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 16.02.2022

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

Appeal Nos.117 to 129 of 2021

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

-Vs-

J.Srinivas (A.No.117/2021)
1. Venkataramani
2. V.Usha (A.No.118/2021)
S. Geetha (A.No.119/2021)
K.C. Settu (A.No.120/2021)
V. Eswaran (A.No.121/2021)
S. Rajesh (A.No.122/2021)
Shanthi Veerappan (A.No.123/2021)
1. R.Berlin Raja Kumar
2. A.R. Ajusha (A.No.124/2021)
1. M.Raja
2. R.Sudha (A.No.125/2021)

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1. S.Santhanam
2. S.Gayatri Jayashree } (A.No.126/2021)
K.Kannan (A.No.127/2021)
R.Jayaraman (A.No.128/2021)
Arvind Jothiprakash (A.No.129/2021) .... Respondents

These appeals were taken on file on 17.11.2021 and came up for final hearing on 7.2.2022 in the presence of M/s. Mani Sundargopal and Shree Aadya.S, Counsels for the appellant. All the respondents appeared in person and represented Mr. J.Srinivas on behalf of all 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:

COMMON ORDER

1. The home buyers thirteen in number have preferred complaint against the promoter before the Regulatory Authority for the relief of handing over possession of apartment from the promoter with regard to the project 'Republic' situate in Kovur village, Sriperumbudur Taluk, Kanchipuram District in all totally measuring an extent of 7 acres and 48.92 cents. The Regulatory Authority passed common order for all the thirteen complaints. Here the promoter has preferred thirteen appeals against the home buyers. The reliefs sought for by the promoter against the home buyers are one and the same hence a common order is passed for all the appeals.

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2. These appeals been preferred against the order of the Tamil Nadu Real Estate Regulatory Authority in C.Nos.273 to 279, 284, 289, 297, 298, 305 and 346 of 2019 dated 21.01.2021. Hereinafter in these appeals the appellant are called as promoter and the respondents are called as home buyers per their original rankings. The home buyers preferred separate thirteen complaints against the promoter for the relief of handing over possession by 30.6.2019 with all amenities. The Regulatory Authority after the appearance of promoter directed the promoter to submit an affidavit regarding the status of the common amenities. The promoter filed status report. On the basis of the status report the authority has directed the promoter to hand over apartment with all amenities before 31.1.2021 and also directed the promoter to register the project before 28.2.2021. Aggrieved upon the same the promoter has preferred this appeal on the following main grounds:

- None of the home buyers sought for the registration of the project in their complaint.
- Structural work in the project had been completed before the RERA Act came into force and granted exemption from registration in the CMDA website.
- No opportunity was given to the promoter to set out the factors as to how the project is not liable to be registered.
- Direction to provide electricity to the home buyers free of cost is unjust.

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3. The learned counsel for the appellant/promoter would submit that without giving proper opportunity for the promoter to contest the case the learned Authority has simply directed the promoter to file status report. On that basis the Authority directed the registration of the project which was already exempted from registration under CMDA website before the Rule came into force i.e., on 22.6.2017. The project of the promoter namely Rebulic was launched in August 2013 and it consists of 455 apartments comprised of blocks A, C,D & E with six towers. Out of the 455 apartments 269 apartments in block C, D & E have been sold. Block E is meant for economically weaker section of the society consists of 105 apartments out of which 61 were sold. It has been completed and possession handed over. For blocks C & D the promoter has applied for completion certificate on 31.5.2017 itself i.e., before the RERA Rules came into force. Republic Block B was registered under the RERA in TN/01/Building/0031/2017 dated 23.8.2017 and Block A was also registered under the RERA in TN/01/Building/0106/2021 dated 7.4.2021. Therefore the completed projects of the promoter need not be registered and to be completed projects properly registered with the Regulatory Authority. Therefore these appeals have to be allowed.

4. The learned representative of the home buyers Mr.J.Srinivas would submit that the common amenities were not completed by the promoter and they have promised to complete the same and hand over the possession.

Hence the learned Regulatory Authority after elaborate discussion came to a correct conclusion and there is no infirmity in these findings hence appeals have to be dismissed.

5. Points for consideration:

1. Whether the project of the promoter "Republic" Blocks C, D & E are liable to be registered under RERA?
2. Whether the appeals deserve to be allowed or not?

Point No.1:

6. According to the promoter the project 'Republic' was launched in 2013 and it consists of 399 apartments comprised of 3 blocks C, D and E, out of which 269 apartments were sold. Block E exclusively for the economically weaker section of the society consists of 105 apartments out of which 61 apartments were sold. In this block 54 were taken possession. The learned Regulatory Authority has stated in paragraph no.6 of its order that "the respondent has also given the present status and the time line to completion of the common amenities as follows:". The learned authority has given 10 items of common amenities namely lighting in apartment complex, club house with terrace garden indoor games, AV room, multipurpose hall, separate rest room, change room for staff and drivers, WTP, STP, walk way, bicycle way, garden theatre stage, swimming pool, completion of play area and open car

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park allotment. In the above said amenities civil works were completed and installations of machinery works were going on.

7. The construction agreement dated 31.3.2015 in which time for completion mentioned as within 30 months with a grace period of 180 days from the date of obtaining the building plan sanction from the CMDA on 26.9.2013. The allottees and the promoter were agreed in clause 8 of the agreement which runs as follows:

> ***" In the event of any delay in handing over the Schedule C property, the BUILDER/PROMOTER undertakes to pay a rental compensation to the ALLOTTEE/PURCHASER amounting to Rs.5000/- (Rupees Five Thousand only) per month in the case of a Two Bed Room Compact Apartment, Rs.7500/- (Rupees Seven Thousand Five Hundred Only) per month in the case of Two Bed Room Regular Apartment and Two Bed Room with Study Apartment and Rs.10,000/- (Rupees Ten Thousand only) per month in the case of a Three Bed Room Apartment as the case may be for such delayed period provided such delay not being attributable to the reasons mentioned supra and also subject to the ALLOTTEE/PURCHASER having effected all his payments on time as stipulated in Annexure-I of this agreement. "***

8. The Rule 4(1) Explanation I of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 runs as follows:

> ***4. Disclosure by promoters of existing projects.-***
> ***(1) On the date of coming into force of sub-section (1) of section 3 of the Act, promoters of all ongoing projects shall within the time specified in the said sub-section, make an application to the Authority in the form and manner provided in rule 3.***
> ***Explanation I.- Any agreement already entered between the promoter and the allottee before commencement of these rules shall not be affected.***

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9. In the construction agreement itself the parties have agreed for the delay compensation. That agreement will bind upon both the parties as per RERA Rule No.4 explanation.

10. According to the promoter they have completed the project and applied for completion certificate before the RERA Rules came into force on 22.6.2017 and it was also reflected in the CMDA website which runs as follows:

135	*EC/C1/7690/2017*	*31-05-2017*	*BHARATH PROMOTERS No.30 Old No.25/1 Krishnappa Chetty Street Chindadripet Chennai - 02.*	*S.No.355/1A,1B, 356/1A,1B,2A,2B1,2B2,357/1A2,412/1,2 of Kovur Village, gaining access through 12m wide road from Kundrathur Main Road, Chennai.*

So the promoter claimed that their project was exempted from registration as per the Section 3 of the Real Estate (Regulation and Development) Act, 2016 and Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. But the learned Authority has directed the promoter to register the project of the promoter before 28.2.2021 and the same was vehemently opposed by the promoter in this appeal. How far the argument of the appellant side is tenable has to be analyzed for which the relevant provisions are necessary which are as follows:

Section 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 .. ..

(2) .. ..

Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017

(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) in layout projects i.e., where land is developed into plots, the roads and open spaces gifted to the local body concerned;

(ii) the projects in Chennai Metropolitan Area for which application for completion certificate has been filed with Chennai Metropolitan Development Authority subject to furnishing certificate from the architect/licensed surveyor/ structural engineer associated with the project to the effect that all the buildings in the projects have been structurally completed i.e. all the columns, beams and slabs have been erected supported with photographs. Chennai Metropolitan Development Authority will issue, completion certificate for those projects in compliance with Completion Certificate norms prescribed. In Completion Certificate filed cases, if the Completion Certificate is rejected by Chennai Metropolitan Development

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Authority for violation of norms, such projects will be intimated to the Real Estate Regulatory Authority and will be bound for registration with Real Estate Regulatory Authority. <u>The details of all projects where Completion Certificate application has been filed with Chennai Metropolitan Development Authority prior to notification of these rules</u> will be disclosed to the public by publishing the list of all such projects on the website of Chennai Metropolitan Development Authority and Real Estate Regulatory Authority immediately after notification of these rules.

(iii) .. ..

11. Now let us discuss the plea of the promoter along with the provisions. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, Rule 2(h) states that a project where the development is going on and for which completion certificate has not been issued but excludes such project which fulfill any of the following criteria where the projects in Chennai Metropolitan Area for which application for completion certificate has been filed with Chennai Metropolitan Development Authority. The details of all projects where completion certificate application has been filed with Metropolitan Development Authority prior to notification of these Rules will be disclosed to the public by publishing the list of all such projects of the website of Chennai Metropolitan Development Authority.

12. So the promoter applied for the completion certificate on 31.5.2017 itself before the Rules came into force on 22.6.2017. The above said

application was not rejected by the Chennai Metropolitan Development Authority. Furthermore, in fact even on 31.5.2017 itself the Chennai Metropolitan Development Authority website has clearly stated that the project is exempted under Rule 2(h)(ii) as it is structurally completed. It is relevant to point out here it has published in CMDA website much before the Rules came into force in Tamil Nadu viz., 22.6.2017. Partial completion certificate was issued by the CMDA on 24.7.2020 as per the CMDA website which runs as follows:

15	*M/s. Bharath Promoters No.32, KB Dasan Salai SIET College Road Alwarpet, Chennai – 600 018*	*S. No.355/1A, 1B, 356/1A, 1B, 2A, 2B1, 2B2, 357/1A2, 412/1, 2 of Kovur Village, Kundrathur Main Road, Chennai, within the limit of Kundrathur Panchayat Union*	*CMDA issued Planning Permission No.C/PP/MSB-IT/54 A to H/2013, dated 26.09.2013, in Letter No.C3/13278/2012, dated 26.09.2013, Planning Permit No.8121*	*C3/13278/ 2012*	*4 Blocks out of 7 Blocks Block – C: Stilt Floor + 7 Floors with 154 dwelling units; Block – D: Ground Floor (Part) / Stilt Floor (Part) + 7 Floors with 140 dwelling units and Departmental store (GF only); Block – E (LIG Housing): Stilt Floor + 7 Floors with 105 dwelling units; total = 399 dwelling units; & Block – F: Basement Floor + Ground Floor + 1st Floor Club House*	*EC/C-I/1897/ 2020*	*1st Partial Completion Certificate No. EC/ Central - I/115 /2020 dated:24-07-2020*

13. The Chennai Metropolitan Development Authority had issued partial completion certificate on 24.7.2020 for the project 'Republic' Block C,D, E & F. The promoter has registered the Block 'B' of 'Republic' project with RERA on 23.8.2017 and has registered the Block 'A' of 'Republic' project with RERA on 7.4.2021. But the learned Regulatory Authority has stated in its order that "the respondent/promoter to register this project with Authority before 28.2.2021". After the issuing of partial completion certificate only by the Chennai Metropolitan Development Authority the learned Regulatory Authority has passed orders to register the project. Block B was already registered with

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RERA on 23.8.2017 itself. Block C, D, E, F completed on 24.7.2020 itself as per the CMDA website. On 15.9.2020 the home buyers' representative Mr.J.Srinivas has filed an affidavit and admitted about the handed over the apartments and regarding the complaints of pending works in the amenities by way of reply on 30.9.2020 the promoter has filed an affidavit and stated the status of the pending common amenities and the plan of action to complete the same before 31.12.2020 and to prove the same the promoter has also produced photo copies of all amenities.

14. As per the CMDA website particulars the promoter has obtained building permission for 7 blocks and building plan permit No.8121 dated 26.9.2013. Out of which Block C,D, E & F has been completed and obtained partial completion certificate No. EC/ Central -I/115 /2020 on 24.7.2020 and remaining two blocks were registered with Tamil Nadu RERA Authority. In the light of the analysis of the status of completion of the apartments, and common amenities this Tribunal holds that Block C,D, E & F of the project 'Republic' is not registerable. Therefore this Tribunal comes to a conclusion that the order of the Regulatory Authority regarding the direction of registration of the project of the promoter "Republic" is liable to be set aside since part of the project already registered with RERA and the remaining part of the project has been completed as per the completion certificate. Hence the project of the respondent C,D & E is not liable to be registered. The point No.1 is answered accordingly.

Point No.2:

15. The learned authority has directed the promoter to register the project, directed the promoter to complete along with common amenities and handed over possession and direct the promoter to provide electricity to the home buyers at free of cost till permanent EB service connection is obtained. In point No.1 it was decided that Block C,D and E is not registrable since it has obtained partial completion certificate, possession of apartments handed over and balance projects were registered with RERA. Further the authority has directed the promoter to provide free electricity till permanent connection is obtained. Why the authority has directed the promoter to provide free electricity for which no reason was adduced by the learned Regulatory Authority. In the grounds of appeal as ground No.8 the appellant has stated that applied for EB connection as early as on 12.8.2020 land was gifted for installation of substation and the electricity board has so far not granted the electricity connection on 30.9.2019 regarding electricity connection the promoter has sent a letter in which the promoter has produced further action particulars with regard to electricity connection. On perusal of the same there is no fault for delay on the part of the promoter. In such circumstances, direction to supply free electricity by the promoter cannot be justified. For the delay is concerned the home buyers are having opportunity for legal action. In such circumstances, the authority cannot direct the promoter to provide free electricity for the no fault on the part of the promoter. Hence the direction regarding providing free electricity is not legally sustainable. Therefore this

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Tribunal comes to a conclusion that the order of the Regulatory Authority regarding direction for registration, handing over of possession has become infructuous. In such circumstances the order of the Regulatory Authority is liable to be set aside and this Tribunal comes to a conclusion that these appeals are deserve to be allowed. Point No.2 is answered accordingly.

16. **Appeal Nos.117 to 129 of 2021**

In the result, these appeals are allowed and the order of the Regulatory Authority in C.Nos. 273 to 279, 284, 289, 297, 298, 305 and 346 of 2019 are set aside and the complaints of the home buyers become infructuous. 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 16th Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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