the complainant the finding of the Authority is contrary to law. How far the contention is tenable has to be analyzed. When the project of the 1st appellant is found that it is an on-going project the Regulatory Authority is having ample power to direct the appellants to register the project and there is no infirmity in that finding.

20. Therefore this Tribunal comes to the conclusion that the grounds put forth by the appellant side are not sufficient to interfere with the findings of the Learned Regulatory Authority. Hence the appeal fails.

21. In the result this appeal A.No.52 of 2020 is dismissed. No costs. The order of the Regulatory Authority in C.No.479/2019 dated 03.09.2020 is confirmed. The connected Miscellaneous Applications are closed.

This Order is dictated directly to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on the 6th Day of January 2021.

Sd/- XXXX
JUDICIAL MEMBER

Sd/- XXXX
ADMINISTRATIVE MEMBER

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