BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 17.11.2021

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member

Appeal No. 102 of 2021

M/s.VGN Property Developers Pvt. Ltd
Represented by its MD, V.Pratish Devadoss ... Appellant

-Vs-

S.N.Karthikeyan ... Respondent

This Appeal was preferred against the order of Adjudicating Officer in C.C.P.No.10 of 2020 dated 19.03.2021. This Appeal was taken on file on 27.09.2021 and came up for hearing for compliance in M.A.No.140 of 2021 under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and ordered to pre-deposit of 40% of the total amount ordered by the court below. For compliance of pre-deposit order the matter came up in the presence of appellant's counsel M/s.K.Harishankar, Srinath Sridevan, T.K.Bhaskar,

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Mithreyi Kasthurirangan and Varsha Chandrasekar. The case was posted on 17.11.2021 for reporting compliance through video conferencing. Considering the non compliance of the pre-deposit order this Tribunal delivered the following:

ORDER

1. The respondent in this appeal has preferred complaint before the Adjudicating Officer in C.C.P.No.10 of 2020 for the relief of refund of sale consideration with interest and for compensation. After contest the Adjudicating Officer allowed the complaint in part and directed the appellant/promoter to refund the sale consideration Rs.5,36,500/- with interest @ 10.05 % per annum along with compensation of Rs.50,000/- for mental agony and litigation cost Rs.25,000/. Aggrieved upon the same the appellant/promoter herein has preferred this appeal along with waiver application. In the waiver application this Tribunal ordered 40% of the total amount ordered by the court below. Since the appellant failed to comply the order this Tribunal delivered the following order:

> ***"This Tribunal has directed the appellant in M.A.No.140/2021 on 20.10.2021 to deposit 40% of the all the amounts as ordered by the court below on or before 16.11.2021 and posted for compliance on 17.11.2021. The appellant without complying the order under Section 43(5) came forward with M.A.No.179/2021 on 16.11.2021 for extension of time stating their inability to pay the amount. The learned senior counsel Mr.K.Harishankar pointed out that due to corona difficulties and various difficulties in the***

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business they are unable to comply with the order and sought for time. This Tribunal brought to the notice to the learned counsel, the judgment of the Hon'ble Supreme Court in New Tech Promoters and Developers Pvt. Ltd. Vs. State of Uttar Pradesh & Ors. dated 11.11.2021 wherein the Hon'ble Supreme Court has stated that the amount to be deposited under Section 43(5) is not a onerous condition. The application filed by the appellant M.A.No.179/2021 seeking for extension of time at this stage is not maintainable. Hence the extension application is dismissed, consequently the Section 43(5) application M.A.No.140/2021 for non compliance is dismissed.

In view of the dismissal of the application under Section 43(5), which is a mandatory requirement, the appeal A.No.102/2021 is dismissed for non compliance.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 17th Day of November 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDL. MEMBER