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 19.04.2021

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

Appeal No. 68 of 2020

S.M.Chandrasekar ... Appellant

-Vs-

1. The Managing Director,
   Indian Railway Welfare Organization (IRWO)

2. The General Manager,
   (former)/Chief Project Manager (at present)/
   South zone,
   Indian Railway Welfare Organization (IRWO)

... Respondents

This appeal was taken on file on 06.11.2020 and came up for final hearing on 26.03.2021 in the presence of M/s.L.Poovendra Perumal, S.Kishore Kumar & R.Saravanan, Counsels for the appellant and Mr. G. Prakash, Counsel for 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. The appellant/complainant has preferred a complaint before the Regulatory Authority in C.No.472 of 2019 for the relief of direction to the respondent to allot an independent dwelling unit and for refund of the amount. The Regulatory Authority dismissed the complaint as not maintainable. Aggrieved upon the same the appellant has preferred this appeal.

2. The appellant became a primary member in the year 1990 with primary registration No.041432 in the Indian Railway Welfare Organization. In the year 1992 a group housing scheme, hill view, Rail Vihar, Madras-Phase-I, was announced by IRWO for construction of Multi-storey flats on Poonamallee High Road near Anna Nagar for serving and Retired Employees. The appellant purchased the application to apply for the above flat. Due to his health problem the appellant missed the chance of acquiring the flat under the above scheme. Again, for second time a group housing scheme/Chennai-Phase-I, was announced by IRWO for procurement of land in Ambattur Village by publication in daily news paper on 10.09.2003. The appellant made the payment of Rs.26,500/- towards cost of land in the above scheme for Type II independent house. On 26.05.2005 IRWO intimated to the appellant to exercise option and the appellant exercised his option on 03.06.2005 for independent house Type B (II). In June 2006, IRWO issued applications as complementary copies of brochures in two parts (A and B) with last date of collection of application as 31.07.2006. Due to his daughter's 12th std studies and his father's death the appellant could not apply and pay

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within the time and paid the required amount of Rs.43,500/- only on 03.08.2006, with representation to consider for allotment of Type B dwelling unit in the above scheme. His name was kept in the list of members who had paid the booking money after the stipulated date. His request for delay condonation was not considered however IRWO directed the appellant stating that IRWO is in the process of launching 2nd phase of the scheme and advised to apply for the same when called for. Then he preferred appeal by returning the refund of cheque. Even after repeated continuous relentless effort by requesting through many number of correspondences and personal meeting with the officials of IRWO from the year 2004 to till date it is of no use and no reply is received in the allotment of either in Type B or in Type A individual dwelling unit in the reopened Chennai Phase II-A Group Housing Scheme. Therefore, the appellant/complainant having now left with no other option is excepting to seek the assistance and help of TNRERA by way of this complaint in C.No.472 of 2019.

3. The respondent denied the allegations of the appellant/complainant and stated that the Group Housing Scheme 2006 Rail Vihar, Ambattur, Chennai Phase II A was launched as per the brochure the scheme was kept open till 31.07.2006. In Nov 2003 demands survey was conducted for Chennai Phase II-A project for which the complainant deposited Rs.26,500/- then the complainant was intimated to apply for dwelling unit opted for in the demand survey according to the option exercised by the complainant. The said scheme was kept open till 31.07.2006. Thereafter, the complainant has applied for Chennai phase II A Group Housing Scheme for Type II-B by paying the total amount of Rs.70,000/-. The Group Housing Scheme 2006 Phase II has been closed by 31.07.2006. The complainant has paid the balance amount of Rs.43,500/- only on 03.08.2006 i.e.,

after the expiry of the scheme. However, since the scheme was closed on 31.07.2006 the competent authority has decided to refund the booking money to those for whom no allotment was made. Since certain applicants paid their booking money after the due date and their applications were not considered, the GM/SZ wide his letter dated 07.08.2007 has recommended the names of 9 applicants to keep them under waiting list in which the complainant herein was also figured in the said list for Type B at Serial No.1. However, the recommendation of the GM/SZ was not accepted and the competent authority took a decision on 14.08.2007 that the amount paid by the applicants after due date is to get refunded by speed post. After the receipt of the cheque the complainant returned the cheque again with request to consider. However, IRWO was in the process of launching the 2nd phase of the scheme advised him to apply for the same when called for. Subsequently, 2nd scheme of Group Housing 2014 Rail Vihar, Chennai Phase II B at Ambattur was opened from 02.07.2014 to 04.08.2014 and the complainant has applied in this scheme for Type III-A dwelling unit on 01.08.2014 by paying Rs.1,50,000/- as booking money. The allotment was made in the name of the complainant for Type III-A confirmed by letter dated 20.12.2017 and it was intimated to the complainant by letter dated 20.12.2017 and was advised to pay 1st installment of Rs.5 lakhs together with Rs.60,000/- towards GST totaling to Rs.5,60,000/- within the due date of 07.03.2018 and he was further advised to make the 2nd and 3rd installments with reminder letter dated 13.04.2018 but the complainant did not pay the installment amount as mentioned and requested wide his letter dated 28.06.2018 to withdraw his name from the Phase-II-B Group Housing Scheme in Chennai due to his financial limitations and requested to refund the booking amount accordingly as per the General Rules of IRWO the amount of Rs.1,20,500/- was refunded. Rail

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Vihar Ambattur Group Housing Scheme has been reopened from 10.11.2016 to 30.12.2016 for filling the vacant units of Chennai Phase II-A Group Housing Scheme as per scheme brochure paragraph No.16 applicants of the Phase-II-B whose booking amount is lying with the IRWO can also apply in the prescribed booking applications indicating "applicant of Chennai Phase-II-B" as a fresh applicant. In response to the same the complainant has submitted his application for allotment of Type A dwelling unit under Phase II-A by remitting Rs.50,000/- by way of DD dated 23.12.2016. As 102 applications were received in which against 4 vacant units in Type-A-1, Type-C-2, Type-D-2 the competent authority directed to conduct a draw through paper slip in his office on the date and time convenient to him by calling applicants and make out the seniorities list year wise. Accordingly, a draw was conducted on 10.04.2017, 24 applicants including complainant participated in the draw and not selected. The complainant was informed by the corporate office by letter dated 24.05.2017 that his name has been placed in the waiting list No.1 in type A dwelling unit and if the complainant is not interest in keeping his name in the waiting list he can inform the corporate office for arranging refund. Since it has been found that the complainant has also applied for Phase II-B Group Housing Scheme opened during the period 02.06.2014 to 08.09.2014 and in the application the complainant did not indicate that he has already applied of Chennai Phase II-B. Names of those applicants as per the seniority have been placed in the waiting list who had applied for the first time in IRWO. As such the complainant's name and other 8 applicant's names have been removed from the waiting list by letter dated 24.07.2017. The complainant refused to receive the refund of Rs.50,000/- and preferred request for reconsideration after consideration it was found that as the complainant has already applied for the 2nd Group Housing Scheme-2014 opened from 02.06.2014

to 04.08.2014, the removal of the waiting list from No.1 for the Type A is in order for which IRWO has refunded the booking amount of Rs.50,000/- by letter dated 04.07.2014. In the light of the facts stated above the complainant is not entitled to maintain the complaint. Moreover, there are no flats available for sale as demanded by the complainant and entire transactions took place much before the commencement of the Act, as there is no retrospective effect available under the Act, the complainant is not entitled to approach the Regulatory Authority. Apart from that the delay and latches on facts are attributable only on the complainant. Moreover, the project is to promote the Welfare Housing Scheme to the employees of the Railway to avail or own a house at a low cost and it is not a commercial project in nature therefore, no strict liability could be enforced. Therefore the complaint is not maintainable.

4. After contest the Regulatory Authority found that this complaint is not maintainable. Aggrieved upon that the appellant/complainant preferred this appeal on the following main grounds:

i. Where the vacancy arises for phase-II-A dwelling unit in Type A-1, C-2, D-2 the appellant was not considered under the seniority basis.

ii. Some of the allottees, who paid booking money much delayed than the appellant, were entertained by the respondent but it was not considered by the authority, it is against Article 14 of the Constitution of India.

iii. The appellant's name has been removed from the waiting list of Chennai Phase II-A even though the appellant applied for the type III-A flat phase II-B Chennai by stating he is an applicant

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in Chennai Phase II-B not only in the page No.7,8,9 and 10 of the application dated 23.12.2016 but also in the covering letter dated 23.12.2016. It was also not taken into account by the Authority.

iv. The Authority failed to interpret the definition of allottee in a larger sense which is misconception by the court below.

v. Section 11 of the Real Estate Act was not properly appreciated by the Regulatory Authority.

vi. The appellant paid 2nd installment of Rs.43,500/- with a delay of only two days due to death of his father. It was also not considered by the Regulatory Authority.

vii. The Regulatory Authority failed to note that the respondent has deducted a sum of Rs.29,500/- from the amount of Rs.1,50,000/- which is paid by the appellant towards the Type III-A dwelling unit.

5. In addition to the above grounds, during the course of arguments, the Learned counsel for the appellant would submit that the General Manager of the Railway recommended to consider the name of the appellant/complainant for the allotment the competent authority failed to consider the same and simply advised the appellant to apply for the allotment in another scheme which is not suitable for the financial capacity of the appellant/complainant. Hence the appellant/complaint was constrained to withdraw the complaint and sought for the refund of Rs.1,50,000/-. From that amount the IRWO deducted Rs.29,500/- it is highly excessive. The appellant sought for the allotment of the dwelling unit for the past nearly 30 years i.e., from the year 1992 onwards but still the appellant is

not able to get the dwelling unit. The appellant had paid the booking money as part of the cost of the land and the IRWO itself recognized the appellant as an allottee and issued the receipt for the payment of Rs.26,500/- as "allottees copy" and the name of the appellant is mentioned as allottee's name (page No.79 of the Typed Set). But the Learned Authority came to a conclusion that the complainant is not an allottee since he has not been issued any allotment letter. When the respondent itself recognized the appellant as an allottee, the conclusion of the Regulatory Authority as not an allottee is against the terms of the agreement between the parties. Therefore the appeal has to be allowed.

6. The learned counsel for the respondent would submit that it is not disputed that the appellant/complainant became the member of the IRWO in the year 1992. The only dispute between the appellant and the respondent is that the appellant paid the money after the due date i.e. on 03.08.2006 instead of 31.07.2006. By following the Rules and Regulations of the IRWO the competent authority of the IRWO rejected the recommendation of the General Manager and refund was made. But the appellant purposely refused to accept the refund and sent back the same. Even after sufficient opportunity was given to the complainant for allotment by way of draw on the basis of seniority list the complainant was not able to get allotment in the draw hence he was advised to apply for another scheme and house was allotted but due to his financial crisis the appellant himself has withdrawn from the scheme and sought for refund and refund was made as per the Rules and Regulations of IRWO. After getting the refund amount the appellant has came forward with this complaint under Real Estate (Regulation and Development) Act. The entire transaction between the appellant and the respondent took place much before the Act came into force

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hence this Act has no retrospective effect. Furthermore, the appellant was never allotted any flat or dwelling unit hence the Regulatory Authority rightly came to a conclusion that there is no relationship between the appellant and respondent as an allottee and promoter. Therefore there are no merits in the appeal and needs to be dismissed.

7. Points for consideration:

1. Whether the complainant is an allottee?
2. Whether the complaint is maintainable?
3. Whether the appeal is deserves to be allowed or not?

Point No.1:

8. According to the appellant, the respondents themselves admitted the appellant as an allottee (page No.79 of the Typed set). According to the respondents no allotment was made to the appellant hence the appellant is not an allottee. The Regulatory Authority found that since the appellant has not been issued any allotment letter and his name was kept only in the waiting list, the appellant is not an allottee. Before going to discuss the merits of the case it is relevant to mention the definition of the word "alllottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

> ***(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;***

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9. As per the definition under Section 2(d) of the Act the word allottee under the Real Estate project means the person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. In this case the appellant even though claimed as an allottee he has not produced any piece of paper to prove that he has been allotted specific flat, plot or apartment or dwelling unit. Admittedly, he has paid the booking money and it is not disputed. On the side of the appellant the receipt issued by the respondent was relied by the appellant side in which the word allottee is used. In the above said receipt it has been specifically printed as allottee's copy, allottee's name. In the column installment number it is mentioned as initial part cost of land. In the above said receipt there is no specific flat number or door number has been mentioned. The appellant has produced 84 items of list of documents in which there is no such allotment letter found place in the above said items. In page No.206 of the typed set of the appellant the IRWO has issued an allotment letter dated 20.12.2017 in which it has been specifically stated that "allotment of dwelling unit IRWO's Rail Vihar Phase II-B Ambattur, Chennai". In the above said letter the first installment amount was mentioned as Rs.5,00,000/- GST Rs.60,000/- total amount payable Rs.5,60,000/-, due date mentioned as 07.03.2018. Subsequently on 28.06.2018 the appellant sent a letter to the IRWO by stating his withdrawal from Phase II-B Chennai Group Housing Scheme with request for refund (Typed Set at Page No.52). By accepting the request of the appellant IRWOs refunded the amount deducting penalty with GST Rs.29,500/- and refunded Rs.1,20,500/- to the appellant. After that only the appellant approached the Regulatory Authority. Regarding Type A single bedroom dwelling units and Type B double bedroom dwelling units even though the appellant applied the appellant has not been allotted any dwelling unit since the appellant

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paid the amount after the due date and his name was kept in the waiting list as Serial No.1. Subsequently, the appellant's name was also removed from the waiting list. The appellant's name was kept in the waiting list till he has been allotted phase II-B dwelling unit at Ambattur, Chennai. No allotment letter was issued to the appellant for the Type B double bedroom or Type A single bedroom dwelling units. Hence as per the definition of Section 2(d) of the Act, without allotment letter to the above said Type A or Type B dwelling units the appellant cannot be construed as an allottee. Till the appellant/complainant became an allottee he is only a proposed purchaser. In this case the appellant/complainant is not at all a proposed purchaser since he paid the amount after the due date for the allotment hence the appellant/complainant was treated as a proposed purchaser in the waiting list. The above said waiting list was also prepared after continuous efforts of representations and appeal to the higher officials. In any event, the appellant/complainant cannot be treated as an allottee as per the 2(d) of the Real Estate (Regulation and Development) Act, 2016. Point No.1 is answered accordingly.

Point No.2:

10. The Real Estate (Regulation and Development) Act, 2016 contemplates two provisions for preferring complaint i.e., Section 7 and Section 31 of the Act which are as follows:

> ***Section 7: Revocation of registration.***
>
> ***7. (1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—***
>
> ***(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;***

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,— (i) falsely represents that the services are of a particular standard or grade; (ii) represents that the promoter has approval or affiliation which such promoter does not have; (iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

<u>Section 31: Filing of complaints with the Authority or the adjudicating officer.</u>

31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

11. As per Section 7 if any promoter makes a default, violates any provisions or involved in any kind of unfair practice or falsely represents, on receipt of complaint the authorities empowered to revoke the registration of the

project. The entire provision of Section 7 relates to the promoter's default and violation for which on receipt of complaint the authority can take action. In this case it is not the case of the appellant/complainant that the respondent has violated any provisions of the Act so Section 7 is not applicable.

12. As per Section 31 any aggrieved person may file a complaint for any violation or contravention of the Act or Rules or Regulations by the promoter, allottee or real estate agent. In point No.1 it was decided that the appellant/complainant is not an allottee. It is not the case of the appellant/complainant that the project of the respondent is an on-going project hence Section 3 of the Act is not applicable. Furthermore, the Group Housing Scheme 2006 Rail Vihar, Ambattur, Chennai Phase II-A was kept open till 31.07.2006 and the appellant/complainant failed to pay the amount within the stipulated date and paid only on 03.08.2006 after the due date hence his name was kept under the waiting list. Again the appellant/complainant was advised to apply for the 2nd phase of the scheme in the year 2014 and he paid Rs.1,50,000/- as booking money and then he has withdrawn from the scheme due to his financial crisis. For the 2nd phase of the scheme in the year 2014 he voluntarily withdraw, in the year 2006 scheme the appellant/complainant failed to pay the booking money before the closing of the scheme. Both the schemes were started much before the Real Estate Act came into force. The word aggrieved person contemplated in Section 31 relates to this Act. This Act has no retrospective effect. Furthermore, the real dispute between the appellant/complainant and the respondent is regarding administrative matters i.e., the specific allegation of the appellant/complainant against the respondent is that the respondent has allotted flats to the persons those who paid application money later than the

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appellant/complainant. Admittedly there are 10 persons arrayed in the waiting list persons who have paid application money after the due date (page no.91 of the Typed set). When vacancy arises in dwelling units the vacancies were filled up by conducting draw by allotting 10% for the waiting list persons. For the 4 vacancies 102 applicants have participated, in such circumstances the competent authority has directed to conduct a draw in paper slip and booking shall be made to the eligible applicants against vacant dwelling units and remaining applicants shall be considered for placing in the wait list as per provisions of IRWO General Rules (pages 163 and 164 of Typed set). Therefore the appellant/complainant cannot invoke Section 31 since he is not an aggrieved person as per the provisions of this Act. The grievance of the appellant/complainant is only with regard to delayed payment of application money was not considered. The appellant/complainant has also made number of representations up to the General Manager and also preferred appeal against the rejections but all have ended in vain. Hence after the implementation of the Real Estate (Regulation and Development) Act 2016 the appellant/complainant came forward as a second round of litigation by invoking Section 31 of the Real Estate (Regulation and Development) Act 2016. The appellant/complainant is neither an allottee nor aggrieved person hence compliant of the appellant/complainant is not maintainable. The point No.2 is answered accordingly.

Point No.3:

13. On the side of the appellant raised grounds 'a' to 'k' out of which 'a', 'b', 'c' and 'k' are all only formal grounds. The grounds 'd', 'e', 'f' and 'i' with regard to seniority list. The ground 'g' with regard to the word allottee, ground 'h'

with regard to section 11 of the Real Estate (Regulation and Development) Act and the ground 'j' with regard to deduction and GST. Let us analyze one by one.

14. Admittedly, the appellant/complainant became the member in the year 1990. In the year 1990 not only the appellant/complainant but also other persons in the waiting list also became members. The specific allegation of the appellant/complainant is that the person those who paid later than the appellant was allotted a dwelling unit. How far this allegation is true has to be considered. For the above said allegation answer is available in page No.107 and 108 of the typed set. At page No.107 of typed set letter dated 07.08.2007 in which it has been stated as follows:

> ***"A copy of the waiting list is enclosed for reference.***
>
> ***Subsequently, one among the list viz. Sri Jagdish Alagar (S.No.9) has been issued an allotment letter vide Corporate Office Letter No.IRWO/Chennai-II/ALT/000006/C dated 29.3.07 for a Type-C dwelling unit.***
>
> ***Further against the 42 units of Type-B, 41 have been filled up and there is one vacancy on date and a decision regarding allotting the same has to be taken.***
>
> ***In the meanwhile, the Corporate office vide letter dated 18.07.2007 cited above, have advised that 'the waiting list is to be prepared out of those applicants whose applications have been received by the stipulated last date for receipt of booking application forms, the cases under reference can be considered when fresh applications are called for this project later on'."***

15. The waiting list S.No.9 has been issued an allotment letter for Type-C dwelling unit and not Type-B dwelling unit. Whenever vacancy arose the IRWO have followed seniority Rules and they have fixed the cut-off date before 30.09.2007 and after 30.09.2007 to determine the senior of the membership. In this regard when vacancy was arose in Chennai Phase-A Group Housing Scheme

the scheme was reopened from 10.11.2016 to 30.12.2016. Against 4 vacant dwelling units there were one or two applicants have applied for the scheme. How they were selected for the vacant dwelling units is described in the letter dated 10.03.2017 at page No.163 of the typed set which runs as follows:

> *"Against 4 vacant DUs (TypeA-1 Type C-1, Type D-2) 102 applicants have applied as First Timer for booking of vacant DUs of Phase -11A Housing Scheme we have prepared senior (year-wise) list of these applicants after considering the vacant DUs as well as wait list to be prepared (which shall be 10% of the DUs of each type.)*
>
> *In this regard it is stated that as per IRWO General Rules the seniority of members who have Primary Membership of IRWO before implementation of IRWO General Rules i.e upto 30.09.2007 shall be reckoned from their becoming Primary member. Seniority amongst those who are becoming members after implementation of IRWO General Rules i.e. after 30.09.2007 shall be determined by their Membership No. It is also provided in IRWO General Rules that in case there are more than one member of the same year their inter-se seniority for the year shall be determined through draw. Since there are more than one member of the same year in each year upto 30.09.2007 and in each Type seniority of these members has to be determined though draw. "*

16. Now let us see the seniority Rules contemplated in the IRWO General Rules at page No.232 of typed set:

> ***14. Seniority Rules:***
>
> *14.1 The seniority of the members who have become primary members of IRWO before the implementation of these Rules will be reckoned by the year of their becoming Primary Members. However, in case of more than one member of the same year, seniority on a particular occasion will be determined by computerized draw based on random number generation.*
>
> *14.2 Seniority amongst those becoming members after the implementation of these Rules will be determined by the Membership number.*

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14.3 The seniority of those who have become members before the implementation of these Rules will rank higher than those who become members after the implementation of these Rules.

17. As per the above said Rules the allotment has been made by the IRWO. So the allegation of the compliant is not sustainable. The next allegation is with regard to removal from the seniority list. The respondent in its counter paragraph No.6 at page No.68 of the typed set has stated the reason for the removal which runs as follows: "Since it has been found that the complainant had also applied for phase II-B Group Housing Scheme opened during the period 2.6.2014 to 8.9.2014 and in the application the complainant did not indicate that he has already applied of Chennai-Phase-II-B. Names of those applicants as per the seniority list have been placed in the waiting list who had applied for the first time in IRWO. As such the complainant's name and 8 other applicants name have been removed from the waiting list wide corporate office letter dated 24.07.2017. During the course of argument the learned counsel has shown the application and would submit that the appellant has specifically mentioned about the previously applied facts. The relevant pages of the applications in the typed set are 85, 150 and 32. In page No.85, the application dated 3.8.2006. In the above said applications DECLARATION BY THE APPLICANT PORTION in column

Page No.86 of typed set application dated 3.8.2006

(iii) I have applied for a dwelling unit type .... in ..... scheme of IRWO but have not yet been allotted the dwelling unit.

Page No.150 of typed set application dated 01.08.2014

(iii) I have applied for a dwelling unit type B in Chennai at Ambattur scheme of IRWO but have not yet been allotted the dwelling unit.

Page No.32 of typed set application dated 23.12.2016

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(iii) I have applied for a dwelling unit type B in (i) Chennai-Phase IIA ii) IIIA in Chennai-Phase II B scheme of IRWO but have not yet been allotted the dwelling unit.

18. The respondents have specifically stated the reason for removal of waiting list name that phase II-B Group Housing Scheme opened during the period 2.6.2014 to 8.9.2014 and in that application the complainant did not indicate that he has already applied in Chennai-Phase-II-B. The appellant has specifically mentioned in 23.12.2016 application but that particulars have not found place in 1.8.2014 application hence they have removed the name of the appellant/complainant as well as other 8 waiting list persons. On perusal of the 1.8.2014 application the particular column the appellant has not specifically mentioned as 23.12.2016 application mentioning matters. So this ground is also not sustainable.

19. Regarding ground 'g' in point No.1 it was elaborately discussed and answered. The ground 'h' is with regard to Section 11 of the Real Estate (Regulation and Development) Act. It is not the case of the appellant that the respondent has not followed the Section 11 of the Real Estate (Regulation and Development) Act and further stated that the promoter at the time of booking and issue of allotment letter shall be responsible to make available to the allottee the information regarding sanctioned plan etc., stage wise schedule of completion of the project etc. It is true that the promoter is bound to disclose the above particulars as stated by the appellant under Section 11 of the Real Estate (Regulation and Development) Act, to the person those who have received allotment letter as an allottee. In this case the appellant/complainant himself is not an allottee and no allotment letter was issued to him. In such circumstances

Section 11 of the Real Estate (Regulation and Development) Act is certainly not applicable to the appellant/complainant.

20. The last ground with regard to refund of amount with penalty and GST. According to the appellant a sum of Rs.29,500/- was deducted and balance Rs.1,20,500/- out of Rs.1,50,000/- was refunded to the appellant and the appellant alleged that it is unjust enrichment to the respondent. In this regard the respondent in paragraph No.5 of the counter at page No.66 of the typed set, the respondent has narrated the details about the penalty and GST which runs as follows:

> *"The complainant did not pay the installment amount as mentioned and requested wide his letter dated 28.06.2018 to withdraw his name from Phase II B Group Housing Scheme in Chennai due to his financial limitations and requested to refund the booking amount accordingly as per the General Rules of IRWO 20.6 (ii), the amount of Rs.1,20,500/- was refunded to the complainant through the cheque after deducting the penalty including the GST i.e. Rs.1,50,000/- (penalty Rs.25,000 + GST Rs.4,500 + Rs.1,20,500/-)"*

The IRWO General Rules 20.6 (ii) runs as follows:

> *"In cases of withdrawal after 3 months from the date of issue of booking letter, an additional payment @ 9% per annum on the defaulted installment is also payable. The total penalty, however, will not exceed Rs.10,000/- in case of Type I and II and Rs.25,000/- in case of Type III and IV".*

21. As per the allotment letter dated 20.12.2017 in favour of the appellant/complainant (page No.206 of the typed set) "based on your response we feel pleasure in informing you that dwelling unit Type III A has been booked

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in your favour". The appellant/complainant in his letter dated 28.06.2018 stated that "it is hereby requested to kindly refund the booking money of Rs.1,50,000/- paid by me towards Type III A dwelling unit in Chennai, Phase II-B Group Housing Scheme". As per the above allotment letter and request letter of the appellant it is very clear that Type III A dwelling unit was allotted to him and the appellant requested to withdraw from the scheme and sought for refund. In the IRWO General Rules 20.6 (ii) the penalty for Type III and IV Rs.25,000/- and also deducted Rs.4,500/- towards GST. The above deductions are as per the above said Rules of IRWO. So this ground is also not sustainable.

22. The grounds put forth by the appellant/complainant are not sustainable to interfere with the findings of the Learned Regulatory Authority. In such circumstances this Tribunal comes to a conclusion that this Appeal does not deserve to be allowed. The point No.3 is answered accordingly.

23. In the result, the Appeal No.68 of 2020 is dismissed. No costs. The order of the Tamil Nadu Real Estate Regulatory Authority in C.No.472 of 2019 dated 03.09.2020 is confirmed.

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 19th Day of April 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

Verified by PeelEstate