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 27.09.2021

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

Appeal No. 03 of 2021

Dr.Vandana Parvez ... Appellant

-Vs-

1. IVR Hotels & Resorts Private Limited
2. Kotak Alternate Opportunities (India) Fund
3. Kotak India Realty Fund
4. Kotak Investment Advisors Limited
5. IVR Prime Urban Developers Ltd.
6. Soma Hotels & Resorts Ltd.
7. E.Sudhir Reddy
8. E.Sunil Reddy
9. E.Ella Reddy
10. M.Mahesh
11. Subhangi Kulkarni .... Respondents

This appeal was taken on file on 11.01.2021 against the order of the Regulatory Authority in C.No.336/2019 dated 21.11.2019 and came up for final

hearing on 01.09.2021 in the presence of Appellant, who is party-in-person and the 1st respondent through its counsel M/s.Thriyambak J. Kannan, Rohan Cherian, Arushi Naresh Hegde, O.Solaiappan and E.N.Hareepriya and respondents 2 to 4 appeared through their counsels M/s.N.Ramakrishnan, P.Neethikumar, Mabel Celestina Thomas & S.M.Kothai Muthu Meenal, Respondents 5 to 11 even though served notice they have not appeared. 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. The appellant/complainant preferred a complaint against the respondents/promoters before the Tamil Nadu Real Estate Regulatory Authority in C.No.336/2019 for the relief of registration of the project of the 1st respondent. The respondents 1 to 4 contested the matter. After contest the Regulatory Authority dismissed the compliant as not maintainable. Aggrieved upon the same the appellant/complainant preferred this appeal. For easy understanding the parties are referred as per their original rankings as purchaser/complainant and promoters/respondents.

2. According to the complainant in 2011 IVR started advertising about its Aavisa Project in leading English and Tamil dailies as well as over the internet, with tall claims of promoting it as a premium residential complex with world class amenities including a Golf Course, club house, hotels, hospitals and schools etc. at its site in Santhavelur Village, Sriperumbudur Taluk, Kanchipuram District. They also assured the complainant and her family, membership to use the Golf Course being developed by them as a part of the project. In fact, the project was marketed as part of a master plan with 'State level environment impact

assessment'. These apart, they also emphasized that the investors of samten housing being promoted with DTCP Approvals and parcels of land bearing S.Nos. 425/4A, 425/4B etc totally measuring about 52 acres at Santhavelur Village, Sriperumbur Taluk would have the right to use the Mediterranean style Golf club being constructed and made operational by the company. Believing what she had seen and had to be true she agreed to purchase plot No.262 (House no.20) in the above said S.No. measuring 1980 sq. ft. for a total sale consideration of Rs.15,84,000/-. Then, she was compelled against her wishes to agree and enter into a construction agreement to get her villa built by them measuring about 2150 sq. ft. at the rate of Rs.2100 sq. ft. excluding the statutory dues or charges payable to the Government towards all the expenses incurred for obtaining sanctions and approvals for construction of building, charges payable towards VAT, service tax and for TN electricity board connections. IVR quoted a total of Rs.60,99,000/- for the land and the villa in Samten B housing within the Aavisa project. On 9.12.2011, the complainant entered into sale agreement and paid a sum of Rs.4,00,000/- towards advance and then on 26.12.2011 the complainant paid Rs.11,84,000/- and got executed the sale deed for the land.

3. On the very same day, i.e., 9.12.2011 she was forced to execute a construction agreement for the construction of the villa on plot no.262 measuring about 2150 sq. ft. for total cost of Rs.45,15,000/-. So far she has paid a sum of Rs.56,47,500/- for which receipts have been issued. During the construction the complainant observed cracks on the newly casted roof of the said villa through which rain water was oozing into the floor of the villa. The said defect was intimated to the representatives of the company. But grievances were grossly neglected. Most of the common facilities/amenities namely golf course, club

house, hospitals, golf academy, Multi-cuisine restaurant, schools etc are lying incomplete or not initiated at all. Around June 2015, the complainant also took temporary possession of her villa to furnish and provide essential house hold consumer durables deemed essential for living in it. However, after the completion of the interior work when the region experienced rains, the complainant was shocked and disappointed to face the outcome of the substandard quality of construction and materials used by the promoters of the project from multiple stand points. As per the construction agreement the time limit for handing over of the possession was fixed to be 18 months. Even then the promoters failed to complete the project as promised. Hence, the complainant was constrained to issue a letter to the promoters regarding above facts on 15.11.2017.

4. For which on 9.2.2018 the 1st respondent sent a reply by stating that they had completed the major construction work of the villa and further stated that inspite of their regular follow ups for the plastering and finishing stage payment of Rs.5,25,680/- the complainant have deliberately taken the possession of the building in 2015 and have been staying in the house for the past 2.5 years. They do admit that certain final finishing work is pending from their side that too because of non-receipt of the pending stage payment. Due to non satisfaction of the reply the complainant approached the Tamil Nadu Real Estate Regulatory Authority through the complaint.

5. After contest the learned Regulatory Authority found that the complainant has taken possession of the villa in June 2015 itself prior to the commencement of The Real Estate (Regulations and Development) Act, 2016. Therefore, this plot cum construction of villa governed by the agreement for sale,

sale deed and construction agreement is a completed project prior to the commencement of the Act and hence does not require registration with the authority. The Authority does not find any merit including the respondents 2 to 4 as respondents since they are only financial investors in Respondent No.1. The Authority holds that this complaint is not maintainable and is ordered accordingly.

6. Points for consideration:

1. Whether the complaint of the complainant/purchaser is maintainable?
2. Whether the appeal deserves to be allowed or not?

Point No.1:

7. The complainant is the purchaser of the 1st respondent is an admitted fact and it is not disputed. The complainant purchased the plot from the 1st respondent and entered into construction agreement with the 1st respondent and so far paid Rs.56,47,500/- out of Rs.60,99,000/- and the balance to be paid by the complainant to the respondent is also not disputed. The complainant admitted the taking of temporary possession of the villa around June 2015 and the 1st respondent admitted that certain final finishing work is pending from their side. The above said admissions were expressed in the letter of the complainant dated 15.11.2017 at paragraph No.14 and reply letter of the 1st respondent dated 9.2.2018 in the last paragraph. The complainant alleged that the so called taking temporary possession for the purpose of internal works in her villa and found the major structural defects in the construction of the villa and even though it was addressed they were not rectified and common amenities were not provided. Hence the complainant construed the project of the 1st respondent is an ongoing

project and to invoke provisions of The Real Estate (Regulations and Development) Act, 2016 to redress her grievances and sought for the registration of the project.

8. The 1st respondent even though admitted the pending works of the complainant's villa, the 1st respondent alleged that pending works due to non-receipt of the pending stage payment and the complainant took possession of the villa and residing for the past 2.5 years. Hence, the project of the 1st respondent is not an ongoing project and cannot invoke the provisions of The Real Estate (Regulations and Development) Act, 2016 and the complaint itself is not maintainable.

9. At this juncture, the learned Regulatory Authority accepted the plea of the 1st respondent regarding taking possession of the villa and construed the project of the respondent as completed project and concluded that the complaint is not maintainable.

10. Now let us analyze whether the conclusion reached by the Regulatory Authority is legally sustainable under the provisions of The Real Estate (Regulations and Development) Act, 2016. Before analyzing the merits it is relevant to mention the relevant provisions to decide the issue. The following are the relevant provisions:

Section 3 of the Real Estate (Regulations and Development) Act, 2016

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:

.. .. ..

Section 2(q)

(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

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

2. Definitions.- In these rules, unless the context otherwise requires,-

(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) .. .. ..

(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 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. The details of all projects where Completion Certificate application has been filed with Chennai Metropolitan Development Authority prior to notification of these rules will be disclosed to the public by publishing the list of all such 2 projects on the website of Chennai Metropolitan Development Authority and Real Estate Regulatory Authority immediately after notification of these rules.

(iii) in the case of projects under execution outside Chennai Metropolitan Area, as no provision and procedure has yet been prescribed for issue of completion certificate, if the construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. Such projects shall be intimated to the concerned Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of these rules with a copy marked to the office of the Director of Town and Country Planning. The Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority.

11. Before discussing the merits of the case the background of the enactment of The Real Estate (Regulations and Development) Act, 2016 has to be looked into. Nowadays the demand for housing is increased abnormally. The Government is not able to fulfill the huge demand of the housing. The private sectors are taking advantage of the situation. It leads to absence of professionalism and standardization and lack of adequate consumer protection. It necessitates the legislation of the central Act for the Rea Estate sector. For the past 2 decades the same situation is existing. Before that no such housing problem and house construction happened in a small scale and within the local limit. House owner employed the persons, those who are experienced, in construction field and they have constructed for the wages. Their relationship was

in existence as master and servant. Nowadays the high increasing demands of the housing leads to the new concept of construction industry. Those industries now has become as a global industry, involvement of huge amounts and creating employment opportunities not only to the local people but also to the people from faraway places. Hence it caused absence of professionalism and standardization. These are the root cause for the centralized legislation for the real estate sector. Originally Real Estate bill was drafted in the year 2009 and subsequently it conceived as a bill in the year 2013 and the standing committee of the parliament has filed its report on 12.02.2014 and the bill was passed in the Parliament on 10.03.2016 after many amendments incorporated.

12. The real estate Act 2016 came into force on 25.03.2016. Sections 2, 20-39, 41-58, 71-78 and 81-92 came into force on 01.05.2016. The remaining sections 3-19, 40, 59-70, 79 & 80 came into force on 01.05.2017. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 came into force on 22.06.2017.

13. One of the special features of this Act is compulsory registration of the Real Estate project. No promoter shall sell any Real Estate project or even without registration the promoter cannot advertise. At the same time there is a proviso clause in Section 3(1) of the Real Estate Act regarding the projects which were already commenced. In Section 3(1) proviso clause as stated supra it has been specifically enacted that any project 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 3 months from the date of commencement of this Act. As per the above proviso clause no Real Estate project is in existence without

registration throughout India. If any project, which were commenced before the enactment of this Real Estate Act, that project can be construed as a completed project by obtaining completion certificate. What is meant by completion certificate is narrated in Section 2(q). Section 2(q) has been extracted in the previous paragraph in which it has been specifically mentioned that completion certificate or such other certificate issued by the competent authority certifying that the real estate project has been developed according to the sanction plan, layout plan and specifications as approved by the competent authority under the local laws. The competent authority was also explained in Section 2(p) which runs as follows:-

> ***(p) "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;***

14. In addition to that the State Governments were empowered to frame rules under this Act. The Tamil Nadu Real Estate (Regulation and Development) Rules 2017 has also explained the meaning of the ongoing project which is extracted in the previous page.

15. In the Tamil Nadu Real Estate Rules 2017 under Section 2(h)(iii) it has been specifically stated that if the construction is structurally completed and certified by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. Such projects shall be intimated to the concerned Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of these Rules with a copy marked to the office of the Director of Town and Country

Planning. The Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the Rules besides publication of the same in the website of Real Estate Regulatory Authority. Now let us put as nutshell the projects which are completed before the Real Estate Act came into force they have to obtain completion certificate from the competent authority. In the outside Metropolitan Area no procedures were prescribed for issue of completion certificate, in such situation the engineer or surveyor who is in charge of the said construction ought to have certify that the said project has been completed as per the approval or building plan and the said fact must be intimated to the local town planning authority. Why the intimation was required by the Rules?. No Real Estate project shall be left without registration. When the Real Estate Project developer intimated to the local town planning authority in turn they have to publish the list in the website of the Real Estate Regulatory Authority regarding the Real Estate Project. It is for the purpose of implementing the preamble of the Act by letter and spirit. The preamble of this Act emphasize the transparency in Real Estate selling. It is relevant to mention here the preamble of this Act.

> ***"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. "***

16. These are the legal provisions contemplated in the Act to ascertain whether the project is a completed project or ongoing project. Now let us see

whether the conclusion arrived at by the Regulatory Authority as contemplated in the provisions of the Act. The Regulatory Authority in paragraph No.27 of its order dated 21.11.2019 has observed that complainant has taken possession of the villa in June 2015 itself prior to the commencement of The Real Estate (Regulations and Development) Act, 2016 therefore it is a completed project and does not require registration with the Authority. How far the finding is sustainable has to be analyzed.

17. The conclusion of the Regulatory Authority is only based on the taking possession. The background of the enactment of the central legislation for the real estate sector speaks about the lack of standardization and professionalism. Hence the Real Estate (Regulations and Development) Act, 2016 was enacted and the construction industry brought to the clutches of this Act. This Act is not only applicable to the new construction of projects but also to the existing projects. For which an enabling provision was incorporated in Section 3(1) as a proviso clause. Section 3(1) proviso runs as follows:

> ***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:***

18. On the date of commencement of the Act the projects which has not been issued completion certificate, the promoter shall make an application for the registration of the project within 3 months from the date of commencement of this Act. In this case the promoter has not produced any completion certificate. The` learned Regulatory Authority has also not looked into any completion certificate as contemplated in the Act. But the Authority has relied and accepted

the allegations of the parties and came to a conclusion that the project of the 1st respondent is a completed project in paragraph No.27 of its order. But nowhere in the Act defined about the words 'completed project' and taking possession. The Act defined only completion certificate in Section 2(q) of the Act. Further, it is explained in Rule 2(h)(ii) and 2(h)(iii) of The Tamil Nadu Real Estate (Regulations and Development) Rules, 2017 as stated supra. The proviso clause construed the project, which has not been issued completion certificate, as an ongoing project on the date of commencement of the Act. In this case the project of the 1st respondent has not produced any completion certificate as contemplated under Rule 2(h)(ii) & (iii). But the authority has relied verbal version of the 1st respondent as taking possession to come to a conclusion as a concluded project. The said finding is not according to Section (3) of The Real Estate (Regulations and Development) Act, 2016 and Rules 2(h)(ii) and (iii) of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. As per the above said provisions of the Act and Rules and admission of the promoter as 'we do admit that certain final finishing works is pending from our side that too because of your non receipt of the pending stage payment', the project of the 1st respondent is certainly is an ongoing project on the date of commencement of the Act. Under such circumstances any grievance regarding the project by way of complaint is certainly maintainable. Therefore, the complaint of the complainant/purchaser is maintainable under Section 3(1) proviso clause for adjudication. The point No.1 is answered accordingly.

Point No.2:

19. The complainant/purchaser came forward with the complaint with regard to grievances of structural defects, non-implementation of common amenities,

etc., but the learned authority gave a finding as complaint is not maintainable by relying allegations of the parties. The above said finding is not according to provisions of law as decided in point No.1.

20. Further, both the purchaser and promoter specifically agreed in the construction agreement dated 9.12.2011 that the built up unit is handed over by the developer in writing to the purchaser in clause No.20 of the construction agreement which runs as follows:

> ***"The Developer shall hand over possession of the schedule 'B' property to the purchaser only after receipt of all the amounts due from the purchaser. The purchaser shall not interfere in any manner with the construction and other developmental activities by the developer until the built up unit is handed over by the developer in writing to the purchaser."***

21. As per the above said clause, handing over of villa by the developer to the purchaser is only by writing. In this case no such written documents were produced by the 1st respondent for handing over possession of the villa to the purchaser. According to the version of the purchaser she has taken possession temporarily for the purpose of doing interior works and it will not amounts to taking away the possession of villa as contemplated in the construction agreement clause 20. Against the said written agreement the 1st respondent alleged that possession was handed over but the learned authority without analyzing the allegation as per the terms of the agreement simply believed and gave a finding on that basis. So the findings of the learned Authority is both legally and factually not correct and not sustainable under Section 3 of The Real Estate (Regulations and Development) Act, 2016 and clause 20 of the written construction agreement of the purchaser and developer.

22. Therefore, this Tribunal comes to a conclusion that the finding of the learned Authority is liable to be set aside. The point No.2 is answered accordingly.

23. In the result, this appeal is allowed and the order of the Regulatory Authority in C.No336/2019 dated 21.11.2019 is set aside. The compliant of the purchaser is maintainable and the Regulatory Authority is directed to restore the complaint in C.No.336/2019 and dispose the complaint on merits by giving sufficient opportunities to both sides within 3 months. No costs.

Connected Miscellaneous application is 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 27th Day of September 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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