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 10.11.2021

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

Appeal No. 35 of 2021

M/s.Rajeswari Infrastructure Limited,
Rep by its Managing Director
G.Ramamurthy, Aged 60 yrs. ... Appellant

-Vs-

N. Prabakaran .... Respondent

This appeal was taken on file on 24.03.2021 and came up for final hearing on 29.09.2021 in the presence of M/s.K.Govi Ganesan, S.Sriram, R.Raja Shama Gayathri and A.Dhanwanthi, Counsels for the appellant. The respondent appeared through Advocates M/s.S.Venkatesh and S.Jaganathan.

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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 against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.73/2020 dated 21.01.2021. The home buyer preferred a complaint against the promoter for the relief of handing over possession and for damages. After contest the Regulatory Authority directed the promoter to hand over the possession of apartment before 28.02.2021 after collecting the balance cost of construction and directed the complainant to move before the Adjudicating Officer for interest on the delayed construction and compensation and directed the promoter to move before the Adjudicating Officer for interest on delayed payment, if any. For easy understanding in this appeal herein after the appellant is called as promoter and the respondent is called as home buyer.

2. The home buyer and promoter entered into a sale agreement on 18.08.2012 and construction agreement on 25.05.2012 for purchase of undivided share and construction of plot at 1st floor, flat No.C1, F1 with super built up area of 667 sq. ft including common areas and 369 sq. ft. undivided share of land bearing plot Nos. C1 to C6 situated at Vandalur village, Chengalpet District. The promoter agreed to complete the construction within

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a period of 12 months from the date of the construction agreement i.e 25.05.2012 and the cost of construction was fixed at Rs.22,51,000/- and the home buyer paid Rs.20,25,900/-. The promoter failed to complete the construction of the plot within the time fixed in the agreement. The promoter denied the allegations of the home buyer and stated that the delay was due to non availability of raw materials and the government approval formalities and further the home buyer had illegally broke open the main door of the flat and changed with another lock further also has not paid the payment due from the home buyer. After contest the learned Regulatory Authority had not accepted the reason adduced by the promoter and directed the promoter to hand over possession within the stipulated time after receiving the balance sale consideration. Aggrieved upon the same the promoter came forward on the following main grounds:

- Even though the claim of the home buyer before the District Consumer Forum against the appellant was dismissed and for the same ground again the home buyer has approached the authority.
- As per section 19(6) of The Real Estate (Regulations and Development) Act, 2016 the home buyer violated this provision as a defaulter is not entitled to file a claim.

3. The learned counsel for the appellant would submit that the learned Regulatory Authority failed to consider the above said grounds and moreover the claim of the home buyer is hit by Res-Judicata. Therefore the appeal has to be allowed.

4. The learned counsel for the home buyer would submit that the home buyer even though paid more than 90% of the sale consideration the promoter failed to hand over the possession of flat. Hence the learned Regulatory Authority has rightly directed the promoter to hand over the flat within the stipulated time but so far the promoter has not complied. Therefore there is no infirmity in the findings of the Regulatory Authority hence appeal has to be dismissed.

5. Points for consideration:

1. Whether the finding given by the District Consumer Forum against the home buyer is a bar to prefer this complaint?
2. Whether the appeal deserves to be allowed or not?

Point No.1:

6. According to the home buyer he entered into sale and construction agreement with the promoter on 25.05.2012. The total sale price was fixed at for Rs.22,51,000/-. The promoter agreed to complete the construction within 12 months from the date of agreement. Since the promoter failed to complete the construction as promised, the home buyer preferred a complaint on 17.1.2014 before the District Consumer Disputes Redressal Forum, Chennai (South) for the relief of compensation of Rs.1,00,000/- for mental agony with subsequent interest at the rate of 18 % per annum and for costs. The Consumer Forum dismissed the compliant on 11.6.2019. Then the home buyer

preferred this compliant before the Tamil Real Estate Regulatory Authority on 4.3.2020 for the relief of handing over possession of the constructed flat and for damages. After contest the learned Regulatory Authority directed the promoter to hand over the possession to the home buyer before 28.2.2021 after collecting the balance cost of construction and directed both the home buyer and promoter to approach the Adjudicating Officer for the relief of delay compensation as well as for delayed payment. Aggrieved upon the same the promoter preferred this appeal and raised this issue as a main ground.

7. Admittedly, the home buyer and the promoter entered into agreement on 25.05.2012 and agreed to complete the construction within a year and admittedly so far possession was not handed over and the home buyer so far paid Rs.20,25,900/- and the balance to be paid only Rs.2,25,100/. The home buyer preferred a compliant before the District Consumer Forum for the relief of compensation since possession was not handed over as promised. The learned Consumer Forum dismissed the compliant on the ground that there is no agreement between the parties for any compensation for the delay and the home buyer is a defaulter so the defaulter cannot entertain any consumer complaint. Now the home buyer came forward with this complaint before the Regulatory Authority for the relief of handing over possession as well as for damages. The promoter himself admitted in the counter filed before the Regulatory Authority and specifically admitted that the promoter is always ready to hand over the flat to the home buyer with good condition and to the satisfaction of him, but subject to the condition that the home buyer has

to pay the balance amount which he is liable to pay as of now. From the above said admission it is very crystal clear that the possession was not handed over. The Real Estate (Regulations and Development) Act, 2016 came into force on 1.5.2016 and on the date of coming into force of the Act the promoter has not obtained any completion certificate, therefore the project of the promoter can be treated as an ongoing project and the home buyer rightly approached the Regulatory Authority to protect his right by invoking the Real Estate (Regulations and Development) Act, 2016. The fact that he earlier invoked the provisions of the Consumer Protection Act for the relief of damages is not a bar to invoke the provisions of the Real Estate (Regulations and Development) Act, 2016. The proviso clause of Section 71(1) of The Real Estate (Regulations and Development) Act, 2016 clearly permits the home buyers to invoke provisions of The Real Estate (Regulations and Development) Act, 2016 by withdrawing the complaint before the Consumer Forum. So, mere dismissal of complaint before the Consumer Forum for damages alone are not sufficient to deny the rights of the home buyer to approach the Regulatory Authority for getting possession of the apartment for which the home buyer paid more than 90% of the sale consideration, further the prayer in the Consumer Petition and the prayer herein is totally different. Therefore, the ground put forth by the promoter is not sustainable. The point No.1 is answered accordingly.

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Point No.2:

8. The Regulatory Authority has directed the promoter to hand over possession before 28.2.2021 after getting balance sale consideration. So far possession was not handed over and no steps were taken by the promoter by issuing demand for the balance sale consideration. As per the construction agreement dated 25.05.2012 the promoter ought to have completed the construction within 12 months from the date of agreement. Even though the promoter has received 90% of the sale consideration from the home buyer he has not chosen to take any steps to hand over the possession. Admittedly, as per letter dated 20.02.2020 of the promoter, the promoter is in occupation of the flat allotted to the home buyer by storing raw materials. If really the promoter has completed the apartment as a usable product certainly he would have informed the home buyer to pay the balance sale consideration and to get possession. So far he has not done so, even after receipt of 90% of the sale consideration. The purpose and background of the enactment of this central legislation is to protect the poor home buyers from the clutches of the promoters. For the past 8 years, the promoter has without handing over the possession to the home buyer retaining the sale consideration of the home buyer and enriching himself. Therefore the learned Regulatory Authority by implementing The Real Estate (Regulations and Development) Act, 2016 by letter and spirit directed the promoter to hand over the possession within the stipulated time. But, the promoter has failed to comply with the order, even though the promoter admitted to hand over possession in his counter.

9. As per the payment schedule the last payment of 10% is to be made on completion of plastering, painting and on handing over of possession. The promoter has not produced any documentary evidence that he has completed the plastering, painting and ready to hand over possession. Even after the lapse of 8 years the promoter has not chosen to complete the construction in a full-fledged manner. At this juncture it is relevant to mention the background of the Act.

> ***"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums."***

10. In this matter also there is absence of professionalism and standardization and lack of adequate consumer protection. Hence the learned Regulatory Authority rightly directed the promoter to hand over the possession within the stipulated time. The Real Estate (Regulations and Development) Act, 2016 paves way for the protection of the poor home buyer, who paid 90% of the sale consideration without any return from the promoter and paying EMI with interest for the housing loan obtained by him. The home buyer is liable to pay 10% - 10,000/- only after completion of the plastering and painting. The promoter so far not informed to the home buyer about the completion of the plastering and painting. In such circumstances, there is no such due from the

home buyer. The liability to pay the last installment accrues only on the intimation of the promoter regarding completion of plastering and painting. In this case, admittedly, the promoter himself occupied the flat allotted to the home buyer by keeping his raw materials. In the above said letter of the promoter dated 20.02.2020 itself the promoter failed to disclose the fact of completion of painting and plastering. The above said letter itself is against clause 16 of the builders' agreement. In such circumstances the finding of the learned Regulatory Authority is absolutely in accordance with law and there is no infirmity to interfere with the findings and the appeal is not deserves to be allowed. The point No.2 is answered accordingly.

11. At the same time to implement the Real Estate (Regulations and Development) Act, 2016 by letter and spirit and more stringent the order of the Regulatory Authority is modified by directing the promoter and home buyer to hand over possession within the stipulated time.

12. In the result, the appeal is dismissed with costs. The findings of the Regulatory Authority in C.No.73 of 2020 dated 21.01.2021 are confirmed and direction of the Regulatory Authority is modified as follows:

a) The promoter is directed to inform the home buyer and as well as the Regulatory Authority within 2 weeks from the date of this order, regarding completion of plastering and painting of flat allotted to the home buyer;

b) The home buyer is directed to deposit the balance sale consideration before the Regulatory Authority within 2 weeks from the date of receipt of information from the promoter;

c) The Regulatory Authority is directed to take further action by inspection regarding completion of the flat, etc. if the promoter fails to inform within the stipulated time;

d) The Regulatory Authority is further directed to ensure handing over of possession of flat to the home buyer within a period of one month by adopting all formalities.

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 10th Day of November 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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