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 20.09.2021

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

Appeal Nos. 5 & 6 of 2021

M/s. Ozone Projects Private Limited
Rep. by its Managing Director Mr.S.Vasudevan

... Appellant in both appeals

-Vs-

1. Yogi Saraf

2. Rinku Saraf ... Respondents in both appeals

These appeals were preferred against the order of Adjudicating Officer in C.C.P.Nos. 305 and 306 of 2019 dated 20.11.2020. These appeals were taken on file on 13.01.2021. The appellant preferred waiver application in both the appeals in M.A.Nos.7 and 9 of 2021 under Section 43(5) of the Real Estate (Regulation

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and Development) Act, 2016 and ordered on 20.01.2021 to pre-deposit of 30% each of the total amount ordered by the court below in each appeal. For compliance of pre-deposit order the matter came up in the presence of appellant's counsel M/s. Trans Corporate Legal Services LLP Ms. Madhusruthi Neelakantan on 08.09.2021 and requested for further time for compliance. This Tribunal by granting extension of time passed conditional order and directed the appellant to comply the order on or before 19.09.2021 and the post the case for compliance on 20.09.2021. On that date considering the non compliance of the pre-deposit order this Tribunal delivered the following:

COMMON ORDER

1. Both the respondents herein booked two flats with the appellant and entered into construction agreement and paid Rs.70,60,954.68 for each flat. The appellant failed to comply with the construction agreement hence the respondents came forward with separate complaints before the Adjudicating Officer in C.C.P.Nos. 305 and 306 of 2019. Even after sufficient time granted to the appellant for filing counter and as well as evidence they have not chosen to utilize the same. Hence the learned Adjudicating Officer on considering the available records passed a common order by directing the appellant herein to refund the amount paid by the respondents herein along with interest, compensation and litigation expenses. Aggrieved upon the same the appellant preferred these appeals along with waiver applications.

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2. In the waiver applications this Tribunal ordered to deposit 30% in each of the appeals for the total amount ordered by the court below on 20.01.2021. Even though this Tribunal granted time for compliance on 1.3.2021, 7.4.2021, 28.4.2021, 28.06.2021, 28.07.2021, 8.9.2021 and 20.09.2021 the appellant partly complied the order and failed to deposit the balance amount. Hence the Tribunal passed conditional order on 8.9.2021. Since the appellant failed to comply the order this Tribunal delivered the following order:

> ***"No representation for the appellant. These are the cases where deposit under Section 43(5) was originally ordered as early as on 20.01.2021. Thereafter, they had filed many applications for extension of time stating that there are difficulties due to corona virus. They were directed to deposit only 30% of the total amount as ordered by the court below. Even on the said 30% so far they have only deposited a part of the ordered amount. They are still liable to pay balance amount but they have not paid this money in spite of the repeated extension of time granted by this Court. On the last hearing dated 08.09.2021, conditional order was passed that if the balance amount is not deposited on or before 19.09.2021 then the applications under Section 43(5) shall stands dismissed. It is verified from the office that they have not deposited the balance amount till today. As they have not complied with the order for depositing the amount the applications as per the earlier order itself stands automatically dismissed.***
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> ***Today as there is no representation, as per the previous order under Section 43(5) the applications stands dismissed. The amount so far deposited will be refunded to the purchaser/respondent if he files necessary application after the appeal time is over. Copy of the order is to be sent to the respondent.***

3. The appellant has not complied with the order passed under Section 43(5) in spite of extension of time granted in M.A.Nos.7 & 9 of 2021.

Consequently, for non compliance of the order passed under Section 43(5) both the appeals are dismissed for non compliance. No costs.

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 20th Day of September 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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