**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 22.10.2021**

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

**Appeal Nos. 38 & 63/2021**

**Appeal No.38/2021**

S.Elayaraja
Proprietor of M/s.Grand Style Constructions ... Appellant/Promoter

-Vs-

1. K.S.Prateep Kumar
2. Srividya ... Respondents/Home buyers

3. S.Sivaraj
Manager M/s.Grand Style Constructions
.... Respondent/Manager of Appellant/Promoter

4. C.A.Prabhakar .... Respondent/Land Owner



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**Appeal No. 63/2021**

C.A.Prabhakar ... Appellant/Land Owner/Promoter

-Vs-

1. K.S.Prateep Kumar
2. Srividya ... Respondents/Home buyers

3. S. Elayaraja
   Proprietor of M/s.Grand Style Constructions
   .... Respondent/Promoter

4. S.Sivaraj
   Manager M/s.Grand Style Constructions
   .... Respondent/Manager of 3rd Respondent/Promoter

These appeals were preferred against the order of the Regulatory Authority in C.No.309 of 2009 dated 11.2.2021 and these appeals were taken on file on 26.03.2021 and 28.04.2021 respectively and came up for final hearing on 22.09.2021 in the presence of M/s.S.Abu Backer Sidhic and S.Vadivel Murugan, Counsels for the appellant in A.No.38/2021 & for 3rd respondent in A.No.63/2021 and M/s.T.K.S. Gandhi, J.T.Rajasurya, M.Arun, S.Aravind, S.Berlin Prabhu, Counsels for the respondents 1 and 2 in A.No.38 and 63 of 2021 and Ms.Vishali Sekar counsel for 3rd respondent in A.No.38/2021 and for 4th respondent in A.No.63/2021. M/s.M.Devaraj, R.Venkatraman, N.Senthil Kumar, Counsels for 4th respondent in A.No.38/2021 and for appellant in A.No.63/2021. Having heard the arguments of both sides in both the appeals through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

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## COMMON ORDER

1. These two appeals were arise from the order of the Regulatory Authority in C.No.309 of 2019 dated 11.2.2021. The respondents 1 and 3 in C.No.309/2019 have filed separate appeals. Both the appellants in both the appeals have questioned the finding of the Regulatory Authority regarding registration and handing over. Therefore this Tribunal is delivering this common order for both the appeals. To avoid confusion the parties are called in this order as per their original rankings as home buyers, builder/promoter and land owner/promoter.

2. The appellant/promoter in A.No.38/2021 and the respondents 1 & 2 in both the appeals have entered into a construction agreement on 4.6.2018 and the same was registered on 20.9.2018 and on the same date UDS sale deed was executed by the appellant as a power agent of the 4th respondent/land owner in favour of the home buyers/respondents 1 & 2. The total sale price was fixed for UDS and flat as Rs.40,00,000/- with regard to plot No.A in Kumaran Kudil Annexe, 6th Street, Okiyam Thoraipakkam Village, Sholinganallur Taluk, Kanchipuram District Flat No.F3 measuring 936 sq. ft of built up area and UDS land of 468 sq. ft. out of a total extent of 3010 sq. ft. of lands.

3. The home buyers paid a sum of Rs.35,00,000/- towards cost of flat and paid a sum of Rs.4,00,000/- towards additional works. The home buyers have not paid the balance sale consideration of Rs.5,00,000/- along with promised cost and expenses towards shifting of electric transmitter, stamp duty and other



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incidental expenses and agreed cheque amounts. Hence the appellants/promoters have not handed over the flat. Therefore the dispute arose between the promoter and the home buyers and the home buyers preferred a complaint before the Regulatory Authority for the relief of registration of the project, handing over of the flat and for other reliefs. After contest the Regulatory Authority directed both the appellants in A.No.38 and 63 of 2021 for registration of project jointly and directed them to hand over the flat to the home buyers. Aggrieved upon the same both the appellants preferred these separate appeals on the following main grounds:

- The Regulatory Authority has no jurisdiction to entertain the complaint of the home buyers under Section 3(2)(a) of The Real Estate (Regulations and Development) Act, 2016, since the project of the promoter is a standalone project measuring 3010 sq. ft. (279 sq. m.) within the area of construction specified in Section 3(2)(a) of The Real Estate (Regulations and Development) Act, 2016.
- The Regulatory Authority has no power to issue direction suo moto to implead the land owner as a party to these proceedings.
- Without paying full sale consideration the Regulatory Authority cannot direct the promoter to hand over the flat.

4. In addition to the above said main ground the learned counsels for the appellants have put forth vehemently regarding the finding of the authority on the point of other money transactions between the promoters and home buyers.



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Further would submit that when the matter is pending before the proper civil forum namely the district court, and the above said fact was brought to the notice of the Regulatory Authority but it was not considered and finding was given by the learned authority it amounts to exceeding of its jurisdiction. The learned counsels further would submit specifically that the land owner purchased 5 plots by way of separate sale deed and obtained separate building plan approval in his name and started construction of each and every plot separately as a standalone project within the limit of below 500 sq. m. and below 8 apartments. Therefore the project of the appellants will not come under the purview of The Real Estate (Regulations and Development) Act, 2016. This fact was repeatedly even though explained by way of documentary evidences the Regulatory Authority has failed to consider the same hence the order of the Regulatory Authority is liable to be set aside. Therefore these appeals have to be allowed.

5. The counsel for the Manager of the promoter (R3 in A.No.38/2021 and R4 in A.No.63/2021) has left out the video conferencing without any arguments.

6. The learned counsel for the home buyers would submit that the learned Regulatory Authority has analyzed entire material on record and came to a correct conclusion and there is no infirmity in the findings of the authority and further these appeals are devoid of merits. Therefore both the appeals have to be dismissed.

7. Points for consideration:

1. Whether the plea of the appellants that the project of the promoters will not come under the purview of the Section 3(2)(a) of The Real Estate (Regulations and Development) Act, 2016 is sustainable?

2. Whether the plea of the appellants that the Regulatory Authority has no power to order for impleading the land owner as a party to these proceedings is sustainable?

3. Whether the appeals deserve to be allowed or not?

Point No.1:

8. The appellants entered into construction agreement and sale with the home buyers respectively. Due to dispute between them regarding handing over of possession of the flat, the home buyers approached the Regulatory Authority by way of complaint and the Regulatory Authority entertained the complaint and granted relief in favour of the home buyers aggrieved upon the same the promoters preferred these appeals are all admitted facts and there is no dispute. The appellants have put forth three main grounds against the order of the Regulatory Authority. The first ground is regarding admissibility of complaint with regard to jurisdiction of the Regulatory Authority.

9. According to the appellants they have promoted a standalone project namely, Grand Melody, within the total extent of 3010 sq. ft. (279 sq. m.) and constructed 6 apartments. For the above said project the building plan was obtained in the name of the land owner/promoter and entered into construction and sale agreement with individual home buyers. The land owner/promoter



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entered into sale agreement and sale with the home buyers through power agent namely the contractor/promoter herein. The promoters have not entered into any agreement for construction or sale with regard to any group development. They are doing standalone project alone within the area of land and building prescribed under Section 3(2)(a) of The Real Estate (Regulations and Development) Act, 2016. To substantiate the above said facts the appellants have produced number of documents even then the learned Regulatory Authority failed to appreciate the same and came to a wrong conclusion.

10. According to the home buyers the appellants have developed a group development scheme through 5 projects having 26 flats in the project names of Grand Melody (6 flats), Grand Symphony (5 flats) Grand Harmony (5 flats) Grand Rhyme (5 flats), Grand Rhythm (5 flats) within the total area measuring 11,822.5 sq. ft. for which applied for plan approval in which the total measurement is mentioned as 11759 sq. ft. it is equivalent to 1092.84 sq. m. From the above said total land the present disputed land measuring 3010 sq.ft., out of which the home buyers entered into sale and construction agreement within the area of the land for flat F3. Hence the plea of the appellants as standalone project is not true.

11. The learned Regulatory Authority accepted the plea of the home buyers and gave a finding that the project of the appellants is the group development project and directed them to register the project. Now let us analyze whether the plea raised in the appeal with regard to jurisdiction is

sustainable? Before going to the merits of the case the relevant provision of this Act has to be looked into and the same is as follows:

***Section 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:***

***Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.***

***(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—***

***(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:***

***Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;***

***(b) .. ..***

***(c) .. ..***

***Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.***

12. Section 3(2)(a) ended with the words ***inclusive of all phases.*** The impact of the Section 3 of the Act is compulsory registration of the Real Estate projects throughout India. Section 3(1) commences with the word no promoter shall advertise, market, book, sell, 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 authority established under this Act. As per Section 3(1) no promoter shall enter into any sale without registration of the real estate project. In this Section the word 'shall' is employed mainly for the purpose of the registration as compulsory and mandatory. In the later portion of this provision there is a proviso clause which clarifies all doubts regarding the projects. Projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued on the commencement of the date of this Act are all compulsorily registerable projects and also gave a time limit for the pending projects by giving 3 months time from the date of commencement of the Act to register the project. Why these restrictions are imposed on the construction industry by way of central legislation in the year 2016? For which the answer is available in the Real Estate Act Bill 2016 which is as follows:

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## REPORT

***Background***

***The Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha on 14th of August 2013. The Bill contains the Statement of Objects and Reasons which spells out the reasons behind initiating the legislation by way of this Bill. It inter alia states as follows-***

***"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.***

***In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.***

***The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.***

13. In the first paragraph of this report submitted by the Select Committee of the Parliament it has been specifically stated that even though the construction industry has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of

adequate consumer protection. Further stated that 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 standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums. Hence this Act contemplates compulsory registration of the Real Estate project throughout India. The real intention of the legislature is no project will be left omitted from registration that is why they have carefully included the ongoing projects within the purview of this Act. The ultimate aim of the legislature is to promogate this Legislation that each and every real estate project must be under the purview of the Act. At the same time in the Act itself they have provided some exemption namely on the date of commencement of the Act if the promoter has received completion certificate it is exempted otherwise the ongoing project shall also come under the purview of this Act. Lastly in this Section as explanation, it is further clarified that, where the real estate project is to be developed in phases every such phase shall be considered a standalone real estate project and the promoter shall obtain registration under this Act for each phase separately. Why this explanation was added? The answer is available in Section 3(2)(a). Section 3(2)(a) is the provision for exemption in which it has been stated where it does not exceed 500 sq. m. or the number of apartments proposed to be developed does not exceed 8 but the next word is very important 'inclusive of all phases'. As the Legislature thought that there might be an ambiguity or different interpretation would be given as regards the section they have carefully included an explanation to clearly say that they have added the

last words "inclusive of all phases". The conjoint reading of Section 3(2)(a) and explanation it will eradicate all doubts and reflect the real intention of the Legislature is to bring all the projects registerable. Now let us apply the above intention of the Legislature to the case in hand.

14. In this case the land owner purchased 5 plots and obtained separate building plans in his own name and constructed building for his own not only in single plot but also in all plots there is no need or necessity consider this Act. Here the land owner is constructing the buildings for the purpose of selling. So certainly this Act attracts. The land owner/promoter himself stated in his legal notice through his advocate clearly and categorically has admitted in page No.169 of appellant's typed set as follows:

> ***"My clients state that there are 5 projects having 26 flats being developed by my clients in the same location. They are named as Grand Melody (6 flats), Grand Symphony (5 flats) Grand Harmony (5 flats) Grand Rhyme (5 flats), Grand Rhythm (5 flats).***
>
> ***Moreover, in all the 5 projects at present 15 out of 26 flats have been given possession and respective owners have started enjoying the premises"***

15. The above said admission is the substantial evidence to prove that the promoters is suppressing the real fact for the purpose of reliving from the clutches of the Real Estate Act. The above said admission still holds good until it is rebutted as per the following verdict of the apex court.

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***AIR 1977 SC 1724***

***Thiru John & Anr Vs. Returning Officer & Ors.***

***(3) It is well-settled that a party's admission as defined in sections 17 to 20 fulfilling the requirements of section 21, Evidence Act is substantive evidence proprio vigore. An admission, if clearly and unequivocally made is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so" and until the presumption was rebutted the fact admitted must be taken to be established. In the instant case, there are a number of clear admissions in prior declarations precisely and deliberately made in solemn documents by Shri John. These admissions were made ante litem motam during the decade preceding the election in question. These admissions were entitled to great weight. They had shifted the burden on the appellant (Shri John) to show that they were incorrect. The appellant had miserably failed to show that these admissions were incorrect.***

16. This is a legal position with regard to the facts of this case. This Tribunal has already held in A.No.67 of 2019 dated 9.9.2020 and clarified the legal position with regard to the claim of exemption from registration by the promoters. On the side of the promoter in this regard as one of the ground regarding exemption has stated that computation of 500 sq. m. shall be made only from the separate building plan approval. If the building plan approval for more than one block is to be obtained there is no necessity to get separate building plan approval for each blocks and the same can be obtained through one single planning permission and building plan approval order. Hence non-considering the same has resulted in the miscarriage of justice and moreover non availability of compound wall cannot in no way gives right to the home buyers to claim right over the neighbouring plot.

17. The intention of the Legislature as stated supra is that development of more than 500 sq. m. or number of apartments does not exceed 8 inclusive of all phases means total number of apartments at any cost should not exceed 8. The promoter is permitted to develop in many phases or by phase by phase and registration can be made collectively for all phases or each and every phase depends upon the financial position of the promoter. If a big promoter develop a very big Real Estate scheme and develop phase by phase it is permitted and a small promoter develop a small project phase by phase, one by one depends upon his financial position it is also permitted but registration is mandatory. It is not the case of the promoter that he has completed his one of the project Grand symphony and sold and delivered all and commences another project it is immaterial. The promoter himself admitted and stated that they are developing 5 projects having 26 flats in the same location in such names out of which 15 out of 26 have been given possession and remaining not given possession. It clearly shows that the promoter is developing the entire project in different names through single contractor in the name of different name and style but claiming as they are standalone projects. It is certainly not acceptable. In number of cases before this Tribunal the developers took the same stand that they have applied for separate building plan approval in the developer name and entered into construction agreement with the home buyers and claiming as it is a separate villa and the area of the land to be developed is also below the prescribed limit under Section 3(2)(a) and such pleas are already negatived and directed to register the project. So in any angle the plea of the appellants as their project is a standalone project and will not come under the purview of Section 3(2)(a) of

The Real Estate (Regulations and Development) Act, 2016 is not sustainable. The point No.1 is answered accordingly.

Point No.2:

18. The specific contention on the side of the promoters that impleading of land owner as respondent in the complaint suo moto ordered by the Regulatory Authority is erroneous and excess of jurisdiction. First of all it is not the suo moto order of the Regulatory Authority. In A.No.67 of 2019 dated 9.9.2020 this Tribunal has specifically directed the Regulatory Authority to implead the promoter Mr.Prabhakar as a third respondent in the case to get a binding adjudication in paragraph No.21 of the order. The learned Regulatory Authority to comply with the direction of this Appellate Authority, has ordered impleading of land owner. So the plea of the promoter as the Regulatory Authority suo moto ordered impleading the land owner is itself not correct. Further the promoter in A.No.38/2021, who is the party to the proceedings in A.No.67/2019 has not challenged the order of this Authority by way of appeal regarding the direction to implead the land owner as the party to the proceedings. At this juncture, this promoter/appellant in A.No.38/2021 has no locus standi to question the same. Further, the land owner is the title holder for the properties in which Real estate development is going on. The promoter/appellant in A.No.38/2021 is only a power agent to the land owner and he has no title or interest over the said property and furthermore the power of attorney executed in favour of him is not coupled with interest. As per Section 202 of the Indian Contract Act where an agent has an interest in the subject matter of the agency, the agency cannot be

terminated to the prejudice of such interest. If the power of attorney was executed in favour of the promoter/appellant in A.No.38/2021 coupled with interest certainly the plea of the promoter/appellant can be accepted. When there is no interest in the property for the promoter/appellant in A.No.38/2021 the only proper and necessary party is the land owner. Furthermore, the land owner/promoter is developing the real estate project through the power agent namely the promoter/appellant in A.No.38/2021 and the home buyers who purchased the land from the land owner through the power agent and the home buyers approached the Regulatory Authority for the relief of registration and handing over of possession of flat. In such circumstances, without impleading the land owner the order against the power agent is useless one and moreover that order will not bind upon the land owner hence this Tribunal directed the authority to implead the land owner.

19. The Regulatory Authority is having ample power for the purpose of discharging its functions under this Act to implead the land owner as per Section 37 of The Real Estate (Regulations and Development) Act, 2016 which runs as follows:

> ***37. Powers of Authority to issue directions***
>
> ***The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.***

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20. As per the above said provision the Regulatory Authority itself having power to issue direction for the purpose of discharging the functions under the provisions of this Act to the promoters, allottees or real estate agents. In this case this Tribunal itself directed to implead the land owners and the authority executed the direction. Therefore this Tribunal comes to a conclusion that there is no infirmity in the direction issued by the authority to implead the land owner. Therefore the plea of the appellant is not sustainable. The point No.2. is answered accordingly.

Point No.3:

21. In point Nos.1 and 2 it was decided that the pleas raised by the appellants, regarding jurisdiction and powers of the Regulatory Authority, are not sustainable. The next and foremost ground raised by the appellants regarding nonpayment of sale consideration. According to the home buyers they have paid through bank Rs.35,00,000/- out of Rs.40,00,000/- towards balance sale consideration they have paid Rs.2,00,000/- each for three times so totally they have paid Rs.41,00,000/- i.e. more than the agreed amount. According to the promoters home buyers paid only Rs.35,00,000/- towards sale consideration and two times paid Rs.2,00,000/- each towards additional works charges and the alleged another payment of Rs.2,00,000/- by cash is not true.

22. Admittedly as per the legal notice issued by the promoters/appellants in A.No.38/2021 the payments made through bank to the tune of Rs.35,00,000/- and three cash payments Rs.2,00,000/- each. The cash payments are dated



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20.09.2018, 12.11.2018 and 06.12.2018 respectively. The promoters/appellants admitted said payment of Rs.35,00,000/- through bank only towards sale consideration. Further they have admitted the receipt of cash payment of Rs.4,00,000/- as Rs.2,00,000/- each on 12.11.2018 and 6.12.2018 but they have not accepted the cash payment dated 20.9.2018. As per their whats app conversation on 19.09.2018 at 12:17 – Sivaraj: Please arrange for cash payment and cheques as discussed and agreed, at 15:30 Pradeep 916 Melody: Ok. Will call you in sometime. On 20.09.2018 at 7:21 – Sivaraj: Please bring original Aadhar and Pan card for registration process at 9:51 Pradeep 916 Melody: Ok sure. But in other two payments conversation as follows:

| | | |
|---|---|---|
| 19.09.2018 | 12:17 | Sivaraj: Please arrange the cash payment and cheques. As discussed and agreed |
| 19.09.2018 | 13:30 | Pradeep 916 Melody: Will call you in some time. |

| | | |
|---|---|---|
| 09.11.2018 | 14:46 | Sivaraj : Expecting your payments tomorrow as agreed. |
| 09.11.2018 | 17:40 | Pradeep 916 Melody: Yes I remember, we also making arrangements for that. Will call you tomorrow. |
| 12.11.2018 | 12:21 | Pradeep 916 Melody: Good Afternoon. |
| 12.11.2018 | 12:25 | Sivaraj: Just give a call before you start |
| 12.11.2018 | 12:59 | Pradeep 916 Melody: Ok sure |

| | | |
|---|---|---|
| 01.12.2018 | 16:15 | Sivaraj : Pls update us on the cheque payment. 2L. |
| 01.12.2018 | 16:16 | Sivaraj: 5L. |
| 01.12.2018 | 23:06 | Pradeep 916 Melody: We are doing arrangements for payment. Will update you soon. |
| 01.12.2018 | 23:09 | Pradeep 916 Melody: Can you please plan this next month as we vacate the flat next month? So that we could pay the monthly EMI. |
| 02.12.2018 | 10:30 | Sivaraj: Still your outstanding payment is 15L. bank + OCR |
| 02.12.2018 | 10:33 | Sivaraj : First try to give 2L payment as agreed. So that I can talk to Elayaraja on releasing the bank payment. |
| 04.12.2018 | 18.08 | Pradeep 916 Melody: We can meet on this Thursday or Friday |
| 05.12.2018 | 15:48 | Pradeep 916 Melody: Ok then. Will meet after 3 |
| 06.12.2018 | 15:25 | Pradeep 916 Melody: Good afternoon. Will you be available at 5.30 in office? I will give you a call before I start. |

23. From the above said conversation before the 12.11.2018 and 6.12.2018 there are possibilities of payment of cash but it cannot be treated as a proof. In the conversation on 2.12.2018 outstanding mentioned as Rs.15,00,000/-, on 24.1.2019 mentioned to bring Rs.12,00,000/- to take possession. The above said conversations not correlated with the pleadings in the appeal. Without seeing the original and subject to cross examination the above said conversation cannot be relied. Regarding cash payment on 20.09.2018 as alleged by the home buyers is not accepted by the developers.

24. As per the written communications and exchange of notices and in the pleadings admitted facts are total sale consideration were fixed at Rs.40,00,000/- paid Rs.35,00,000/- through bank. The subsequent payment of Rs.4,00,000/- even though admitted according to the home buyers it is towards sale consideration but the developers denied as it is for additional work. For the additional works are concerned no admitted proof was filed by the developers. The developers produced two receipts for the payment of cash in the backside of the said receipt there are estimates dated 12.11.2018 and 6.12.2018 and the above said estimates were not admitted by the home buyers. In such circumstances that receipts cannot be relied cash payments made for the additional works and it can be admitted to the limited extent as cash payment acknowledged. In such circumstances the above said two admitted payments added with payments through bank total comes to Rs.39,00,000/-. Remaining balance Rs.1,00,000/- towards sale consideration is in due.

25. On the side of the promoter/appellant in A.No.38/2021 would contend that already there was a money recovery suit pending before the civil court and as well as the criminal court and they are the proper forum for recovery of money and it is also out of scope of this Tribunal. But promoter/appellant in A.No.63/2021 the appellant in the memorandum of appeal as a second prayer prayed as follows:

> ***"2. To direct the payment of the balance of Rs.5 Lakhs towards the construction cost and Rs.3 Lakhs towards registration charges and shifting of transformer."***

26. Now it seems to be a double claim by the promoters against home buyers. Regarding money claim is concerned the learned counsel rightly pointed out that it is not the proper forum under RERA Act hence the claims regarding shifting of transformer and registration charges etc and additional works charges can be decided by the proper forum in its own course.

27. On available records and on admitted facts regarding real estate projects is concerned sale of the flat fixed at Rs.40,00,000/- has paid Rs.39,00,000/- and the balance Rs.1,00,000/- of sale consideration is to be deposited by the home buyers before the Regulatory Authority to complete the sale of real estate project. Therefore this Tribunal comes to a conclusion that the home buyers even though paid Rs.39,00,000/ out of Rs.40,00,000/- they are not able to get the possession for the past 3 years. Hence this Tribunal to implement the RERA Act by letter and spirit decided to allow this appeal in part by

modifying the order of the Regulatory Authority regarding payment of balance sale consideration and confirm regarding other reliefs. The point No.3 is answered accordingly.

28. In the result, by allowing these appeals in part the order of the Regulatory Authority in C.No.309/2019 dated 11.02.2021 is modified and confirmed as follows:

a) The home buyers are directed to deposit Rs.1,00,000/- towards balance sale consideration before the Regulatory Authority within a month from the date of receipt of this order.

b) The order of the Regulatory Authority regarding handing over of possession of the flat by the promoters/developers is set aside & modified as the promoters/developers are directed to hand over the flats to the home buyers within a month from the date of deposit of Rs.1,00,000/- by the home buyers before the Regulatory Authority.

c) The claim of the promoter/appellant in A.No.63/2021 for the balance of Rs.5,00,000/- towards the construction cost and Rs.3,00,000/- towards the registration charges and shifting of transformer against the home buyers is dismissed and promoter/appellant in A.No.63/2021 can join with promoter/appellant in A.No.38/2021 to claim the same before the proper forum.

d) The order of the Regulatory Authority regarding direction to register the project of the promoter is confirmed and the Regulatory Authority is directed to take suitable action for registration of the project as per the above direction with letter and spirit.



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e) The interim order passed by this Tribunal is vacated and connected Miscellaneous applications are closed. No costs.

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 22nd Day of October 2021.

**Sd/- xxxx**
**CHAIRPERSON**

**Sd/- xxxx**
**ADMN. MEMBER**

**Sd/- xxxx**
**JUDL. MEMBER**

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