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 17.11.2021

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

Appeal No. 79 of 2021

M/s.VGN Property Developers Pvt. Ltd
Represented by its Chairman V.N.Devadoss
And it's MD. V.Pratish Devadoss
Now represented by Mr.G.V.Ramana ... Appellant

-Vs-

1. E. Narayanan
2. Gajalakshmi Narayanan ... Respondents

This Appeal was preferred against the order of Adjudicating Officer in C.C.P.No.348 of 2019 dated 25.02.2021. This Appeal was taken on file on 13.07.2021 and came up for hearing for compliance in M.A.No.96 of 2021 under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and ordered to pre-deposit of 40% of the total amount ordered by the court below. For compliance of pre-deposit order the matter came up in the presence of

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appellant's counsel M/s.K.Harishankar, Srinath Sridevan, T.K.Bhaskar, R.Radeesh Manikandan, B.Gopinath and Mithreyi KasthuriRangan. The case was posted on 17.11.2021 for reporting compliance through video conferencing. Considering the non compliance of the pre-deposit order this Tribunal delivered the following:

ORDER

1. The respondent in this appeal has preferred complaint before the Adjudicating Officer in C.C.P.No.348 of 2019 for the relief of refund of sale consideration with interest and for compensation. After contest the Adjudicating Officer allowed the complaint in part and directed the appellant/promoter to refund the sale consideration Rs.33,15,281/- with interest @ 10.05 % per annum along with compensation of Rs.2,00,000/- for mental agony and litigation cost Rs.25,000/. Aggrieved upon the same the appellant/promoter herein has preferred this appeal along with waiver application. In the waiver application this Tribunal ordered 40% of the total amount ordered by the court below. Since the appellant failed to comply the order this Tribunal delivered the following order:

> **"This Tribunal has directed under Section 43(5), the appellant to deposit 40% of all the amounts ordered by the court below. The direction was given to the appellant on 19.07.2021 to deposit on or before 17.08.2021. The appellant did not pay the amount. On 18.8.2021, as according to the appellant, there is a calculation mistake and as they could not deposit in time therefore they sought time in M.A.No.96/2021, time was extended upto 29.09.2021. On 29.09.2021 they only paid a partial amount of Rs.7,13,524/- but it was not for the full payment of**

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40% of the amount hence it was adjourned for verification and check & call on to 06.10.2021. On 06.10.2021 they sought further time having clarified about the balance amount to be paid. Extension of time was again granted to deposit on or before 28.10.2021 and posted for compliance on 29.10.2021. On 29.10.2021 also they did not pay the amount. They sought further time and this Tribunal granted further time on condition to pay a sum of Rs.5000/- to the Tamil Nadu Chief Minister's Relief fund for corona on or before 8.11.2021 and also granted time for the balance payment till 16.11.2021. In that order it was very clearly stated that if any one of the payment is not made within the time from the date of that order the extension granted shall stand automatically revoked and the application under Section 43(5) shall stand dismissed automatically. The matter was posted for compliance on 17.11.2021.

While this so, the appellant filed an application on 16.11.2021 stating that they have complied with one portion of the order namely payment to the Chief Minister's Relief Fund for corona but not complied with the second limb of the order which expired on 16.11.2021. On 16.11.2021 itself they filed this application M.A.No.178/2021 seeking for extension stating their inability to pay the amount. The learned senior counsel Mr.K.Harishankar pointed out that due to corona difficulties and various difficulties in the business they are unable to comply with the order and sought for time. This Tribunal brought to the notice to the learned counsel, the judgment of the Hon'ble Supreme Court in New Tech Promoters and Developers Pvt. Ltd. Vs. State of Uttar Pradesh & Ors. dated 11.11.2021 wherein the Hon'ble Supreme Court has stated that the amount to be deposited under Section 43(5) is not a onerous condition. That being so, as already, as per the earlier order itself for non compliance of any one of the condition under Section 43(5) as it automatically gets dismissed. The application filed by the appellant M.A.No.178/2021 seeking for extension of time at this stage is not maintainable. Hence the extension application is dismissed consequently Section 43(5) application M.A.No.96/2021 for non compliance is automatically dismissed.

In view of the dismissal of the application under Section 43(5) which is a mandatory requirement the appeal A.No.79/2021 is dismissed for non compliance."

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 17th Day of November 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDL. MEMBER

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