BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate (Regulation And Development) Act 2016)

Friday the 22nd day of April 2022

Coram : Ms.Leena Nair, Administrative Member
Mr.R.Padmanabhan, Judicial Member

Appeal No. 141 of 2021

M/s. Dugar Housing Limited
Rep by Senior Executive – Legal
123, Marshalls Road,
Egmore, Chennai – 600 008. ... Appellant

-Vs-

C. Balasubramanian
Flat No.101, Tower 10, Sky Dugar Flats,
Yadhaval Street, Rajankuppam Road,
Ayanambakkam, Chennai – 600 095. ... Respondent

This appeal was taken on file on 6.12.2021 and came up for final hearing on 18.4.2022 in the presence of M/s. K.V.Bhashyam Chari and Bhuvneshwari, Counsels for the appellant and M/s. R.Munuswamy, Suriya Sankar, R.Lavanya and J.Anitha, 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:

ORDER

1. This appeal has been preferred by the promoter as against the order of the Real Estate Regulatory Authority in C.No.44 of 2020 dated 22.09.2021, directing the promoter/respondent to make the swimming pool operational as and when the NOC for operating the swimming pool is obtained.

2. The case of the complainant in brief is as follows: The complainant was an allottee of flat No.101, Tower 10 in the Sky Dugar Project developed by the promoter. The construction agreement as well as the sale deed in respect of the undivided share were all registered as per law. According to the construction agreement dated 09.09.2015 the promoter agreed to complete the construction on or before 30.09.2015 with a grace period of 6 months. (This construction agreement dated 9.09.2015 appears to have been preceded by a prior unregistered construction agreement.) The building was completed during 2018 and completion certificate was issued by the CMDA on 17.10.2018. The complainant took possession of his flat during May 2018. The promoter promised to complete all the 17 pending amenities listed out in the complaint.

3. Further, there is a registered association named after Sky Dugar Apartment Owners' Association registered during August 2017. But persons who are not owning any flats in the project have been designated as President, Secretary and other office bearers. The formation of association itself without the representation by any one of the owners is irregular. Hence the complaint.

4. The case of the respondent in brief is as follows: The RERA has no authority to deal with the complaint for want of jurisdiction. The application for completion certificate in respect of the project was filed by the promoter on 29.5.2017. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017

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came into force with effect from 22.6.2017 only. As per Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 the project is excluded as the same was not an ongoing project. In a similar case the RERA had already dismissed a complaint in C.No.401/2019 filed by one Mahendran against this respondent by applying Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

5. The respondent has filed an additional counter with details of the amenities provided in the project. According to the respondent except the swimming pool other amenities listed in the complaint have been provided. Infact the swimming pool structure was already completed and necessary NOC from the CMWSSB is awaited. Once the NOC is issued the swimming pool can be used by the allottees. Hence the complaint is liable to be dismissed.

6. After hearing both sides the Regulatory Authority has allowed the complaint in part with a direction to register the project on or before 30.11.2021 and with a direction to make the swimming pool operational as and when the NOC for operating the swimming pool is obtained. In so far as the issue relating to the association the RERA directed the complainant to approach the concerned Registrar of Societies. Aggrieved over the order passed by the RERA dated 22.9.2021 the promoter has preferred this appeal before this Tribunal.

7. Heard both sides. The learned counsel for the appellant/promoter would argue that the RERA has no authority to deal with the complaint for want of jurisdiction. The application for completion certificate in respect of the project was filed by the promoter on 29.5.2017. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 22.6.2017 only. As per Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules,

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2017 the project is excluded as the same was not an ongoing project as on 22.6.2017. In a similar case the RERA had already dismissed a complaint in C.No.401/2019 filed by one Mahendran against this respondent by applying Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, the counsel for appellant/promoter argued. The counsel would further argue that the order passed by the RERA in C.No.401/2019 is a judgment in rem and therefore the RERA is bound by its own judgment and cannot take a different view in a similar point. The counsel would rely upon two judgments of Rajasthan High Court in Ganesh Singh Vs Harisingh & Others and Ram Vs Prabhudhayal & Others.

8. On the other hand the counsel for the respondent/complainant would rely upon the judgment of the Division Bench of our Madras High Court in CMSA No.22/2019 dated 15.9.2020 (Subashini Thulasiram -Vs- M/s. SPR & RG Constructions Private Limited). According to the counsel the Section 3 of the Real Estate (Regulation and Development) Act, 2016 was came into force on 1.5.2017 itself. Admittedly, the application for completion certificate was filed by the appellant / promoter on 29.5.2017. Therefore, the project shall be considered as an ongoing project, the learned counsel argued by relying upon the above said judgment of the Hon'ble High Court, Madras.

9. Point for consideration:

Whether the appeal is deserves to be allowed?

10. Point:

The simple question to be decided in this appeal would be whether the project was an ongoing project as on 1.5.2017, i.e., the date on which Section 3 of the Real Estate (Regulation and Development) Act, 2016 was came into force. This legal position was settled by the judgment of the Division Bench of the Hon'ble

High Court, Madras in CMSA No.22/2019 dated 15.9.2020. The Hon'ble High Court in paragraph 43 held as follows:

> ***"(i) As on the date of the commencement of the Act on 1.5.2017 the 1st respondent has not applied for completion certificate and therefore the 1st respondent's project is an ongoing project.***
>
> ***(ii) The respondent cannot take shelter under Rule 2(h)(ii) of the Tamil Nadu RERA Rules stating that the 1st respondent has applied for completion certificate on 29.05.2017 as Rule give an exemption only to the developers who applied for completion certificate on or before 01.05.2017."***

11. Even in this case on hand also the appellant/promoter has applied for completion certificate only on 29.5.2017. In these circumstances the proposition law laid down by our Hon'ble High Court squarely applies in this case also.

12. The counsel for the appellant/promoter vehemently argued that the order passed by RERA in another case in C.No.401/2019 is a judgment in rem and it is binding on RERA. Judgment of a court in exercise of probate, matrimonial and insolvency jurisdiction confirming or taking away any legal character are judgments in rem. All other judgments of civil courts are judgments in personam. The order passed by the RERA in C.No.401/2019 nowhere confirmed or took away any legal character of any person. Therefore, it is only a judgment in personam. The citations relied upon by the learned counsel for the appellant has no relevancy to this case as the facts are completely different.

13. Therefore, in the light of the Division Bench judgment of our High Court this Tribunal hold that the project of the appellant was an ongoing project as on 1.5.2017. As such the complaint is maintainable before RERA. The RERA has reached to the correct conclusion and requires no interference by this Tribunal.

Therefore there is no merits in the appeal and deserves to be dismissed. The point is answered accordingly.

14. In the result the appeal is hereby dismissed. Both the parties are hereby directed to bear their own costs.

Connected Miscellaneous Applications if any are hereby 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 this 22nd Day of April 2022.

Sd/-xxx
ADMN. MEMBER

Sd/-xxx
JUDL. MEMBER

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