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 28.01.2022

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member

Appeal No. 64 of 2021

M/s. Provident Housing Limited,
Rep. by its Managing Director, V.Madhu
Now rep. by its Authorised Signatory, M.D.Sudhakar ... Appellant

-Vs-

P.Rajasekhar .... Respondent

This appeal was taken on file on 28.4.2021 and came up for final hearing on 19.01.2022 in the presence of M/s. R.Sathish Kumar, R.Chandrasudan, R.Gopika and S.Muthu Kumar, Counsels for the appellant and M/s.V.S.Senthil Kumar and A.Kripakaran, Counsels 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 promoter against the order of the Adjudicating Officer in C.C.P.No.50 of 2020 dated 29.10.2020. The promoter remained absent before the Adjudicating Officer hence on available records of the home buyer the Adjudicating Officer passed order on merits. Hereinafter, the appellant and respondent are called as per their original rankings as promoter and home buyer. The promoter has preferred this appeal on the following main grounds:

- Rule 18 proviso clause of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 was not properly followed.
- The promoter sent a letter on 28.5.2019 regarding possession of flat to the home buyer it was also not at all considered.
- The main contention of the appellant is that he is not the promoter as defined under Section 2(zk) of the Act since the project falls outside the ambit of an ongoing project.
- The development works of the appellant project was completed and applied for completion certificate prior to the commencement of Section 3 of the Act.

2. The learned counsel for the appellant would submit that the main important grounds namely the appellant is not a promoter and the project of the appellant will not come under the purview of the RERA under Section 3 have to be decided on merits. Furthermore, notice from the Adjudicating Officer served

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to the site address at Coimbatore and they were not communicated to the appellant properly hence there was no representation on their behalf before the Adjudicating Officer. Therefore, to decide the case on merits this appeal has to be allowed.

3. The learned counsel for the respondent/home buyer would submit that learned Adjudicating Officer properly ordered notice to the appellant and it was served even then they were purposely avoided to appear and putforth the case since there is no merit. Therefore, the appeal has to be dismissed.

4. Point for consideration:

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

Point :

5. The promoter and the home buyer entered into construction agreement on 27.5.2014 and the promoter agreed to hand over possession on or before 31.8.2016 with a grace period of 6 months i.e., February 2017. On 14.11.2014 the promoter has executed undivided share in favour of the home buyer. The promoter has sent an email on 15.3.2017 by stating that possession schedule will be informed to all our customers very shortly. Again on 14.10.2017 the promoter has sent another email by stating that we are sending you the latest update on our complete project. After that there was no communication regarding handing over possession. The home buyer sent a notice on 17.7.2019 in which the home buyer has clearly stated that till May 31st 2019 possession was

not handed over. In the above said notice in paragraph No.7. The home buyer himself admitted that on 24.6.2019 the promoter informed by mail that the flat is ready to take the possession with demand to pay interest of Rs.74,144/- in addition to the balance sum of Rs.2,30,707/- but the home buyer denied the above said demand notice. But the learned Adjudicating Officer has not discussed about the email dated 24.6.2019 by the promoter.

6. According to Section 38 and 53 of The Real Estate (Regulation and Development) Act, 2016 the guiding principles for the Regulatory Authority as well as for this Appellate Tribunal is the principles of natural justice. In this case even though the promoter has not appeared after the receipt of the notice the learned Adjudicating Officer unfortunately omitted to discuss about the case of the promoter regarding the readiness of the handing over, particularly, which was admitted by the home buyer himself in his legal notice. Furthermore, the home buyer preferred this complaint only on 29.1.2020, after 6 months from the date of email from the promoter. In such circumstances it is the bounden duty of the Adjudicating Officer to discuss the merits of both side contentions, even though the promoter remained absent, and come to a conclusion with a speaking order. But in this case the learned Adjudicating Officer omitted to discuss about the contention of the promoter it is against the principles of natural justice. Therefore this Tribunal comes to a conclusion that this appeal necessarily has to be allowed for remand and retrial. Hence this appeal is deserves to be allowed. Point is answered accordingly.

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7. In the result, this appeal is allowed with cost of Rs.10,000/- to Chief Minister's Relief Fund (Covid). The order of the Adjudicating Officer in C.C.P.No.50 of 2020 dated 29.10.2020 is set aside and the complaint of the home buyer is remanded back to the Tamil Nadu Real Estate Regulatory Authority, Chennai for retrial regarding refund. 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, the powers vested with the Adjudicating Officer in adjudicating refund is now ousted and therefore this Tribunal issued the following directions:

a) The Adjudicating Officer is directed to return the complaint to the Regulatory Authority to decide the issue of refund, interest for refund, etc.,

b) The Regulatory Authority is directed to take the complaint on file and after giving sufficient opportunity to both sides decide the issue regarding refund and interest thereon etc., on merits as per the Real Estate (Regulation and Development) Act, 2016 and pass orders in accordance with law.

c) The promoter deposited pre-deposit amount, 40% of ordered total amount, shall be kept in the fixed deposit till the disposal of the complaint.

d) Both parties are directed to appear before the Adjudicating Officer on 10.2.2022.

e) Receipt of payment of cost to Chief Minister's Relief Fund to be produced before the Adjudicating Officer on 10.2.2022.

This Order is directly dictated to the Stenographer, typed in the computer by her, corrected and pronounced by us in the open court on 28th Day of January 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDL. MEMBER

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