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 17.12.2021

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

Appeal No. 34 of 2021

Sai Peace and Prosperity Apartments Buyers Association - Kottivakkam
Rep by its Secretary Elamukil Tamil.

... Appellant

-Vs-

1. Ambojini Property Developers Pvt. Ltd.
   Rep by Resolution Professional
2. ASK Investment Managers P Ltd.
   Rep through its Authorized Signatory
3. Real Value Promoters Pvt. Ltd.

.... Respondents

This appeal was taken on file on 19.03.2021 and came up for final hearing on 15.12.2021 in the presence of M/s. Srinath Sridevan, T.K.Bhaskar, K.Harishankar, Bhagavath Krishnan and Srivittal.V, Advocates for the appellant

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and M/s. Anant Merathia, Ranghasayee NRG and Priyanka Dorothy Varma, Counsels for R1 and M/s. R.Parthasarathy, Rahul Balaji, Vishnu Mohan and K.Chandrasekaran, Counsels for R2. R3 called absent. 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 home buyers' Association against the order of the Adjudicating Officer in S.R.No.228 of 2020 in Un Numbered C.C.P.No. / 2020 dated 30.11.2020. The appellant Association preferred a complaint against the respondents for the relief of refund and compensation. That complaint was not numbered and maintainability of the complaint was questioned at the SR stage and orders were passed as the complaint is not maintainable by the Association of allottees. Aggrieved upon the same the appellant/association of allottees preferred this appeal on the following main grounds:

- Section 31(1) explanation of the RERA Act has clarified that the word person shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.
- The citations referred on the side of the appellant were not properly appreciated by the Adjudicating Officer.

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2. The learned counsel for the appellant further relied the Hon'ble Supreme Court verdict which is reported in 1990 (1) SCC 608 that the persons on whose behalf the suit is being brought must have the same interest i.e., either the interest must be common or they must have a common grievance they seek to get redressed. But the persons who may be represented in the suit need not have the same cause of action. Under Order 1 Rule 8 CPC also representing capacity suit is permissible. Further would submit that the learned Adjudicating Officer came to a conclusion on the ground that there is no specific provision in the Real Estate (Regulation and Development) Act, 2016 as in the Consumer Protection Act. Hence the appeal has to be allowed.

3. The learned counsel for the 1st respondent would submit that the matter is already pending before the Insolvency and Bankruptcy Board of India. Moreover the home buyers are the corporate creditors and parties to the IBC proceedings. Hence this proceeding is hit by Section 14 of the IBC. Therefore this complaint is not maintainable and it was rightly dismissed.

4. The learned counsel for the 2nd respondent would submit that the 2nd respondent is not a promoter and he is only a share holder and further would submit that the proceedings under IBC are pending. At this stage this complaint is not maintainable and rightly dismissed.

5. Point for consideration:

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

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Point:

6. According to the appellant the only contention is that this complaint by the association of allottees is maintainable under Section 31(1) Explanation of The Real Estate (Regulation and Development) Act, 2016 and under Order 1 Rule 8 CPC.

7. According to the respondents 1 and 2 the proceedings are pending under IBC hence this complaint is not maintainable. The third respondent, who is the promoter of the project herein, had published advertisements and brochures, inviting offers for the purchase of the apartments in the project. The third respondent has not appeared in this appeal. The appellant sought for the relief of refund of sale consideration and compensation. At the SR stage, the office of the Adjudicating Officer returned the complaint by directing the appellant to file separate complaints for each apartment. The appellant represented the complaint then it was posted to argue the maintainability of the complaint. After hearing the counsel for complainant the Adjudicating Officer passed the order as complaint is not maintainable.

8. On the side of the appellant relied section 31 (1) Explanation and 1990 (1) SCC 608. It is relevant to extract the section 31 and the said citation.

31. Filing of complaints with the Authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the

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rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

1990(1) SCC 608

Chairman, Tamil Nadu Housing ... vs T.N. Ganapathy

HELD: The condition necessary for applications under Order 1 of Rule 8 is that the persons on whose behalf the suit is being brought must have the same interest i.e. either the interest must be common or they must have a common grievance which they seek to get redressed. But the Persons who may be represented in a suit need not have the same cause of action.

9. The Adjudicating Officer has found that the citations referred on the side of the appellant namely AIR 1981 SC 298, 2016 SCC online NCDRC 2727, 2017 SCC online SC 1945 and 2020 SCC online SC 208 are not relevant to the facts of this case and stated as follows: "Above said cases dealt with Section 12 (1)(b) of the Consumer protection Act and as per that section a registered association can file a complaint on behalf of several allottees each of whom has a separate and distinct cause of action. There is no similar provision in the RERA Act. Consumer Protection Act 1987 also has no provision similar Section 72 of the RERA Act under which this forum is required to follow the principles

under Section, while adjudicating the quantum of compensation and interest." Therefore the above judgments are not applicable to the provisions under the RERA Act.

10. The learned Adjudicating Officer has come to a conclusion that the referred citations dealt with Consumer Protection Act and in the RERA Act there is no such similar provision. Hence he has not accepted the same.

11. The appellant/association of allottee came forward with the complaint under Section 31 of the Act for the relief of refund and compensation. The appellant/association of allottees are the group of allottees registered their association under the Societies Registration Act bearing No.122/2018. As per Section 31 an aggrieved person can prefer a complaint under The Real Estate (Regulation and Development) Act, 2016. In Section 31 (1) itself the meaning of the word 'person' is contemplated as Explanation - person shall include the association of allottees registered under any law for the time being in force. The appellant association was registered under the Tamil Nadu Societies Registration Act 1975 for which certificate of registration of societies in Form No.II bearing S.No.122 of 2018. For the same proof is produced. As per explanation the only requirement is registration of the association and the same was complied with. The Act itself gave the meaning of the word person which includes association of allottees. Section 31(1) contemplated without any ambiguity or doubt. In such circumstances there is no need or necessity to refer any other Act. Furthermore, the Supreme Court

citation referred on the side of the appellant in the Tamil Nadu Housing Board case the Hon'ble Supreme Court has clearly held that the persons who may be represented in the suit need not have the same cause of action. The only condition necessary to invoke representative suit is that must have the same interest i.e., either the interest must be common or they must have a common grievance which they seek to redressed. In this case, all the allottees even though they have not the same cause of action and they are having common grievance namely refund and compensation for the delay. As per Section 53 of this Act the Appellate Tribunal shall not be bound by the procedure laid down by the CPC, the principles laid down by the Law of the Land can be looked into as a guidance to apply the law in proper approach. In this Act, Section 31(1) Explanation itself for the meaning of the word 'persons' who are all included is explained by using the word 'shall'. Hence there is no ambiguity or doubt in the provision of law contemplated in Section 31. But the learned Adjudicating Officer has not properly appreciated the Section 31 of this Act and came to a wrong conclusion. Therefore this Tribunal comes to a conclusion that this appeal deserves to be allowed. The point is answered accordingly.

12. In the result, this appeal is allowed without cost. The order of the Adjudicating Officer in S.R.No.228 of 2020 in Un-Numbered C.C.P.No. of 2020 dated 30.11.2020 is set aside and the complaint is maintainable. This Tribunal issued the following directions as per the judgment of the Hon'ble Supreme Court dated 11.11.2021 in Newtech Promoters and Developers Pvt. Ltd. Vs. The State of Uttar Pradesh and others:

(a) The Adjudicating Officer is directed to return the complaint of the appellant/association of allottees/complainant to the Tamil Real Estate Regulatory Authority.

(b) The Tamil Nadu Real Estate Regulatory Authority is directed to number the complaint and dispose the complaint on merits after giving sufficient opportunity to both sides and pass orders in accordance with law.

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 17th Day of December 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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