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 19.04.2021

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

Appeal Nos. 13 to 17 of 2021

1. SPR & RG Constructions Private Limited
   Rep. by its Managing Director,
   Mr.Hitesh Kumar P Kawad

2. Hitesh P Kawad
   Managing Director,
   SPR & RG Constructions Private Limited

3. M.G.Surendranath
   Director,
   SPR & RG Constructions Private Limited

... Appellants

-Vs-

Ronald Lamech .... Respondent in A.No.13/2021

1. S.Suresh
2. S.Srividhya .... Respondents in A.No.14/2021

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1. K.Venkataramanan
2. Latha Venkataramanan .... Respondents in A.No.15/2021

P.Suresh .... Respondent in A.No.16/2021

1. Anju Anna Thomas
2. Annie Thomas .... Respondents in A.No.17/2021

These appeals were taken on file on 19.02.2021 and came up for final hearing on 09.04.2021 in the presence of M/s.E.Sathish Kumar, R.Saravanakanni, counsels for the appellants and M/s.Paul & Paul, J.Hudson Samuel & Partners, Counsels for 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. These appeals have been preferred against the common order of the Tamil Nadu Real Estate Regulatory Authority in I.A.Nos.5 to 9/2021 in C.No.21, 38 to 41/2020 dated 04.02.2021.

2. These respondents have filed separate complaints against the appellants for the relief of registration of the project and for other reliefs. The appellants questioned the maintainability of the complaints by way of separate applications namely I.A.Nos.5 to 9 of 2021 in C.Nos.21, 38 to 41 of 2020. After contest the Regulatory Authority dismissed all the petitions as not maintainable. Aggrieved upon the same the appellants preferred these appeals.

3. The appellants filed applications for maintainability and in support of their applications the appellants' Assistant Manager, Liason one S.Ramesh, filed an affidavit and stated that the complaint of the respondents are liable to be dismissed in lumini as being not maintainable due to lack of jurisdiction. One Mrs.Subashini Thulasiram, filed a complaint through Form 'N' before the Adjudicating Officer by claiming compensation for the delay in completion that complaint was not numbered for the purpose of deciding whether the complaint fall within the jurisdiction of the TNRERA. The appellant has raised preliminary objections that the project is a completed project as on date of notification of TNRERA Rules. After contest the Learned Adjudicatng Officer gave a finding that the complaint is maintainable. Aggrieved upon that the appellants have preferred appeal 2 of 2019 and the same was allowed on 19.06.2019 and held that the project of the appellant is not an ongoing project. Aggrieved upon that the said Subashini Thulasiram preferred second appeal before the Honble High Court at Madras in CMSA No.22/2019 and the High Court allowed the appeal on 15.09.2020.Now the appellant filed a special Leave Petition before the Honble Supreme Court in SLP (c) No. 014103 of 2020 on 16.11.2020 and the same is pending. While the above mentioned second appeal was pending before the High Court in CMSA No.22 of 2019 suppressing the same, the complainant filed this complaint and the same has been numbered. On the date of filing this complaint the above said order of the Tribunal in A.No.2 of 2019 dated 19.06.2019 was prevailing. It was categorically held that the project of the respondents is not an ongoing project and will not come under the purview of the TNRERA. Furthermore, even the jurisdiction maintainability on the project has not yet reached it finality, which is the subject matter of the SLP and is pending for disposal by the Apex Court. The respondents misrepresented before the Authority

and got numbered the above complaint by suppressing the above facts which is purely a misrepresentation, falsification, abuse of process of law and the same has been barred by law. Hence the complaints have to be dismissed with exemplary costs.

4. The respondents objected this application by stating that the above interim application filed by the appellants raising a preliminary objection on maintainability is not maintainable, an abuse of process of court, devoid of merits and liable to be dismissed in lumini. The above said Subashini Thulasiram had filed second appeal and the same was allowed by an order dated 15.09.2020. In the said order it has been categorically held that the complaint filed by Mrs. Subashini Thulasiram was maintainable as the project was an ongoing project and comes under the purview of RERA. There was no suppression of facts, misrepresentation, falsification and abuse of process of court. The interim applications filed by the appellants only with malafide intention to delay the proceedings and which itself an abuse of process of law and not maintainable. Hence the applications have to be dismissed.

5. The Learned counsel for the appellants would submit that the matter is pending before the Hon'ble Supreme Court to decide the primary matter of the case i.e., whether the project of the appellants is an ongoing project or not. At this juncture without reaching finality in this matter proceeding with the case leads to further litigation. Hence the appeals have to be allowed.

6. The Learned counsel for the respondents would submit that the appellants solely relied upon the Tamil Nadu Real Estate Rules, 2017. But the

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Division Bench of the Hon'ble High Court clearly and categorically held that the State Government Rule 2(h)(ii) is contrary to Section 3 of the Real Estate (Regulation and Development) Act 2016. Till the pronouncement of the Apex Court in its finding in the SLP the findings of the Division Bench of the Hon'ble High Court holds good. Therefore, the applications were rightly dismissed by the Learned Authority. Therefore there were no merits in these Appeals.

7. Points for consideration:

1. Whether these appeals are deserves to be allowed or not?

Point:

8. Perused both sides contention. On perusal the SLP filed by the appellants before the Apex Court is pending and no stay was granted in the SLP. Admittedly, the respondents herein are allottees and they came forward with these complaints for the relief of registration along with 8 other reliefs under the Real Estate (Regulation and Development) Act, 2016. The relief seeking for registration is one among the relief sought by the respondents. The Learned appellants' counsel cited the following decision of the Apex Court in another appeal as respondents would contend that now the matter pending adjudication before the Highest Court of the Land hence the decision of the Highest Court alone to be followed and till then no decision can be taken regarding the project of the respondents.

1974 (2) SCC 453

Supreme Court of India

Gojer Bros. Pvt. Ltd vs Ratan Lal Singh on 1 May, 1974

Allowing the appeal,
HELD : (1) The doctrine of merger is based on the principle that there cannot be, at one and the same time more than one

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operative order governing the same subject matter. Therefore the judgment of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated as being superseded by the judgment of the superior court. In other words, the judgment of the inferior court loses its identity by its merger with the judgment of the superior court.

9. In the above verdict of the Hon'ble Supreme Court it is very clear that the judgment of the inferior court loses its identity by its merger with the judgment of the superior court. As on date the order of this Tribunal in A.No.2/2019 loses its identity by its merger with the judgment of the superior court namely the Hon'ble Madras High Court. Even though the respondents preferred SLP before the Supreme Court no decision was arrived at by the Hon'ble Supreme Court till then the order of the Hon'ble High Court will prevail over the order of this Tribunal and necessarily this Tribunal as well as the Regulatory Authority have to follow the judgment of the Hon'ble High Court.

10. As per the above said verdict of the Apex Court till the finality reached by the Apex Court in the SLP filed by the appellants the judgment of the Hon'ble High Court Division Bench will prevail over the order of this Tribunal. This is the legal position contemplated by the law of the land. But the appellants herein against the legal position simply filed applications for maintainability in each and every complaint and came forward with these appeals. Hence the Learned counsel for the respondents would submit that it amounts to delaying tactics. The arguments of the learned counsel cannot be brushed aside and there is force in that argument. If really the appellants are very much interested in deciding the issue with regard to ongoing project or not, the appellants can very well urge the matter before the Hon'ble Apex Court and get the stay of all other proceedings.

Without getting stay the affected parties namely the respondents cannot be prevented from proceeding their cases. Therefore this Tribunal comes to a conclusion that these appeals do not deserve to be allowed. The point is answered accordingly.

11. In the result, A.Nos.13 to 17/2021 are dismissed. No costs. The order of the Tamil Nadu Real Estate Regulatory Authority in I.A.Nos.5 to 9 of 2021 in C.Nos.21 and 38 to 41 of 2020 dated 04.02.2021 are confirmed.

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 April 2021.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
ADMN. MEMBER

Sd/-xxxx
JUDL. MEMBER

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