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 19.01.2022

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

A.No. 136/2021

1. M/s. Pacifica (Chennai Project) Infrastructure Co. Pvt. Ltd.,
Rep. by its Deputy General Manager,
Marketing, Mr.S. Vijayaraghavan
(Authorized Signatory).

2. M/s. Pacifica Builders Pvt. Ltd.,
Rep. by its Deputy General Manager,
Marketing, Mr. S. Vijayaraghavan
(Authorized Signatory). ... Appellants

-Vs-

1. A.Jayakumar
2. J. Mangaiyarkarasi ... Respondents

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This Appeal has been preferred against the order of Adjudicating Officer in C.C.P.No.82/2020 dated 30.07.2021. This Appeal was taken on file on 29.11.2021 and came up for final hearing in M.A.No.187/2021 under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and ordered to pre-deposit of 100% 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. Sarvabhauman Associates, K. Venkatasubban and K.S. Srinivasan. The case was posted on 19.01.2022 through video conferencing for reporting compliance. The appellant deposited only 30%. Remaining amount not deposited. Considering the non compliance of the pre-deposit order this Tribunal delivered the following:

ORDER

The home buyer preferred a complaint against the promoter for refund of amount paid with interest and compensation with costs in C.C.P.No.82 of 2020. After contest the Adjudicating Officer directed the promoter to refund Rs.47,91,075.80 with interest at the rate of 10.15% from the date of respective payment till repayment. The Adjudicating Officer has also awarded Rs.2,00,000/- towards mental agony and inconvenience and awarded a sum of Rs.25,000/- towards litigation expenses. Aggrieved upon the same the appellant herein preferred this appeal along with waiver application under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016. In the waiver application in M.A.No.187/2021 this Tribunal ordered 100% of the total amount ordered by the court below. The appellant deposited only 30% on

7.12.2021 and the remaining amount till date has not been deposited. Hence considering the non compliance this Tribunal passed the following order:

> ***The appellant counsel stated that as per the earlier order, the client has not deposited the amount in the court. The last date for paying the amount was on 18.1.2022. Today when the matter is called for, balance amount has not been deposited. As per the order in Section 43(5) application, even though 100% was ordered they deposited only 30% on 7.12.2021, the remaining amount till date has not been deposited. In view of the Hon'ble Supreme Court by its latest judgment dated 11.11.2021 in***
>
> ***M/s. Newtech promoters and developers pvt. Ltd.***
> ***.....appellant(s)***
>
> ***Versus***
>
> ***State of up & ors. Etc. .....respondent(s)***
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> ***Since they were directed to pay 100% as they have not deposited the amount, the appeal cannot be entertained and the appeal is dismissed for non compliance to deposit the entire amount as ordered by this Court in the application under Section 43(5).***
>
> ***Appeal is dismissed for non compliance. No cost.***
>
> 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 19th Day of January 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDL. MEMBER