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. 81 of 2020

M/s. Aknam Finvest Private Limited,
Rep. by its Managing Director,
Shri.S.K.Moorthy. ... Appellant

-Vs-

M/s.Natesan Housing Private Limited
Rep. by its Director,
Shri.V.P.Seetharaman .... Respondent

This appeal was taken on file on 16.12.2020 and came up for final hearing on 31.03.2021 in the presence of Mr.M.P.Muthukumaran, Counsel for the appellant and Mr.T.Singaravelu, Counsel for the respondent. 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:

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ORDER

1. This appeal has been preferred against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.408 of 2019 dated 10.02.2020 regarding maintainability.

2. The appellant/complainant and the respondent entered into agreement for sale of land and construction in May 2012. Under the agreement the complainant paid a sum of Rs.62,37,600/- for the cottage and a sum of Rs.1,00,000/- was collected by the respondent from the complainant towards corpus fund. The respondent has collection Rs.50,000/- from the complainant and similar amounts from other purchasers/allottees as club house charges. The club house facility has not been provided till today. The complete control and authority over the maintenance is exercised by the respondent, there is neither transparency nor accountability. No statements or breakup of expenditure have been provided to the residents. Hence the appellant/complainant came forward with the complaint for the relief of cancellation of exemption granted to the respondent, direction to complete the pending works namely club house, sewage treatment plan, direct to hand over the corpus fund with interest to the association, freeze the bank account of the respondent to restrain them from diverting the corpus fund, direct the respondent to hand over the control and authority over maintenance activities to the association and for costs.

3. After contest the Regulatory Authority has dismissed the complaint as not maintainable. Aggrieved upon the same the appellant/complainant preferred this Appeal on the main grounds and stated that the Regulatory Authority without

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considering any documents filed by the appellant and considered the handing over of possession in the year 2012 and assessment of Tax in the year 2014 and without considering the bundle of facilities namely club house, STP etc., in the apartment which were not provided as agreed and still it is an on-going project. Mere handing over of apartment alone was of no use. Further, the respondent by playing fraud on the Authority and that a fraudulent certificate is non-est in the eye of law has been obtained by the promoter. The Authority miserably failed to consider these facts on merits and came to a wrong conclusion. The Learned counsel for the appellant vehemently would submit that the Authority without going to the merits of the case and without considering the documents, photographs/videos filed by the complainant and proceeded with the predetermined notion as if apart from handing over the apartment to the purchasers, the respondent need not do anything at all, in effect nullifying all the obligations of the respondent.

4. The learned counsel for the respondent would submit that the appellant has not produced any piece of paper to show that there is pending works in the apartment. The appellant and the association office bearers communicated to the respondent only with regard to corpus fund. The respondent is always ready and willing to transfer the corpus fund to the association account but the apartment owners are not cooperative and they have been divided among themselves, so, it is not possible to the respondent to transfer the corpus fund. After the completion of the construction the possession of the apartments and facilities appurtenant with the apartments to the individual owners and they have given the certificate to that effect and they themselves assessed the property for the municipal tax. Due to fight and difference of opinion between the apartment owners in the

association matters they came forward with this complaint after the enactment of this Real Estate (Regulation and Development) Act, 2016 to conceal their difference of opinion. Hence there is no merit in the appeal.

5. Points for consideration:

1. Whether the complainant is entitled to invoke the Real Estate (Regulation and Development) Act, 2016?
2. Whether the appeal deserves to be allowed or not?

Point No.1:

6. The complainant and the respondent entered into 'Agreement for sale of land and construction' on 03.05.2012 and possession of the apartment was handed over on 06.09.2012, total cost of the apartment is Rs.62,37,600/- are all admitted facts of both sides. The specific case of the appellant is that the respondent/promoter has not completed common amenities as agreed upon them namely club house and Sewage Treatment Plant and also the respondent/promoter failed to transfer corpus fund to the association of allottees. Mere handing over of possession of the apartment without common amenities cannot be construed as a valid handing over and still the club house and STP are not yet commenced. Hence the project of the respondent/promoter is an on-going project and the appellant/complainant is entitled to invoke the Real Estate (Regulation and Development) Act, 2016.

7. The specific case of the respondent/promoter is that all the common facilities were provided by them and the promoter is ready to transfer the corpus fund but dispute with regard to association members the promoter is not able to

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transfer the corpus fund. Furthermore, the only defence on the side of the respondent is that the appellant/complainant is not entitled to invoke the Real Estate (Regulation and Development) Act, 2016.

8. The Learned Regulatory Authority came to a conclusion that the project of the respondent/promoter had been completed and handed over in the year 2012 itself hence the appellant/complainant cannot invoke the provisions of the Real Estate (Regulation and Development) Act, 2016 and found that the complaint is not maintainable.

9. On the side of the appellant/complainant the only defence is the project of the respondent is an on-going project. In support of that defence on the side of the appellant/complainant has produced 24 documents by way of two typed sets dated 27.08.2019 and 22.11.2019 respectively. Document No.1 dated 3.5.2012 is the agreement for sale and construction, Document No.2 dated 31.07.2017 is the DTCP-status of the applications filed with DTCP under Rule 2(h)(iii) of the Tamil Nadu Real Estate Rules, 2017, Document Nos.3 to 8 are the email communications between the parties regarding corpus fund, Document Nos.9 and 10 dated 14.12.2018 is the receipt issued by the respondent for receipt of the amount. Document No.11 is copy of letter with copy of DD and Document No.12 even though it has been stated as photos along with CD no photos are available. The above said documents 1 to 12 are no way useful to prove the project of the respondent as an on-going project. In the second typed set Document No.1 and 2 related with flat Nos.H112 and F301, they are no way connected with this case. Document Nos.3 and 4 are with regard to the balance sheet of the respondent. Document No.5 dated 23.09.2018 is Executive

Committee Resolution regarding election of new office bearers. Document No.6 dated 20.10.2018 is with regard to the Minutes of the Executive Committee Meeting, in the above said meeting the resolution passed with regard to maintenance charges, corpus funds, unauthorized construction, MOU with Natesan Housing Private Limited. In the above said resolution there is no discussion with regard to the so called club house and STP. Document No.7 is with regard to transfer of corpus fund, email communication. Document No.8 is with regard to payment of maintenance charges, email communication. Document No.9 is screenshot of AGM Notice. Document No.10 is the intimation by complainant to members that he has filed a complaint in RERA. Document No.11 is the 5 letters of support from flat owners. Document No.12 is the CD but no such CD attached. The above said 12 documents have also not disclosed anything with regard to the club house and STP and as well as the on-going project.

10. On the side of the respondent has produced a typed set with 10 documents the document No.1 is the publication made by TNRERA in the website. Document No.2 dated 04.05.2012 copy of the sale deed for registration of undivided share of land between the respondent and complainant. Document No.3 dated 06.09.2012 is the possession certificate signed by the purchaser and developer namely the complainant and the respondent. Document Nos.4 and 5 are the property tax receipts. Document No.6 is the notice to the Registrar of Societies. Document No.7 dated 9.4.2013 is the letter from Trichy Corporation regarding providing sewage connection and other infrastructure. Document No.8 is the Minutes of AGM Meeting and Annual Report. Document No.9 dated 9.9.2010 is the proceedings of the Director of Town and Country Planning. Document No.10 is the speed post receipt.

11. The appellant produced 24 documents and the respondent produced 10 documents. The above said 34 documents have not disclosed anything with regard to club house, STP and on-going project. Now let us discuss the merits of the case before that the relevant provision of the Real Estate (Regulation and Development) Act, 2016 has to be looked into. The applicability of the Act the relevant provision is Section 3 of the Real Estate (Regulation and Development) Act, 2016, which runs as follows:

> ***3. Prior registration of real estate project with Real Estate Regulatory Authority.***
>
> ***(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:***
>
> ***Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.***
>
> ***(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—***
>
> ***(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;***
>
> ***(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;***

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

12. As per Section 3 of the Real Estate (Regulation and Development) Act, 2016, each and every project shall be registered with the Regulatory Authority. Without registration no sale can be made. As per the proviso clause if any project on the date of commencement of the Act not obtained any completion certificate it is an on-going project. What are projects are on-going project is defined in Rule 2(h)(ii) and (iii) of the Tamil Nadu Real Estate Rules, 2017, which runs as follows:

2. Definitions.- In these rules, unless the context otherwise requires,-

(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) .. ..

(ii) .. ..

(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

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the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority.

13. As per Rule 2(h)(iii) the project which is **under execution outside Chennai Metropolitan Area, as no provision and procedure has yet been prescribed for issue of completion certificate.** In such a situation, the possession certificate was obtained by the promoter from the allottee and the same is produced by the respondent in his Typed Set at page No.34 in which it has been specifically mentioned as follows:

1. *The construction of the above apartment (H001) is complete inclusive of common amenities all respects to the satisfaction of the purchaser.*
2. *Developer confirms receipt of all payments as per agreement from the purchaser.*
3. *Purchaser and Developer confirm that there are no dues/no claims from either side.*
4. *Purchaser confirms receipt of original sale deed 1472/2012 dated 04.05.2012 and 1 set of parent documents. (Bound volume).*
5. *Purchaser has received from the Developer following keys of the apartment (H001)*

Door Description	*No. of keys*
Main Door	*1 x 4*
Kitchen/service area	*1 x 2*
Master bedrooms (GF, FF)	*2 x 2*
Sit outs (GF-1, FF-3)	*4 x 2*

In conclusion of the agreement mentioned, between the purchaser and the developer, the developer does hereby hand over the vacant possession of Apartment No.H001 (Sampurna Block) in Ponni Delta Retirement Community and the purchaser confirms taken possession this Day 06.09.2012 in front of the witnesses.

Sd/- for Aknam Finvest Pvt. Ltd. *Sd/- for Natesan Housing Pvt. Ltd.*

14. In the above said possession certificate it has been specifically mentioned that the apartment is complete inclusive of common amenities all respects to the satisfaction of the purchaser. In the above said certificate both

the purchaser and developer signed in the presence of the witnesses. The certificate was not disputed by the appellant and moreover it is not the case of the appellant that the above said Point No.1, "the construction of the apartment is complete inclusive of common amenities in all respects" is obtained by fraud or false. It is a clear admission by the appellant himself that the common amenities were completed in all respects. While delivering the possession, the appellant has not stated anything as a protest regarding incomplete facilities namely club house and STP.

15. After taking possession the appellant has paid tax on 10.03.2014 in the name of the appellant himself. So the possession handed over in the year 2012 and the property was assessed for tax in the year 2014. The respondent has also produced letter from the Assistant Commissioner Srirangam Division of Trichirapalli Corporation, in which also they have stated that action will be taken for underground drainage system. If really the STP was not provided it is not possible to connect with underground drainage. One Sundaram of H008 has applied for the underground drainage for which the reply was given by the Assistant Commissioner. So everything done before the Act came into force in 2016. Now let us see whether this Real Estate (Regulation and Development) Act, 2016 has got retrospective effect. For which the answer is available in the Division Bench Judgment of the Bombay High Court in the following judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2737 OF 2017
(WRIT PETITION LODGING NO. 2010 OF 2017)

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Neelkamal Realtors Suburban Pvt. Ltd. and anr. .. Petitioners Vs. 1. Union of India and ors. .. Respondents

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest.

16. As per the above Judgment of the Bombay High Court the RERA Act are not retrospective in nature. So if the project is an on-going project on the date of commencement of the Act the arguments of the appellant side are acceptable one. But here the appellant/complainant failed to prove that the project of the respondent on the date of commencement of the Act is an on-going project. Moreover, this Act has no retrospective effect. Therefore, this Tribunal comes to a conclusion that the appellant/complainant is not entitled to invoke the provisions of Real Estate (Regulation and Development) Act, 2016. The point No.1 is answered accordingly.

Point No.2:

17. On the side of the appellant the main contention in this appeal is that the Regulatory Authority failed to consider the documents relied by the appellant and the Authority has considered the handing over possession and assessment of tax, they are alone not sufficient and mere handing over of possession without facilities cannot be construed as a valid handing over of possession. On the side of the respondent, they have totally denied the contention of the appellant by producing documents. There are 24 documents relied by the appellant and 10

documents relied by the respondent. Out of 24 documents relied by the appellant none of the documents revealed the non completion of club house and STP. Furthermore, the learned Authority has decided the complaint on the basis of the maintainability and moreover it has not gone into the evidences adduced by the appellant. Hence the appellant has put forth the same as a ground to set aside the order of the Authority. While analyzing the documents produced by the appellant prima facie no case is made out to entertain the complaint. Furthermore, the possession of the apartment has been handed over in the year 2012 and after 4 years by invoking the welfare legislation namely the Real Estate (Regulation and Development) Act, 2016, the appellant has came forward with this complaint as if the project of the respondent is an on-going project. The appellant has miserably failed to prove by documentary evidence that the respondent's project is an on-going project. The documents relied by the appellant are not sufficient to hold that the respondent's project is an on-going project. But in contra on the side of the respondent it has been clearly proved by way of documentary evidence that the project has been completed and handed over in the year 2012 and the assessed to tax in the year 2014. It was not disputed by the appellant at all. The only contention raised on the side of the appellant is that mere delivery of possession of apartment alone is not sufficient and it should be along with common facilities. But unfortunately, the appellant never raised his little finger at any point of time regarding non completion of facilities namely club house and STP before he approached the Regulatory Authority. Even in the General Body Meeting of the Owner's association also they have not raised the non completion of facilities namely the club house and STP and they have not passed any resolution to that effect. They have passed resolution only with regard to transfer of corpus fund and it was also admitted by

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the respondent that due to lack of unity they are not able to transfer the same to the owner's association.

18. In any view of the matter, the appellant has miserably failed to prove that the respondent's project is an on-going project. Moreover, the appellants have not produced any piece of paper to show that the respondent's project is an on-going project by way of showing the non completion of club house and STP by documentary evidences. Hence the Regulatory Authority on the basis of the available evidence came to the conclusion that complaint is not maintainable. As per the Neelkamal Realtors Judgment of the Bombay High Court the Real Estate (Regulation and Development) Act, 2016 has no retrospective effect, even though it is a beneficial legislation to the purchasers/allottees. Section 3(2)(b) of the Act has specifically contemplated that if the completion certificate obtained on the date of implementation of the Act, this Act cannot be invoked. In this case as per Rule 2(h)(iii) of the Real Estate Rules, 2017 when there is no specific procedure contemplated for completion certificate the parties themselves entered into an agreement for completion of the apartment and produced the same by the respondent and when the appellant himself has not questioned the same, by mere allegation as the exemption certificate was not properly obtained is not sufficient. The Regulatory Authority has, not only relied the exemption certificate but also the documents admitted by the appellant and relied by the respondent and came to a conclusion that the complaint is not maintainable. The conclusion arrived at by the Regulatory Authority cannot be found fault. Therefore, this Tribunal comes to a conclusion that this appeal does not deserve to be allowed. The point No.2 is answered accordingly.

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19. In the result, this appeal A.No.81/2020 is dismissed. No costs. The order of the Regulatory Authority in C.No.408/2019 dated 10.02.2020 is confirmed. 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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