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 26.04.2021

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

Appeal No. 65 of 2020

Vijayaraghavan.V.K. ... Appellant

-Vs-

1. SPR & RG Constructions Pvt. Ltd.
   Rep. by its Managing Director,
   Mr.Hitesh Kumar P Kawad

2. Hitesh P Kawad
   Managing Director, SPR & RG Constructions Pvt. Ltd.

3. M.G.Surendranath
   Director, SPR & RG Constructions Pvt. Ltd.

... Respondents

This appeal was taken on file on 29.10.2020 and came up for final hearing on 07.04.2021 in the presence of M/s.A.Neelakantan and Rahul Neelakantan, counsels for the appellant and M/s.E.Satish Kumar, R.Saravanakanni, Counsels for

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the 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. This appeal has been preferred against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.442/2019 dated 13.08.2020.

2. The appellant had purchased a flat bearing door No.2126 from the respondents under an agreement of sale and construction dated 13.07.2012. Total sale consideration for the undivided share of land measuring 406 sq. ft. fixed at Rs.11,16,500/-. The total project land area as per sale deed is 9 acres and 9 cents. The building plan approval was granted on 04.09.2012. As per the initial plan the approval was given by the CMDA for construction of combined basement 1 and 2 plus ground floor plus 14 floors of blocks 1 to 9 to comprise 950 dwelling units. A sum of Rs.66,72,895/- was paid by the appellant to the 1st respondent towards cost of construction and for all amenities and common areas. The completion date of the project was fixed at 36 months from 31.03.2012 i.e., on or before 31.03.2015. The project completion certificate from CMDA was obtained by the respondent only on 06.09.2018. The appellant celebrated 'Grahapravesam' ceremony on 25.06.2018. The appellant came to know that there were several deviations in the project constructions from the initial plan by submitting revised proposal and planning permit by increasing the number of flats from 950 to 1050. Due to increase in the number of flats the common area and car parking area have been considerably reduced. Hence the appellant issued a letter to the respondent on 24.06.2019 by pointing out the deviations and seeking

clarifications but did not receive any response from the respondents. Hence this project is an on-going project and the appellant came forward with Form 'M' for registration of the project and for other reliefs.

3. The respondents have stated that they have completed the project as early as 05.05.2017 and the application for completion certificate was filed on 29.05.2017 and granted the completion certificate on 06.09.2018. The TNRERA Rules has specifically excludes those projects in Chennai Metropolitan area for which the application for completion certificate has been filed prior to the notification of the Rules. The TNRERA website has also published the list therefore, this project does not come within the ambit of on-going projects. This stand has been confirmed by the TNREAT by its order dated 19.06.2019 in A.No.2/2019 hence appeal has to be rejected.

4. After perusing the complaint, counter statement of both sides the Regulatory Authority found that the TNREAT has held that this project is not an on-going project and that the second appeal filed by the appellant is pending before the Hon'ble High Court of Madras. Therefore the Regulatory Authority holds that this complaint is not maintainable and proper course of action would be to wait the decision of the Hon'ble High Court of Madras in the second appeal.

5. Point for consideration:

Whether the appeal deserves to be allowed or not?

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Point:

6. According to the appellant the respondents' project is an on-going project and liable to be registered under the TNRERA. According to the respondents the project of the respondents is not an on-going project as per the order of this Tribunal dated 19.06.2019. While the second appeal is pending before the High Court of Judicature Madras in CMSA No.22 of 2019, the appellant preferred this complaint on 21.10.2019. But, the Regulatory Authority erroneously numbered the complaint filed by the appellant and subsequently dismissed the complaint on the very same ground with proper reasons. Therefore, the order of the authority is very much sustainable and does not warrant any interference. According to the Learned Authority in its order dated 13.08.2020 that this complaint is not maintainable and proper course of action to await the decision of Hon'ble High Court of Madras in the second appeal. Now let us discuss about the previous orders of the Adjudicating Officer, order of this Tribunal and orders of the Hon'ble High Court in CMSA No.32 of 2020 with regard to the project of the respondents.

7. One Subashini Thulasiram, who is an allottee of the respondents' project namely 'Osian Chlorophyll', has preferred a compliant before the Adjudicating Officer for the refund of the amount paid by her towards the construction agreement with the 1st respondent herein since the project has not been completed within the stipulated period. The 1st respondent herein objected that complaint as not maintainable and insisted for taking up the matter as a preliminary issue in the SR stage itself. After contest the Learned Adjudicating Officer found that the complaint is maintainable for refund. Aggrieved upon that the 1st respondent herein preferred appeal before this Tribunal in A.No.2/2019

and this Tribunal found that the project of the 1st respondent is not an on-going project and the complaint is not maintainable. Aggrieved upon that the said Subashini Thulasiram preferred second appeal before Hon'ble High Court in CMSA No.22 of 2019. While the second appeal was pending another allottee of the respondents herein, by name V.K.Vijayaraghavan, preferred a complaint for registration of the respondents' project and other reliefs. In that complaint the Learned Authority found that there is a conflict of orders by the Adjudicating Officer and Appellate Tribunal regarding respondents' project. In such a situation the Learned Authority has found that to await the decision of the Hon'ble High Court of Madras in the second appeal. Now the second appeal has been disposed of on 15.09.2020 and the Hon'ble High Court found that the respondents' project is an on-going project and the complaint is maintainable before the Adjudicating Officer.

8. The Hon'ble High Court has found by interpreting Rule 2(h)(ii) of the Tamil Nadu Real Estate Rules 2017 by invoking Section 3 of the Real Estate (Regulation and Development) Act, 2016 which runs as follows:

> *"It is well settled law that the parent Act will prevail over the Rules and there cannot be any Rules contrary to the Act. Assuming that Rule 2(h)(ii) gives some relief to the 1st respondent, it is in contrary to the Section 3 of the Act. When the Act has come into force on 01.05.2017, the 1st respondent should have complied with. The principle that the subordinate legislation cannot be in violation of the Act is supported by following decision of the Apex Court*
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> 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.*

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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."

9. This Tribunal in the above said order in A.No.2/2019 based upon the Tamil Nadu Real Estate Rules 2017 found that it is not an on-going project. But the Division Bench of the Hon'ble High Court found that the Rule itself contrary to Section 3 of the Act, in such circumstances necessarily this Tribunal follow the decision of the Hon'ble Division Bench of the High Court. On the side of the respondents would contend that the 1st respondent now filed a Special Leave Petition before the Hon'ble Supreme Court in SLP (c) No.014103 of 2020 against the order of the Hon'ble High Court and the core issue of TNRERA's jurisdiction over the subject project is pending before the Hon'ble Supreme Court's decision. At this Juncture, the order of the Hon'ble High Court will prevail over the decision of this Tribunal and necessarily this Tribunal as well as the Regulatory Authority has to follow the decisions of the Hon'ble High Court till the finding of the Hon'ble Supreme Court's decision.

10. On the side of the respondent the learned counsel further would contend that even though the project is the same, the facts pleaded on the aspect of the registrability of the project in the appellant's complaint and the facts emphasized and pleaded in the other complaint concerning the same project being different, the authority ought to have adjudicated the complaint of the appellant independently on the merits after perusing the facts stated and evidence adduced. The contention of the respondents is partly acceptable on the principle that each and every case has to be decided on the facts, evidences and circumstances of the particular case. It is no doubt at all. At the same time any

decision of the superior court has to be followed regarding the same facts of the case. Admittedly, the Learned Authority has not given any finding regarding the facts narrated by both sides and simply passed an order to await the decision of the Hon'ble High Court. Now the Hon'ble High Court has given its verdict. Under such circumstances an opportunity has to be given to the Regulatory Authority to decide the case on merits. Therefore this Tribunal comes to a conclusion that this Appeal has to be allowed by setting aside the order of the Regulatory Authority and remand the matter for fresh disposal according to law. The point is answered accordingly.

11. In the result, by allowing this appeal the order of the Regulatory Authority in C.No.442/2019 dated 13.08.2020 is set aside and the C.No.442/2019 is remanded back to the Regulatory Authority to decide the case on merits by giving opportunity to both sides. No costs. 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 26th Day of April 2021.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
ADMN. MEMBER

Sd/-xxxx
JUDL. MEMBER

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