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 07.03.2022

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

A.No. 103/2021

M/s. Akshaya Pvt.Ltd.,
Rep. by its Director, J. Ravi ... Appellant

-Vs-

P.Anandasundaresan ... Respondent

This Appeal has been preferred against the order of Adjudicating Officer in C.C.P.No.30/2020 dated 30.03.2021. This Appeal was taken on file on 29.09.2021 and came up for final hearing on 2.3.2022 in the presence of M/s. Mani Sundargopal and Shree Aadya.S, Counsels for the appellant and M/s. W.R. Subhashini and R. Annamalai, Counsels 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:

Verified RealEstate™

ORDER

1. This appeal has been preferred by the appellant/promoter against the respondent/home buyer. To avoid confusion hereinafter in this appeal the appellant is called as promoter and the respondent is called as home buyer.

2. The home buyer booked an apartment with the promoter in their project namely 'Akshaya January' situate in Thaiyur 'B' village, Chengelpet Taluk, Kanchipuram District. On 30.7.2011 the home buyer and the promoter entered into a memorandum of agreement for sale of the constructed flat for a total sum of Rs.46,38,000/-. The time for completion of the apartment is with 30 months from the date of obtaining the sanction of the building plan with a grace period of 90 days. The home buyer came forward with the complaint before the Adjudicating Officer for the relief of compensation for delay in handing over possession, mental agony and litigation costs. After contest the Adjudicating Officer directed the promoter to pay delay compensation with interest, compensation for mental agony and litigation costs. Aggrieved upon the same the promoter preferred this appeal on the following main grounds:

- The completion certificate for the project 'January' was obtained as early as 26.2.2014, the applicability of Section 11(3)(a) does not arise.
- Section 11 is applicable only in respect of real estate project which are commenced after coming into force of the Act.

Verified by PredEstate ™

- Whether a project is an ongoing project or not the proviso to Section 3 of the RERA stipulates that only in respect of projects where completion certificate has not been issued, it can be deemed to be an ongoing project. Therefore, merely by the fact that the apartment was handed over on 14.2.2018, it cannot be said that the project is an ongoing project.
- The memorandum of agreement dated 30.7.2011 wherein specific clauses for compensation in the event of delay in delivery of possession have been mentioned.
- Rights and obligations of the parties to the real estate contract are prospective in nature and hence the agreement between the parties entered prior to the date of coming into operation of the Act will prevail.
- The home buyer had committed several defaults in making the periodical stage wise payments hence the home buyer would not be entitled to any rental compensation as per the terms of clause 8 of the memorandum of agreement.

3. The learned counsel for the appellant/promoter would submit that the learned Adjudicating Officer has miserably failed to appreciate the above points while deciding the complaint. This Tribunal already decided in A.No.2/2021 that the project of the promoter namely 'January' is exempted from registration since completion certificate was issued to the appellant's project on 26.2.2014 itself. Therefore this appeal has to be allowed.

4. The learned counsel for the respondent/home buyer would submit that mere completion certificate is not enough and occupancy certificate was not obtained by the promoter since the project has not been completed on the date of issuing completion certificate. Therefore, the learned Adjudicating Officer has come to a correct conclusion and there is no infirmity in that finding. Hence this appeal has to be dismissed.

5. From the arguments of both sides counsel the following points were raised for determination:

1. Whether the complaint of the home buyer is maintainable?
2. Whether this appeal is deserves to be allowed or not?

Point No.1:

6. According to the home buyer his apartment was delivered only in 14.02.2018 by the promoter hence the completion certificate dated 26.02.2014 relied by the promoter is a false document to mislead the forum. Hence the project of the promoter is an ongoing project and the complaint is maintainable.

7. According to the promoter they have commenced the project in the year 2011 and completed the project in the year 2014 and only after inspection by the local body officials the completion certificate was issued on 26.2.2014. By relying this document this Tribunal has already decided in A.No.2/2021 dated 24.1.2022 that the project of the respondent is not an ongoing project

and registration under RERA is not necessary. The home buyer in this case has purchased and got possession from the same 'January' project of the promoter. Hence the complaint of the home buyer is not maintainable.

8. According to the learned Adjudicating Officer by relying Ex.A7 letter that the promoter assured revised compensation for the revised timelines for the completion of the project hence came to the conclusion that the complaint is maintainable.

9. Both the parties took different stand for the maintainability of the complaint. The learned Adjudicating Officer has not relied the stand taken by the home buyer and gave a finding on the basis of Ex.A7. Now we have to analyze which one is reliable to come to a correct conclusion regarding maintainability of the compliant. For which the following provisions of the Act and previous order of this Tribunal and legal position of the Hon'ble Supreme Court are relevant to decide the issue:

> ***Section 2 (q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;***
>
> ***Section 2 (zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;***

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO(S). 6745 – 6749 OF 2021 (Arising out of SLP(Civil) No(s). 3711–3715 OF 2021)

M/S Newtech Promoters And ... vs The State Of Uttar Pradesh

on 11 November, 2021

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term converting and existing building or a part thereof into apartments including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

10. The home buyer came forward with the petition under Order 41 Rule 27 CPC to receive additional document which is the email dated 13.11.2017 and the same was received as additional document Ex.A9 by separate order of this Tribunal. The only document relied by the home buyer that it is an admission by the promoter that the apartment will be ready for handing over by the end of December 2017. Therefore the learned counsel for the home buyer would vehemently contend that the project of the promoter is an ongoing project hence this complaint is absolutely maintainable.

11. The promoter came forward with the completion certificate dated 26.2.2014 and the same was relied by this Tribunal in A.No.2/2021 dated 24.1.2022 and decided that the project 'January' of the promoter is not an

ongoing project. Now this Tribunal cannot differ from that order. This is the argument of the learned counsel for the promoter.

12. The learned counsel for the home buyer replied that the so called completion certificate is only a false document to mislead the forum. How far the arguments of both sides are sustainable has to be analyzed. For which, the answer is available in the provisions of Section 2 and the latest Supreme Court verdict dated 11.11.2021.

13. As per Section 2(q), as stated supra, completion certificate means the completion certificate issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications as approved by the competent authority under the local laws. The above said provision only insists that the project has to be developed as per the sanctioned plan and nothing.

14. As per Section 2(zf) occupancy certificate means, as stated supra, permitting occupation of any building which has provision for civic infrastructure such as water, sanitation and electricity.

15. Section 3(2)(b) of the Real Estate (Regulation and Development) Act, 2016 runs as follows:

> ***Section3(2) notwithstanding anything contained in Sub section 1, no registration of the real estate project shall be required-***

Verified RealEstate ™

b. "Where the promoter has received completion certificate for a real estate project prior to commencement of this Act".

Section 3(2)(b) requires only the completion certificate prior to the commencement of this RERA Act to claim exemption from registration under RERA. In this provision it has not been stated anything about the occupancy certificate. So the arguments put forth by the learned counsel for the home buyer referring Section 2(zf) has no relevancy.

16. The latest Apex court verdict in Newtech case, as extracted supra, the intention of the legislature by necessary implication and without any ambiguity to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. In this judgment also the law of the land insists only the completion certificate to claim exemption from the purview of Section 3 of the Act.

17. Therefore Section 2 and Section 3 of the Real Estate (Regulation and Development) Act, 2016 and the Supreme Court latest judgment have also insisted for claiming exemption from registration only the completion certificate from the competent authority. The promoter has relied the completion certificate issued by the competent authority namely Thaiyur Panchayat, which was issued before the enactment of the Real Estate (Regulation and Development) Act, 2016. So, there is no ambiguity or no doubt that for claiming exemption from registration completion certificate alone is sufficient.

Verified RealEstate™

18. Now let us discuss about the next defense put forth by the home buyer as completion certificate is false document. On the side of the home buyer has produced Ex.A1 to Ex.A8 before the Adjudicating Officer. The above said documents have not stated anything about the completion certificate dated 26.2.2014. Now in this appeal the home buyer came forward with an application in M.A.No.30 of 2022 along with an affidavit in paragraph No.12 he has stated that "the document issued by the 'Thaiyur Panchayat' is a forged one and misleading. Therefore I have to file one more document to establish my case that TNRERA Act is applicable to my case." In the above said document dated 13.11.2017 email in which it has been stated as follows: "with reference to your mail on apartment, readiness the apartment will be ready for handing over by end of December 2017. Once the apartment is ready, we will be inviting you for the final inspection and will proceed with the handing over. Looking forward for your extended cooperation." According to the home buyer, completion means handing over of apartment to him. Therefore, the home buyer relied this document. The Act has not said so. As per Section 2(q) the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications as approved by the competent authority under the local laws. So as per the provision the ingredients for the issuing of completion certificate are sanctioned plan, layout plan, specifications as approved and it should be verified by the competent authority and after satisfaction the completion certificate will be issued. Section 2(q) has not included the specifications stated in Section 2(zf). In Section 2(zf) there are specifications namely civic infrastructure such as water, sanitation and

electricity are the ingredients but they have not included in Section 2(q). The intention of the legislature for issuing completion certificate the ingredients mentioned in Section 2(zf) are not required. Handing over of possession of apartment depends upon the various factors out of which payment is the important as well as the basic one. As per Ex.A4, statement of accounts the last three payments were made only on 14.2.2017, 5.12.2017 and 22.12.2017. After the last payment on 22.12.2017 the possession handed over is not disputed. After the entire payment made by the home buyer if possession is not handed over the claim of the home buyer is tenable but here the claim of the home buyer is not as if even after the payment within 45 days possession was not obtained by the home buyer. Therefore the document relied by the home buyer is no way helpful to strengthen the case of the home buyer.

19. The main defense put forth by the home buyer is that the completion certificate is a false document. To substantiate this defense the home buyer has not produced any piece of paper except additional document now produced in the appeal now marked as Ex.A9. The promoter has produced the completion certificate dated 26.2.2014 as Ex.B3 before the Adjudicating Officer. Regarding the above said document this Tribunal already hold as follows:

BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)
A.No.2/2021 dated 24.1.2022

M/s. Akshaya Pvt.Ltd., Rep. by its Director, J. Ravi Vs-Deepak Kumar Agrawal

15. As per Section 3(2) no registration of the real estate project shall be required where the promoter has

Verified by PropEstate

received the completion certificate for a real estate project prior to the commencement of this Act. In this case the promoter has filed the building plan approval along with completion certificate through a memo on 4.1.2022. On perusal it reveals that the building plan approval was granted on 2.2.2011 by the Thaiyur Panchayat President in which as condition No.12 specific condition that the builder has to obtain completion certificate after completion of the construction as per the approved plan. The period of validity of the building permit was allowed from 2.2.2011 to 2.2.2014. On 26.2.2014 the President of the Thaiyur Panchayat has issued a completion certificate in which it has been specifically mentioned as while issuing completion certificate the building was inspected and verified with the building permit and found correct and no violation of building plan approval and issued completion certificate. The above said certificate was issued on 26.2.2014. On that date this The Real Estate (Regulation and Development) Act, 2016 not at all conceived and this Act received the assent of the President on 25.3.2016 and published in the gazette on 26.3.2016 and further Section 3 to 19 came into force only on 1.5.2017. In 2014, there is no chance for any anticipation of the Act and manipulation of the completion certificate since in the building permit issued by the Thaiyur Panchayat itself there is a specific condition to complete the construction as per the building plan approval and to obtain completion certificate from the Panchayat. So everything happened in the year 2014 and this Act came into force only in the year 2017.. ..

20. The real estate Act came into force only on 1.5.2017 and in March 2016 this Act received the accent of the President. The promoter has obtained building plan approval on 2.2.2011 by the Thaiyur Panchayat President in which as condition No.12 there is a specific condition that the builder has to obtain completion certificate after completion of the construction as per the approved plan. The period of validity of the building permit was allowed on 2.2.2011 to 2.2.2014. On 26.2.2014 the completion certificate was issued. At the time of

obtaining planning permission and obtaining completion certificate the RERA Act itself was not conceived and there is no thought about the completion certificate at all. In such circumstances, in anticipation the promoter has obtained completion certificate for his project is unbelievable and there is no possibilities for creating such a certificate by expecting that the RERA Act will come to force in the year 2016 and in which there is a provision for registration and also there is a provision for exemption by way of obtaining completion certificate is certainly not possible and it is only imaginary. Except the mere allegation as false document there is no material on record to come to a conclusion that the completion certificate relied by the promoter is false one as alleged by the home buyer, Therefore this Tribunal comes to a conclusion that the allegation of the home buyer is not proved that the completion certificate is false. In such circumstances, as per Section 2(q) and 3(2)(b) the completion certificate relied by the promoter is valid since it is not proved as false. Furthermore, the home buyer came forward with the complaint for compensation on 29.11.2019 nearly after 1 ½ years from the date of taking possession by the home buyer. Before that the home buyer has not raised his little finger about the completion certificate. Even on 14.2.2018 (Ex.A6) while taking possession the home buyer agreed to receive the delay compensation as per the agreement from April 2017 to till date. As per the agreement the defaulters are not entitled to delay compensation.

21. The learned Adjudicating Officer has relied Ex.A7 letter dated 26.10.2015 which is also before the Act came into force. In that letter the

completion dates were mentioned. But Section 2(q) defined the completion certificate and as per the definition completion certificate has been issued by verifying the completion of construction as per the approved building plan. But the learned Adjudicating Officer without relying the provision of the Act but relied on the communication between the parties is not according to law. Therefore, the findings of the learned Adjudicating Officer regarding maintainability of the complaint are not sustainable. Hence this Tribunal comes to a conclusion that the complaint itself is not maintainable. The point No.1 is answered accordingly.

Point No.2:

22. In point No.1 it was decided that the complaint is not maintainable. In such circumstances, the entire order of the learned Adjudicating Officer relying the Section 11, 18 of the Real Estate (Regulation and Development) Act, 2016 is not sustainable since the project of the promoter is exempted from registration and as per the verdict of the Hon'ble Supreme Court the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. When the project of the promoter is not an ongoing project certainly the provisions of the Act itself is not applicable. Therefore the relief granted under the Act necessarily has to be set aside since the home buyers are entitled to claim relief only on the basis of the agreement between the parties dated 30.7.2011. Therefore this Tribunal comes to a conclusion that the order of the learned Adjudicating Officer is liable

to be set aside and the appeal deserves to be allowed. Point No.2 is answered accordingly.

23. In the result, by allowing this appeal the order of the Adjudicating Officer in C.C.P.No.30 of 2020 dated 30.03.2021 is set aside and complaint of the home buyer is dismissed. No costs. M.A.No.30/2022 is allowed and additional document is received and marked as Ex.A9.

Connected Miscellaneous Applications are closed.

List of documents filed by the home buyer:

Exhibit Number	Date	Document Name
Ex.A9	13.11.2017	Email sent by promoter to home buyer

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 07th Day of March 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Verified RealEstate™