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 05.01.2022

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

Appeal Nos. 8, 18-28 and 39 to 50 of 2021

State Bank of India Officers Association Chennai Circle (SBIOACC)
Rep. by its General Secretary
R.Balaji ... Appellant in A.Nos.8, 18 to 28/2021 and 1st Respondent in A.Nos.39 to 50 of 2021

M.Mohan ... Appellant in A.No.39 to 50 of 2021 and 2nd Respondent in A.Nos.8, 18 to 28 of 2021

-Vs-

G.Rajendra kumar ... 1st Respondent in A.No.8 and 2nd respondent in A.No.39/2021,

J.Gurumurthy ... 1st Respondent in A.No.18 and 2nd respondent in A.No.40/2021,

R.Prasad POA Holder of P.Arunkumar ... 1st Respondent in A.No.19 and 2nd respondent in A.No.41/2021,

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R.Sritheran	... 1st Respondent in A.No.20 and 2nd respondent in A.No.42/2021,
Nalini Prasad & M.Karthikeyan	... 1st Respondents in A.No.21 and 2nd respondent in A.No.43/2021,
Padma Srinivasan	... 1st Respondent in A.No.22 and 2nd respondent in A.No.44/2021,
A.Sittrarasu	... 1st Respondent in A.No.23 and 2nd respondent in A.No.45/2021,
R.Prasad & Agila Prasad	... 1st Respondent in A.No.24 and 2nd respondent in A.No.46/2021,
B.Perumal POA Holder of Shri Amarnath Shanmugam	... 1st Respondent in A.No.25 and 2nd respondent in A.No.47/2021,
Neelakandan	... 1st Respondent in A.No.26 and 2nd respondent in A.No.48/2021,
P.Gandhi	... 1st Respondent in A.No.27 and 2nd respondent in A.No.49/2021,
V.Subburaj	... 1st Respondent in A.No.28 and 2nd respondent in A.No.50/2021,

These appeals were taken on file on 3.2.2021, 22.2.2021 and 31.3.2021 respectively and came up for final hearing on 1.12.2021 in the presence of M/s.Sarvabhauman Associates, S.Mukunth & Sam Jayaraj Houston, Counsels for the appellant in A.Nos.8, 18 to 28 of 2021 and M/s.T.Vennila and Manoj Kumar.D for R1 in A.Nos, 8, 18,19, 21, 22, 25 to

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28 of 2021 and Mr.T.N.Buvaneswaran Counsel for R2 in A.No.8, 18-28 of 2021. R1, R.Sritheran in A.No.20/2021 appeared in person, R1 A.Sittrarasu, A.No.23/2021 appeared in person and R1 R.Prasad & Agila in A.No.24/2021 appeared in person. For R1 in A.Nos. 27 and 28 of 2021 M/s.C.H.Vinobha Gandhi, H.Surendar, V.Mohanapriya and S.Thiyal Nayaki Counsels appeared.

Mr.T.N.Buvaneswaran, Counsel for Appellant/Ex-Chairman appeared in A.Nos.39 to 50 of 2021, M/s.Sarvabhauman Associates, S.Mukunth & Sam Jayaraj Houston Counsels for R1 appeared in A.Nos.39 to 50 of 2021. For R2 in A.Nos.39 to 41, 43, 44, 47 & 48 of 2021 Advocates M/s.T.Vennila and Manoj Kumar.D appeared. For R2 in A.Nos. 49 and 50 of 2021 M/s.C.H.Vinobha Gandhi, H.Surendar, V.Mohanapriya and S.Thiyal Nayaki Counsels appeared. R2 R.Sritheran, in A.No.42/2021 appeared in person, R2 A.Sittrarasu, A.No.45/2021 appeared in person and R2 R.Prasad & Agila in A.No.46/2021 appeared in person.

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:

COMMON ORDER

1. These separate appeals have been preferred by the promoter and Ex-Chairman of Housing Committee of SBIOACC, respectively against the allottees separately against the order of the Regulatory Authority in C.Nos.004 to 015 of 2020 dated 5.11.2020.

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2. The allottees preferred separate complaints against the promoter and Ex-Chairman of Housing Committee of SBIOACC for the relief of registration of project, delay for handing over, execution of undivided share sale deed for the remaining extent, completion and handing over of amenities and other reliefs. The Regulatory Authority has directed the promoter as well as the Ex-Chairman of Housing Committee of SBIOACC jointly and severally responsible for the execution of this real estate project and attendant obligations as per law. Aggrieved upon the same the promoter and the Ex-Chairman have preferred separate appeals against the allottees. Both the appeals were arose from a single common order. In these appeals the allottees preferred separate complaints and the promoter and Ex-Chairman filed separate appeals totally 24. Hence to avoid confusion and for easy understanding in these appeals the parties are hereinafter called as per their original rankings as promoter, Ex-Chairman and allottees.

3. The appellant in A.No.8/2021, State Bank of India Officers Association Chennai Circle, (SBIOACC) is a trade union formed and registered under the trade union Act. Any officer of SBI working in the area of operation of Chennai circle or on deputation to corporate centre of any agencies in the geographical area of Chennai circle subscribing to the objects of the association and who is not a member of any other trade union shall be eligible to become a member. The termination of

membership is automatic when the member ceases to be in the service as officer in State Bank of India: when the member resigns or retires from the services of the State Bank of India or when the member joins any other association registered under Trade Union Act. The trade union is aimed to contribute only for the welfare of the officers of SBI at Chennai. One of the objectives of the association is to promote housing targets to encourage members to construct houses of their own. The allottees/respondents and appellants in A.Nos. 39 to 50 of 2021 are members of the appellants' association in A.Nos.8,18 to 28 of 2021. The promoter/SBIOACC in line with the above objective and to provide affordable housing in good location with all amenities matching avant-grade projects have decided to formalize a housing project at Mambakkam village, Chengelpet Taluk, Kanchipuram District. About 24.33 acres were identified and purchased from 2011 to 2013. The housing project was promoted on a no profit no loss basis. The project was named as Unity Enclave. Only SBIOA(CC) members, spouses are eligible to buy the apartments. Unity Enclave is the mega project consisting of 21 blocks having 15 floors plus basement and stilt with car parking. It has club house with five floors and a commercial complex having seven floors. The total construction area is 35,66,144 sq. ft. the Executive Committee had formed a Housing Committee to carry and monitor the project. The bidders were invited and M/s.Simplex Infrastructure was chosen as the builder M/s.Sai Consulting Engineers was chosen as a Project Management Consumption and M/s.Kambhavi Architecture foundation was chosen to complete the detail architectural

engineering design. The promoter and allottee entered into a construction agreement on 6..9.2013 and to complete the construction and to deliver the possession fixed at 43 months with a grace period of 6 months i.e. 1st March 2017. Since the possession was handed over to the flat owners during May 2018 without completing the common amenities hence the allottees preferred complaints for various reliefs. After contest the Regulatory Authority directed the registration of the project under TNRERA and directed the promoter/SBIOACC and Ex-Chairman jointly and severally to complete the project within the stipulated time. Aggrieved upon the same both of them preferred these separate appeals on the following main grounds:

- The construction of the apartment has been completed as early as in the year 2017; the keys have been handed over to the flat owners during May 2018 and is exempted under section 3(2)(b) of the Act and is structurally completed as per Rule 2(h)(iii) of the TNRERA Rules 2017.
- The promoter is not a builder but only a representative of the complainants who had entered into agreements with experts for construction of the project.
- There is no shortfall difference between the undivided share in sale agreement and sale deed
- The complainants having come with an unexplained and inordinate delay cannot take advantage of their own wrong.
- Without impleading the builders the defects cannot be rectified.

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4. The learned counsel for the appellant/promoter would submit that main residential buildings were completed and assessed to tax but the amenities not yet completed and the same would not disentitle the appellant from invoking Rule 2(h)(iii) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The applicability of limitation has not been considered. Further would submit that the appellant association would not fall under the definition of the promoter. Without impleading the builder the appellant cannot be liable to rectify the defects. The learned Regulatory Authority without considering the above said facts came to a wrong conclusion hence it has to be set aside.

5. The appellant/Ex-Chairman preferred separate appeal on the following main grounds:

- There is no personal allegation against the appellant/Ex-Chairman and who has acted as Chairman for a limited period of time.
- Due to election rivalry and due to personal enemity with the appellant/Chairman complaint has been filed.
- The project was developed by the SBIOA from the year 2010.

6. The learned counsel for the appellant/Ex-Chairman would submit that the SBIOACC project has been commenced in the year 2010 and land

was identified in the year 2011 builders were identified in 2012 but the appellant/Ex-Chairman became the Chairman of the Housing Committee from 2014 to 31.5.2018 after that he ceased to be its Chairman hence he cannot be liable for the implementation of the project. The promoters namely the SBIOA and the builder/contractor alone are jointly and severally liable but the learned Authority wrongly concluded that the appellant/Ex-Chairman is also liable for the execution of the project as a promoter hence the order of the Authority has to be set aside with regard to the findings against this appellant/Ex-Chairman.

7. Points for consideration:

1. Whether the plea of the appellant/SBIOACC that they are not the promoter is sustainable?
2. Whether the claim of appellant/SBIOACC for exemption under 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 is sustainable?
3. Whether the appeals A.Nos.8,18-28 of 2021 are deserve to be allowed?
4. Whether the plea of the appellant/Ex-Chairman that he is not liable to execute the real estate project is sustainable?
5. Whether the appeals A.Nos.39-50 of 2021 are deserve to be allowed?

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Point No.1:

8. According to the appellant/SBIOACC that they are not the promoter for the real estate project initiated by the association and the builder alone is the promoter. How far the plea is tenable has to be analyzed? Before going to analyze the said facts it is appropriate the mention the relevant provisions in this regard. The meaning of the relevant words namely promoter, real estate project which are defined in Section 2 of the Real Estate (Regulation and Development) Act, 2016 are as follows:

(zk) "promoter" means,—

(i) ***a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or***

(ii) ***a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or***

(iii) ***any development authority or any other public body in respect of allottees of—***
(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
(b) plots owned by such authority or body or placed at their disposal by the Government,
for the purpose of selling all or some of the apartments or plots; or

(iv) ***an apex State level co-operative housing finance society and a primary co-operative***

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housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

(zg) "Person" includes,—
(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;
(v) a competent authority;
(vi) an association of persons or a body of individuals whether incorporated or not;
(vii) a co-operative society registered under any law relating to co-operative societies;
(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

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9. According to Section 2(zk), the word promoter means a person who constructs or causes to be constructed a building consisting of apartments for the purpose of selling to other persons is the promoter. In this definition the word person is used. The word person is explained in Section 2(zg) of this Act. As per Section 2(zg) the word person includes an association of persons or a body of individuals whether incorporated or not. In this case the appellant/SBIOACC is an association of persons or the body of individuals collectively formed an association to execute the real estate project for their benefit and they have registered their body under the Trade Unions Act 1965. So the appellant association comes under the definition of person.

10. As per the definition 2(zk) promoter means a person who constructs or causes to be constructed a building consisting of apartments for the purpose of selling to other persons is the promoter. For the purpose of selling to other persons if a person causes to construct apartments such person is the promoter. Here, the appellant/SBIOACC, is a person and doing the construction of apartments through the builder for the purpose of selling to others. So, the appellant/SBIOACC is the promoter as per the above definition. But the learned counsel for the appellant would submit that the appellant, the 1st respondent/allottee and other complainants cannot be differentiated hence the appellant would not fall under the definition of promoter. But in the definition section 2(zg) and 2(zk) defined the person and the promoter on the basis of the construction of

apartments for the purpose of selling amounts to promotion of real estate project. The appellant counsel would submit that both the appellants and the allottees are one and the same category hence the appellant cannot be treated as promoter. Admittedly, the allottees collectively body of individuals and created an association it is called as per 2(zg) as person. The said person while selling the real estate project that person is treated as a promoter under the provision of this Act. Hence the plea of the appellant side as they are not the promoter is not sustainable under Section 2(zk). The point No.1 is answered accordingly.

Point No.2:

11. The appellant/SBIOACC claimed exemption from registration under Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 since they have completed the project except common amenities. On the side of the appellant/SBIOACC filed a miscellaneous application under Order 41 Rule 27 CPC to receive additional documents in which certificate of architect dated 22.5.2017 as document No.1 and which was produced to DTCP as document No.2 and the same was produced to the TNRERA, as document No.3, for exemption from registration of the project. Even then TNRERA has not considered the certificate of the architect and rejected the claim of the appellant/SBIOACC for exemption under Rule 2(h)(iii) and ordered to register the project. Against that order these appeals have been preferred. Under such circumstances the above said additional documents how far sufficient to

set aside of the order of the Regulatory Authority has also to be analyzed? Before going to answer this question we have to see the meaning of the word real estate project. The word real estate project defined in Section 2(zn) of the real estate Act which runs as follows:

> ***(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;***

12. As per the above definition the real estate project means the development of a building consisting of apartments for the purpose of selling and includes the common areas, the development works, all improvements and structures thereon and all easement rights and appurtenances belonging thereto. So as per the definition real estate project includes the common areas and structures thereon. In the construction agreement at page No.50 of the typed set of the allottee in which common amenities namely lift, stair case, drive way LPG reticulation system, sewage treatment plant, water treatment plant, power back up and club house facilities namely swimming pool, cafeteria, convene, waiting lounge, games room, kids care centre, gym, saloon, spa, multipurpose hall, hobby centre, bar, guest room and commercial building

facilities, super market, car parking were promised by the promoter to the home buyers. Without the above amenities and facilities the construction of apartment alone is not sufficient and not fit for living and moreover it is not a consumable product as decided by this Tribunal in A.Nos.1/2018 and 2/2018 and 7/2019 and the above said orders were confirmed by the Hon'ble High Court.

A.No.1 of 2018 dated 23.5.2018

Y.Ravishankar Vs M/s.Marg properties Limited and another

If we also take into considerations the objects and reasons of the Act, the Act has been enacted mainly to infuse transparency, ensure accountability towards allottee s and protect their interest. It also imposes certain responsibility on both the promoter and the allottee, mainly to establish a fast track dispute resolution mechanism. Therefore the intention of the legislature is to have a workable solution for any difficulty faced by an allottee. This can be done if the project is registered under the Authority. In fact, when we also take into consideration, the Rule 2(n) where the definition of real estate project is given, it actually says the development of the building includes the common areas, the development works, all improvements and structures thereon and all easement rights and apprutenances belonging thereto which will clearly indicate that this legislature's intention in the Act is to say that the project should have been completed in all respects.

Under the Act, it is very clear that the end product namely the flat is a usable commodity. It does not contemplate the promoter to say that they have only completed a portion of it.

As per the above said conclusion of this Tribunal completion of project means that the property should be in an usable condition by the allottee. The end product namely the flat is a usable commodity.

A.No.2 of 2018 dated 13.11.2018

M/s.Marg properties Limited Vs T.M.Arunachalam

Therefore the intention of the legislature was only for the parties to have a workable usable commodity namely a flat which cannot be construed as an incomplete flat. As per the Act, it even states that the properties intended to be used as a residential or commercial use such as residence or office or shop.

Therefore, the alleged mere completion of structure or beam cannot connote to the actual users entitlement.

A.No.7 of 2019 dated 27.01.2020

Pacifica (Chennai Project) Infrastructure Pvt. Ltd., and Sylvanus Builders & Developers Ltd., Vs 1) C.R. Chenthirkumaran and 2) C. Dhanalakshmi

The appellant only relied the completion certificate issued by the Pudupakkam Panchayat. But the Pudupakkam Panchayat President has relied on only two planning permit and one building permit. The above said completion certificate is not based upon the Rule contemplated under Rule 2(h)(iii) of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. But the intention of the legislature regarding the completion of the project is concerned it should certified only by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. None of the certificates of the above said persons and photographs were not relied by the President of the Panchayat and moreover he has not whispered anything whether he saw the certificates or photographs.

In these circumstances the completion certificate relied by the appellant is not reliable and the said completion certificate is not sufficient to relief from the clutches of Rule 2(h)(iii).

13. The above said order was challenged before the Division Bench of the Hon'ble High Court in CMSA No.31 of 2020 dated 2.12.2020 in which the Hon'ble High Court held as follows:

In the High Court of Judicature at Madras

Dated : 02.12.2020
Civil Miscellaneous Second Appeal No.31 of 2020
& CMP.No.13108 of 2020

M/s.Pacifica (Chennai Project) Infrastructure Pvt. Ltd. and another - Vs- C.R.Chenthirkumaran and another

The Tribunal took note of the entire factual details. Thus, we find that there absolutely no ground to interfere with the order passed by the Tribunal.

14. From the above discussion it is very clear that the real estate project means building consisting of apartments for the purpose of selling and includes the common areas and structures thereon. According to the appellant building consisting of apartments were completed and the structures on the common areas namely club house and commercial buildings were admittedly not yet completed. Hence the project of the appellant cannot be construed as a completed real estate project and it is only a partially completed real estate project. Therefore the appellant is not entitled to invoke exemption under Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

15. Further, as per Section 3(1) proviso clause 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 said project within a period of three months from the date of commencement of this Act. In this case on the date of commencement of this Act i.e. on 1.5.2017 the appellant/promoter has not completed the project and still admittedly the club house and commercial complexes within the project is not yet completed as per the sanctioned plan, lay out plan and specifications as approved by the competent authority under the local laws. Therefore this Tribunal comes to a conclusion that the project of the appellant/promoter is an ongoing project and the learned Regulatory Authority rightly came to a conclusion that the project of the appellant/promoter is an ongoing

project and directed the promoter to register the same before the Authority. Hence the claim of exemption by the appellant under Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 is not sustainable. The point No.2 is answered accordingly.

Point No.4:

16. According to the appellant/Ex-Chairman he is not liable to execute the real estate project along with the promoter jointly and severally. For which the appellant/Ex-Chairman has stated reason that he is neither a promoter nor a builder. The learned Authority has found that the appellant/Ex-Chairman has been the Chairman of the Housing Committee carrying out this project from August 2014 to 31.5.2018 or 28.1.2019 and hold the post for more than 3 ½ years and further the contract price involved to the tune of Rs.547.88 crores. Hence the Authority holds that both the appellants are jointly and severally responsible for execution of this real estate project. It is not the case of the appellant/SBIOACC and the allottees that the appellant/Ex-Chairman is the promoter. The appellant/Ex-Chairman while he was in service he has acted as a Chairman of the Housing Committee till he holds that post. Subsequent to that for that place someone from the service is acting as a Chairman of the Housing Committee. It is also not disputed. On the side of the allottees they have not produced any proof or evidence to show that the appellant/Ex-Chairman is continuing the Housing Committee Chairman or he is having

liability or responsibility or any power or privity of contract to complete the project.

17. The project was inaugurated in the year 2010 as per letter dated 5.10.2010 (Typed set of promoter page No.1). As per the letter dated 18.2.2011 land for the project was identified. On 29.7.2011 lands for project were purchased, on 10.11.2011 the builders were sorted out and on 3.1.2012 construction companies were short listed on 17.4.2013 and 13.8.2013 agreements were entered into between the promoter and Sai Consulting Engineers Pvt. Ltd. and Kambhavi Architecture Foundation respectively. The Bhoomi Pooja of the Unity Enclave took place on 25.1.2013. After this stage the appellant/Ex-Chairman became the Housing Committee Chairman after that he has given circular informing details of the project regularly in various dates. The above said facts were detailed in the typed set of papers produced by the promoter. The appellant/promoter in its counter filed before the Regulatory Authority on 6.3.2020 in which the appellant has stated as follows:

> ***"State Bank of India Officers Association Chennai Circle, (SBIOACC) is a trade union formed and registered under the trade union Act. Any officer of SBI working in the area of operation of Chennai circle or on deputation to corporate centre of any agencies in the geographical area of Chennai circle subscribing to the objects of the association and who is not a member of any other trade union shall be eligible to become a member. <u>The termination of membership is automatic when the member ceases to be in the service as officer in State Bank of India:</u> when the member resigns or retires from the services of the State Bank of India or when the member joins any other association registered under Trade Union Act."***

18. As per the above passage the termination of membership is automatic when the member ceases to be in the service as officer in the State Bank of India. According to the appellant/Ex-Chairman he has retired from service on 31.5.2018 on superannuation. It is not disputed by the promoter or appellant. In such circumstances how the appellant/Ex-Chairman was continued as Chairman of the Housing Committee for which no proof was filed. Further, the post of Chairmanship of the Housing Committee cannot be continued after retirement from service. The membership of the association itself ceases after retirement. After that the appellant/Ex-Chairman has no right or power or privilege to participate or continue in the post of Housing Committee Chairman. The successor in office shall continue the project as a Housing Committee Chairman and to proceed with the progress of the project. This is the actual and day to day affairs in every government office and private institutions and every association. After the retirement from service and after ceasing as a member from the association the appellant/Ex-Chairman has no right or power to interfere with the affairs of the project of the promoter. After ceasing membership the appellant/Ex-Chairman also became an Ex-Member of the association and he cannot participate in the affairs of the promoter as a Ex-Chairman and he can participate one among the allottees. This is the reality. But the learned Regulatory Authority adduced the reason, for directing the appellant/Ex-Chairman to complete the project along with promoter jointly or severally, that the project involved contract price of Rs.547.88 crores. It alone is not sufficient to fix liability on the

appellant/Ex-Chairman without any bye-law or Rules and Regulations and privity of contract. The allottees have not produced any piece of paper to fix the liability against the appellant/Ex-Chairman. Furthermore, when the allottees were not claimed any relief against the appellant/Ex-Chairman and they have not alleged any specific allegations against appellant/Ex-Chairman the responsibility fixed against the appellant/Ex-Chairman by creating new right by way of the order of the Regulatory Authority is unwarranted and it is not according to law. Therefore this Tribunal comes to a conclusion that the plea of the appellant/Ex-Chairman that he is not liable to execute the real estate project is sustainable. The point No.4 is answered accordingly.

Point Nos.3 and 5:

19. The allottees prayed for number of reliefs against the promoter. Regarding delay in completion of project the Authority has directed the allottees to move through Form 'N'.

20. In the construction agreement in page No.24 of the Typed Set of the allottee in which specifically mentioned about the 4.525 acres land purchased by the appellant which is to be vested with the association to be formed by them for the development of the sports activities. Against that agreement the allottee claimed for sale deed. The learned Authority rightly rejected the claim and directed the appellant to convey the same to the association of allottees.

21. Regarding commercial complex and club house etc there is a specific clause in the construction agreement in page No.26 of the typed set as condition No.3. The measurements calculation regarding construction area 14.33 acres OSR and gift for road etc. 3.50 acres and commercial development area 3.50 acres total area comes to 21.33 acres. The above 21.33 acres were purchased from various survey numbers by the appellant. Hence there is no discrepancy in the measurement of the project. The learned Regulatory Authority has rightly given a finding with regard to the other reliefs.

22. The learned Regulatory Authority while concluding the order by directing the promoter to complete the project and also created a new right to the ceased member of the association to execute the project along with the promoter as jointly and severally is unwarranted and the direction against the appellant/Ex-Chairman is decided as not sustainable in point No.4.

23. Admittedly, the appellant/SBIOACC is the promoter entered into construction agreement with the allottees and executing the project through builders. Hence in point No.1 it was decided that the plea of the appellant/SBIOACC as not the promoter is negatived. The appellant/Ex-Chairman is neither the promoter nor the builder in such circumstances he

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has no locus standi or right or power or privity of contract to participate in the execution of the real estate project. At the same time the present office bearers of the appellant/SBIOACC association are responsible for the execution of the project as promised.

24. Admittedly this real estate project conceived for the welfare of the members of the State Bank Officers Association Chennai Circle only. All the members of the said association contributed funds for the purchase of the land and for construction. It is on the concept of Temple Big Car Festival ('ஊர் கூடி தேர் இழுத்தல்'). At the time of festival to bring the Big Temple Car around all the streets with deity all the people will participate to pull the car. As such in this scheme all the members of the association contribute funds as per their requirement of house and complete the project. The office bearers of the association are managing the funds and executing the project. This project is not like the private builders project. The office bearers of this project are also not the experts in the real estate sector and they are also the officers of the bank and they are also one among the allottees. The real promoter is the builder, unfortunately, who was not added in the complaint by the allottees. Most of the reliefs were claimed against the builder alone. Even though the appellant/SBIOACC has stated in their counter about the responsibility of the builder and non-impleading of the builder, the allottees have not taken any steps to implead the necessary party the builder and impleaded the unnecessary party the appellant/Ex-Chairman. Anyhow, the Authority has

rightly directed the promoter/SBIOACC. The direction against the appellant/Ex-Chairman to complete the project is not sustainable since he has no right or power to participate in the execution of the project. Therefore this Tribunal comes to a conclusion that the appeal filed by the appellant/SBIOACC liable to be dismissed and not deserves to be allowed and the appeal filed by the appellant/Ex-Chairman is liable to be allowed and deserves to be allowed. The point Nos.3 and 5 are answered accordingly.

25. In the result:

A.Nos.8, 18 to 28 of 2021 are dismissed and A.Nos.39 to 50 of 2021 are allowed and the order of the Regulatory Authority in C.Nos.004 to 015 of 2020 is partly dismissed regarding the direction against the appellant/Ex-Chairman (2nd respondent in the complaints) and order of the Regulatory Authority is confirmed regarding direction against the appellant/SBIOACC (1st respondent in the complaints). 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 05th Day of January 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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