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 21.01.2022

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

Appeal No. 148 of 2021

M/s.Sameeraa Foundation Private Limited
Represented by its Authorized Signatory
P.Thiruselvan ... Appellant

-Vs-

1. A.Prashanth
2. Karthiga
3. M/s BBCL Properties Private Ltd
   Rep. by its Director Vummidi Bharath ... Respondents

This Appeal was preferred against the order of Adjudicating Officer in C.C.P.No.297 of 2019 dated 11.3.2021. This Appeal was taken on file on 23.12.2021 and came up for hearing on 5.1.2022 in the presence of appellant's

counsels M/s.S.Namasivayam, S.Rajkumar, S.Muthusubramaniam, Praveen Kumar.D., Diveyadharsini.B.V. and P.Kaviyarasi under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 in M.A.No.1/2022 and ordered to pre-deposit of entire amount (100%) along with the appellant in A.No.132/2021 jointly and severally on or before 20.1.2022 and posted for compliance on 21.1.2022. On that date the appellant came forward with M.A.No.15/2022 for extension of time. But this Tribunal not extended the time and dismissed the application. Considering the non compliance of the pre-deposit order this Tribunal delivered the following:

ORDER

1. The respondents 1 and 2 in this appeal has preferred complaint before the Adjudicating Officer in C.C.P.No.297 of 2019 for the relief of refund of sale consideration with interest and for compensation. After contest the Adjudicating Officer allowed the complaint in part and directed the appellant/promoter to refund the sale consideration Rs.19,68,363/- with interest @ 10.05% per annum under Rule 18 of TNRERA Rules. Further awarded Rs.25,550/- towards registration charges and stamp duty and awarded Rs.2,00,000/- towards compensation for mental agony hardship and litigation costs Rs.25,000/-. Aggrieved upon the same the appellant/promoter herein has preferred this appeal along with waiver application. In the waiver application this Tribunal ordered 100% of the total amount ordered by the court below along with the

appellant in A.No.132/2021 jointly and severally. Since the appellant failed to comply the order this Tribunal delivered the following order:

> ***The present application M.A.No.15/2022 is filed seeking for extension of time to pay the conditional amount ordered under Section 43(5). The original order was passed on 5.1.2022 granting them time till 20.1.2022 for compliance and posted for hearing on 21.1.2022. This application was filed on 20.1.2022 seeking for extension of time. It is pertinent to point out here that already the third respondent in this appeal had filed a separate appeal against the very same order in A.No.132/2021. That appeal came for admission on 1.12.2021 and in M.A.No.182/2021 they were directed to deposit the entire amount as ordered by the court below pursuant to the Judgment of the Hon'ble Supreme Court in M/S.Newtech Promoters and Developers Pvt Ltd.–Vs- State of UP in that order itself it was very clearly stated the amount can be deposited by the appellant and or by the third respondent as they were jointly and severally liable to pay the amount as ordered by the court below. The time granted to pay was till 4.1.2022 and for compliance the matter was posted for hearing on 5.1.2022. Only on 5.1.2022 the present appeal was also brought in for admission along with A.No.132/2021. At that time as the appellant in A.No.132/2021 has not chosen to pay the amount as ordered by the Tribunal dated 1.12.2021 they chose to file an application M.A.No.7/2022 seeking for extension of time to pay the money. Of course jointly or severally along with the present appellant herein.***
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> ***In that view of the matter, as both the matters have arisen out of the very same order and both are jointly and severally liable to pay and the present appeal has been filed by this appellant belatedly and brought on the same day when they sought for time. Both the appellants in A.No.132/2021 and appellant in the present appeal A.No.148/2021 pursuant to their application in M.A.No.1/2022 was granted time till 20.1.2022 to pay the amount and for compliance both the cases were posted on 21.1.2022.***
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> ***Since neither the appellant in A.No.132/2021 nor the appellant in A.No.148/2021 who were jointly and severally liable to pay have not chosen to deposit the amount and both***

has now come forward with respective applications for extension of time and as the application in A.No.132/2021 was dismissed today without granting time, the present application filed by the appellant in M.A.No.15/2022 is also dismissed as sufficient time have already been granted to both the parties to comply with the order jointly and severally. Furthermore, the original order has been passed by the Adjudicating officer as on 11.3.2021 and it is almost one year from the date of order the extension of time is not granted and as per the Hon'ble Supreme Court judgment as the payment of the money is a mandatory one under Section 43(5) the application for extension of time is denied M.A.No.15/2022 is dismissed.

Consequently the A.No.148/2021 is dismissed for non compliance of the deposit of the amount as ordered under Section 43(5).

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 21st Day of January 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDL. MEMBER

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