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 15.09.2021

Coram : Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 32 of 2021

Inseli Park Owners Association
Rep. by its Secretary,
Mrs. Lavanya Veera ... Appellant

-Vs-

Jain Housing & Construction Ltd.
Partner, Mr.Sandeep Mehta ... Respondent

This appeal was taken on file on 15.03.2021 and came up for final hearing on 18.08.2021 in the presence of M/s.Raj & Raj Associates, Advocates C.Harsharaj, A.Arun, R.Pavithran, Counsels for the appellant and M/s.Sai Sathya Jith, Counsel 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:

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ORDER

1. This appeal has been preferred by the appellant/owners' association against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.400/2019 dated 30.01.2020, regarding maintainability of the complaint alone.

2. The appellant is the Inseli park Owners' Association was registered as a society as per Registration Serial No.173 of 2010 under the Tamil Nadu Societies Registration Act. The members of the Association entered into an agreement with the respondent/promoter for the purchase of apartments. The respondent/promoter developed the project named as 'Jains Inseli Park Project' at Padur village, Chengelpet Taluk, Kanchipuram District. It consists of 808 residential apartments along with common amenities and facilities in a total of 8 blocks named A,B,C,D,E,F,G & H measuring a total extent 198.81 grounds (4,77,156.24 sq.ft.). Out of this an approximate extent of 47,733 sq. ft is set apart as open space reservation area. According to the appellant association the respondent/promoter has enormously delayed the completion of the construction of the complex and handing over of the flats to the purchasers. No flats were delivered until end of 2014. The ownership of amenities in H block are unlawfully retained by the promoter. The undivided share in the common areas have not been fully conveyed to the purchasers. The promoter has failed to comply with the terms and conditions of statutory bodies, environmental clearance issued by the state level environment impact assessment Authority Tamil Nadu. The building permits were violated. Further the promoter has not completed the facilities and amenities as promised in their advertisements. Hence, the

Association came forward with a complaint for the above said defects. The respondent/promoter objected the complaint on the ground of maintainability. After contest the Regulatory Authority found that the complaint is not maintainable. Aggrieved upon the same the appellant/association preferred this appeal.

3. The learned counsel for the appellant would submit that the Authority has failed to consider the entire facts narrated in the complaint and simply held that the complaint is not maintainable. The appellant has narrated number of defects which were not yet completed by the promoter. The non completion of the defects narrated by the Association amounts to the project of the respondent is an ongoing project. The Authority has miserably failed to discuss and to give a finding about the project of the respondent, is a completed project or is an ongoing project. The Authority itself rightly rejected the completion certificate relied by the respondent. At this juncture the Authority ought to have decide the project of the respondent is an ongoing project. Instead of that the Authority came to a conclusion that the appellant association has not produced any contrary evidence to prove that the project of the respondent is an ongoing project. It is against the provisions of The Real Estate (Regulations and Development) Act, 2016. Hence the appeal has to be allowed.

4. The learned counsel for the respondent would submit that the appellant itself admitted the handing over of possession before the Act came into force. Without completion of the project there is no possibility for taking over possession by the appellants. Therefore the Authority has rightly negatived the claim of the appellant since no merits. Hence the appeal has to be dismissed.

5. Point for consideration:

1. Whether the appeal deserves to be allowed or not?

Point No.1:

6. According to the appellant the project of the respondent is an ongoing project on the date of commencement of The Real Estate (Regulations and Development) Act, 2016. Hence, the appellant is entitled to invoke the provisions of this Act since the respondent/promoter failed to comply the facilities agreed by them.

7. According to the respondent/promoter the project has been completed before the commencement of the Act and handing over of possession were also completed before the commencement of the Act. Therefore the appellant cannot invoke The Real Estate (Regulations and Development) Act, 2016.

8. The Learned Regulatory Authority by accepting the arguments of the respondent/promoter and came to a conclusion that the complaint is not maintainable and the appellant failed to produce documents to prove that the project of the respondent is an ongoing project.

9. Now let us analyze that the conclusion of the Regulatory Authority is sustainable according to The Real Estate (Regulations and Development) Act, 2016 and the plea of the appellant is tenable. Before going to discuss the merits of the case it is relevant to mention the following provisions of law to decide the issue:

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

3. Prior registration of real estate project with Real Estate Regulatory Authority

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(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)(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) .. .. ..

(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.

10. 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 was 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 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

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has filed its report on 12.02.2014 and the bill was passed in the Parliament on 10.03.2016 after many amendments incorporated.

11. 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.

12. 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;***

13. 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.

14. 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. "***

15. These are the legal provisions contemplated in the Act to ascertain whether the project is a completed project or ongoing project.

16. The Learned Regulatory Authority accepted the contentions of the developer as completed project and possession were handed over prior to the commencement of the Act and also not accepted the completion certificate relied

by the developer. Section 3(1) proviso clause and Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 contemplates about the completion certification on the date of commencement of the Real Estate (Regulation and Development) Act, 2016. Section 3 came into force on 01.05.2017. The developer took the plea regarding complaint that they have completed the project before the commencement of the Act. Section 3(1) proviso clause specifically insisted for obtaining a completion certificate on the date of commencement of the Act. In this case the promoter relied on completion certificate issued by No.43, Padur Panchayat which is stated on 25.09.2012. How far that certificate is acceptable is explained from the following verdict of the Hon'ble Madras High Court

In the High Court of Judicature At Madras

Dated : 16.02.2021

Coram : The Honourable Mr.Justice S.M.Subramaniam

C.M.S.A.No.27 of 2020

M/s.Sare Shelters Project Pvt. Ltd.
Sare Homes Project office ... ***Appellant***

-Vs-

1. Sare Squires

2. Dewy Terraces (Phase-1) Flat Owners' Welfare Association. ... ***Respondents***

"Therefore, in all respects, the Act should be applied in its real spirit so as to protect the rights of the innocent bonafide purchasers from the developer/builders. This apart, the developer of the ongoing project cannot be allowed to escape from the clutches of the Act. It is not as if the Act grants exclusion for an ongoing project or in completed

project. Therefore, the completion must be with reference to the provisions of the Act and not based on the certificate of completion issued by the Executive Officer, Town Panchayat who issued such certificates mostly on extraneous considerations.

Thus, the completion certificate is of no avail to the appellant and the reliance placed upon by the Regulatory Authority is improper and not in consonance with the statement of the objects and reasons as well as the provisions under the Act.

35. The only question of law raised in the present second appeal is that whether the complaint/application filed by the respondent before the Regulatory Authority is maintainable or not. In view of the fact that the completion certificate issued by the Executive Officer, Town Panchayat is not in consonance either with the provisions of the Town and Country planning Act as well as the building plan approval sanctioned by the Director of Town and Country Planning or in accordance with the provision of the RERA Act, the same cannot be construed as a valid certificate for the purpose of grant of exclusion under Section 3(2)(b) of the RERA Act. The certificate is to be construed as insignificant and irrelevant as far as the RERA Act is concerned and for all purposes, the building is to be treated as ongoing project. Therefore, the appellants/builders are bound to comply with the terms and conditions in the project as well as comply with the provisions of various laws governing real estate affairs. Accordingly, this Court has no hesitation in arriving a conclusion that the application/complaint filed by the respondent/apartments owners' association is maintainable under the provisions of the RERA Act, 2016 and accordingly, the order passed by the Appellate Tribunal stands confirmed and consequently, Civil Miscellaneous Second Appeal stands dismissed. No costs.

17. Therefore as per the above verdict the completion certificate relied by the promoter is not acceptable one. The second defence is regarding handing over of possession. The sample letter dated 16.07.2014 which is attached in page No.134 of the Typed Set of the appellant and the same was accepted by the Learned Regulatory Authority. In the above said letter it has been stated as follows.

"With reference to the above flat purchased by me in your JAINS INSELI PARK project I hereby agree and consent that on this the 16th day of July 2014 I have taken possession and keys of my above flat to my entire satisfaction, and I also state that all the clauses laid in the agreement by the promoters are also fulfilled in all respects to my satisfaction."

18. In the above said letter no such signature were obtained from the allottee. Without signature of the allottee for the receipt of the possession, the certificate cannot be construed as a valid one. But the Learned Regulatory Authority has not considered the proof for the handing over of possession. Further the Learned Regulatory Authority has stated that the appellant/Association has failed to produce any contra evidence to prove that this project is an ongoing project. The Tamil Nadu Real Estate (Regulation and Development) Act, 2016 and Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 contemplates two provisions to ascertain whether the project is an ongoing project or completed project. Section 3(1) proviso clause specifically contemplates about the completion certificate and the Rule 2(h)(iii) also specifically contemplates about the completion certificate. When it was not prescribed what is the method to be adopted to show the completion of the project. The above said aspect were not considered by the Learned Regulatory Authority. Inspite of that the Learned Regulatory Authority held that the promoter has failed to prove any contra evidence in this aspect. Findings of the Regulatory authority is not according to Section 3(1) proviso clause and Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules 2017.

19. The appellant came forward with the complaint for the reliefs of compensation, direction to deliver physical possession of Block H and its

amenities and other common areas and for related reliefs. The above said reliefs can be granted or not, has to be analyzed only after letting in evidence by both sides. The reliefs sought by the appellant are all related with the Real Estate project. Regarding delivery of physical possession of Block H and its amenities and other common area are all subject to adjudication. Retaining of Block H and other common areas amounts to the project of the respondent still it is an ongoing project. Both factually and legally the learned Regulatory Authority has not discussed and comes to a conclusion and mere accepting the version of the promoter alone is not sufficient. Hence this Tribunal comes to a conclusion that the complaint of the appellant is maintainable under Section 3(1) proviso clause of the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 and The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The point is answered accordingly.

20. In the result this appeal is allowed and the order of the Regulatory Authority in C.No.400/2019 dated 30.01.2020 is set aside and the Regulatory Authority is directed to restore the complaint in C.No.400/2019 and dispose the case on merits within 3 months after giving sufficient opportunity to both sides.

This Order is dictated to the Stenographer, transcribed and typed in the computer by her, corrected and pronounced by us in the open court on 15th Day of September, 2021.

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER