**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 06.10.2021**

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

**Appeal No. 73 of 2021**

1. Army Welfare Housing Organization (AWHO)
   Rep. by its Managing Director
   South Hutments, Kashmir House,
   Rajaji Marg, New Delhi – 110 011

2. The Project Director
   Army Welfare Housing Organization
   Dinesh Vihar, Thazhambur Link Road,
   Chennai – 600 103. ... Appellants

-Vs-

Tamil Nadu Real Estate Regulatory Authority
(TNRERA) .... Respondent

This appeal was taken on file on 02.07.2021 and came up for final hearing on 15.09.2021 in the presence of M/s.AAV Partners, P.H.Manoj Pandian, N.Zahid Ahmed & Sonali.J., Counsels for the appellants and the



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respondent being the Tamil Nadu Real Estate Regulatory Authority, no notice was served. Having heard the arguments of the appellant side 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 promoter against the order of the Tamil Nadu Real Estate Regulatory Authority bearing No.TNRERA/A3/2661/2021, dated 10.06.2021.

2. The promoter/appellant is Army Welfare Housing Organization, which is registered under the Indian Societies Registration Act. The aim and object of the organization is to construct houses for the welfare of serving/retired Army personnel and the widows in selected stations throughout the country. As such the allottees/respondents have been allotted respective houses and handed over possession on 5.12.2019 (C.No.291/2019), 12.08.2020 (C.No.293/2019) and 22.02.2020 (C.No.294/2019). The above said project commenced in May 2012. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 came into force on 22.06.2017. Hence the allottees came forward with the complaints before the Regulatory Authority for registration of the project and for delay compensation. The Regulatory Authority closed the complaints by its order dated 21.05.2019 by stating that the housing project developed by the Army Welfare Housing Organization has been structurally completed hence exempted from registration with RERA. Aggrieved upon the same the allottees have preferred appeals before this Tribunal. This Tribunal, after contest, set aside the order of the Regulatory Authority by its order dated 31.10.2019 and

directed the promoter to register the project. Aggrieved upon the same the promoter preferred Civil Miscellaneous Second Appeal before the Hon'ble High Court. After contest the Hon'ble High Court remanded the matter to the Regulatory Authority for fresh decision. After issuing notice to the appellant as well as the respective 1st respondent and summoning all records from the planning authority and if necessary, the authority shall examine witnesses and record statements by issuing commissions, provide adequate opportunity to the respective 1st respondent to place materials before the Authority and take an informed decision by recording reasons. Then the Regulatory Authority after contest delivered the order on 25.03.2021 by holding that the project of the promoter is an ongoing project and directing the promoter to register the project before 30.04.2021. Aggrieved upon the same the promoter preferred appeals before the Tami Nadu Rea Estate Appellate Tribunal on 30.04.2021 and that appeals were taken on file on 28.06.2021. In the mean time the Regulatory Authority suo moto imposed penalty on 10.06.2021 for non-compliance of the order dated 25.03.2021. Aggrieved upon the same the appellants have preferred this appeal on the following grounds:

i. The appellant has preferred appeals on 30.04.2021 itself vide S.R.Nos.351, 353 and 355 of 2021 against the final order dated 25.03.2019.
ii. In the event of the authority penalizing the appellants then the appeals filed by the appellants under the statue will become infructuous.
iii. During the pendency of the appeal the authority has imposed with penalty

iv. The appeal has been preferred by the appellant within the limitation period and the same has been filed within 30 days from the date of receipt of the copy of the order.

v. Due to pandemic/lockdowns/force majure and unavailable circumstances and the office of this Tribunal remained closed due to summer vacation are the reasons for the appellant being unable to bring up the appeals and stay applications for hearing at the earliest.

These are the main grounds put forth by the appellants that the learned Regulatory Authority failed to consider and failed to give sufficient opportunity to explain his position. During the course of arguments the learned counsel for the appellants would submit that before invoking Section 59 and 63 of The Real Estate (Regulations and Development) Act, 2016 for imposing penalty on the appellants the Regulatory Authority has miserably failed to follow the natural justice. If an opportunity is given by the authority before imposing penalty certainly there is a chance for the appellants to bring the facts of pendency of appeals by the appellants. Preferring of appeal is a statutory right given under Section 44 of The Real Estate (Regulations and Development) Act, 2016 and before the appeals have been decided by the Tribunal imposing of penalty, suo moto, without giving opportunity to the appellants is certainly against the principles of natural justice and against The Real Estate (Regulations and Development) Act, 2016. Therefore this appeal has to be allowed and the order of the authority imposing penalty has to be set aside.

3. Point for consideration:

Whether the appeal deserves to be allowed or not?



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Point:

4. The appellant is the promoter and against the promoter the Tamil Nadu Real Estate Regulatory Authority has passed orders in C.Nos.291,293,294 of 2019 on 25.03.2021 and directed to register the project before 30.04.2021. Since the appellant failed to register the project the Tamil Nadu Real Estate Regulatory Authority suo moto passed an order on 10.06.2021 by invoking Section 59 and 63 and imposed penalty are all not disputed.

5. On the side of the appellants there are two contentions put forth by them. The first contention is the order passed by the Regulatory Authority without notice to the appellants. The second contention is that during the pendency of the appeal the above said order has been passed.

6. Regarding first contention is concerned the Regulatory Authority has suo moto passed an order on 10.06.2021. According to the appellants after the receipt of the impugned order dated 10.06.2021 they have presented the appeals on 30.04.2021 itself before the Real Estate Appellate Tribunal. On perusal of the appeal memorandum the appeals have been presented on 30.04.2021. As per the attendance register of the TNREAT due to summer vacation and lockdown upto 6.6.2021 from 7.6.2021 to 10.06.2021 TNREAT office was functioning with skeleton staff. Subsequently from 14.06.2021 onwards regular functioning of the office commenced. Hence on 15.6.2021 the appeal memorandum was returned for rectification of defects and after representation appeals have been numbered on 28.06.2021. In the mean time on 10.06.2021 the Tamil Nadu Real Estate Regulatory Authority as suo moto

has passed impugned order. Before passing the impugned order no notice was served to the appellants. Admittedly, as per Section 59 and Section 63 before imposing penalty service of notice to the promoter is not contemplated. The powers conferred for imposing penalty under this Act is contemplated under Section 38 of The Real Estate (Regulations and Development) Act, 2016 which runs as follows:

> ***38. Powers of Authority.***
> ***(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.***
> ***(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.***
> ***(3) .. ..***

7. In the above said provision sub clause (2) adumbrated the word guided by the principles of natural justice. Nowhere in this provision Section 38 suo moto power has been given. But at the same time suo moto power conferred in Section 35 of this Act which runs as follows:

> ***35. Powers of Authority to call for information, conduct investigations.***
> ***(1) Where the Authority considers it expedient to do so, on a complaint or <u>suo motu</u>, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.***
> ***(2) .. ..***

8. Now let us look into the precedents of the Hon'ble Supreme Court and Hon'ble High Court decisions with regard to imposing of penalty.

***Supreme Court of India***
***Jolly George Verghese & Anr vs The Bank Of Cochin on 4 February, 1980***

> ***HELD: 1. The words in section 51 which hurt are "or has had since the date of the decree the means to pay the amount of the decree." Superficially read this implies that if at any time after the passing of an old decree the judgment debtor had come by some resources and had not discharged the decree he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position, apart from being inhuman going by the standards of Article 11 of the International Covenant on Civil and Political Rights and Article 21. A simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or alternatively current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Considerations of the debtor's other pressing needs and straitened circumstances will play prominently. [922E-G]***

***Madras High Court***
***Namachivaya Mudaliar And Anr. vs P.J.A. Manickavelu And Co. on 11 January, 1972***

> ***1. The validity of the order of arrest is challenged by the judgment-debtor. The order is one word one: "Arrest". The contention is that under Section 51, C. P. Code, before an order of arrest and detention in prison is made the Court should give an opportunity to the judgment-debtor for showing cause as to why he should not be committed to prison, and the Court should, for reasons recorded in writing, be satisfied on any of the requirements prescribed in clause a, b or c of the proviso. Rules 37 and 40 of Order XXI C. P. Code should also be referred to in this connection. Order XXI, Rule 37(1) provides that where an application is for arrest and detention in civil prison of a judgment-debtor who is liable to be arrested, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the***

***notice and show cause why he should not be committed to civil prison. The proviso states that such notice shall not be necessary if the Court is satisfied, by an affidavit or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.***

9. From the above said precedents it is very clear that while imposing penalty the principles of natural justice shall be followed. In execution of decrees are concerned there is a specific provision contemplated under Section 51 and Order 21 Rule 37 of CPC. Even though Civil Procedure Code is not applicable for the proceedings under the Real Estate (Regulations and Development) Act, 2016 the precedents can be taken into account. Furthermore, Section 35 and 38 of this Act clearly speaks about the guiding principles of natural justice and the suo moto power conferred only under Section 35 to call for information and conducting investigations. While imposing penalty or interest with regard to any contraventions of obligations under this Act, Rules and Regulations the authority shall be guided by the principles of natural justice. In this case the authority has miserably failed to follow the principles of natural justice. If the authority followed the principles of natural justice certainly the fact of pendency of appeal would have come to the light of the learned authority and further litigation namely this appeal could have been avoided. Therefore this Tribunal comes to a conclusion that the impugned order passed by the authority without following Section 38 of the Act is liable to be set aside and the authority is empowered to impose penalty only after hearing the party on the principles of natural justice and this appeal deserves to be allowed. The point is answered accordingly.

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10. In the result, the appeal is allowed. The order of the Regulatory Authority bearing No.TNRERA/A3/2661/2021 is set aside and the matter is remanded for fresh disposal to the Regulatory Authority by following the principles of natural justice as contemplated under Section 38 of The Real Estate (Regulations and Development) Act, 2016. Connected Miscellaneous Application is 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 06th Day of October 2021.

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

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

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

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