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 21.02.2022

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

Miscellaneous Application Nos.17 to 20 of 2022

in

Appeal Nos.83, 84, 90 and 99 of 2021

1. Army Welfare Housing Organization,
   Rep by its Managing Director

2. Project Director,
   Army Welfare Housing Organization (AWHO) Raman Vihar
   Coimbatore

... Applicants/Respondents

-Vs-

Capt P.S.Dheenadayalan (Retd) (M.A.No.17/2022 in A.No.83/2021)
Sub Maj/ HLTK.Shunmugavelu (Retd) (M.A.No.18/2022 in A.No.84/2021)
Col R.Ganesan (M.A.No.19/2022 in A.No.90/2021)
Col.Sreeghanlal P Raman (Retd) (M.A.No.20/2022 in A.No.99/2021)

... Respondents/ Appellants

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These Miscellaneous applications were taken on file on 28.1.2022 and came up for final hearing on 7.2.2022 along with appeal. Appellants in A.Nos.83 and 99 of 2021 appeared as party in person and Appellant in A.No.84/2021 appeared through his counsels M/s.R.Ramasubramaniam Raja, R.Hemavathi, Arvind.A.S., D.Nancydevadass, K.Vanikala and B.AnithaaSelvi and Appellant in A.No.90/2021 appeared through his counsels M/s. K.R.Samratt and M.Senthil Vadivu and Respondents appeared through their counsels M/s. AAV Partners, P.H.Manoj Pandian, N.Zahid Ahmed and S.Varshini. 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 Miscellaneous applications were preferred by the applicants/respondents/promoters against the respondents/appellants/home buyers for the relief of reception of additional documents under Order 41 Rule 27 CPC.

2. The applicants/promoters came forward with the applications for reception of additional evidence in all the appeals and in support of these applications the 2nd applicant/project director filed an affidavit and stating that

the 18 documents are very important documents and disprove the case of the home buyers and falsify the allegations of the home buyers.

3. The respondents/home buyers filed lengthy counter affidavit and narrated the entire facts of the case. The home buyers have not stated in their counter that the documents sought to be received is unnecessary or not relevant and belatedly produced but sought for the dismissal of the Miscellaneous applications.

4. Point for consideration:

Whether the applications deserve to be allowed or not?

Point:

5. The promoters seeking to produce additional documents under Order 41 Rule 27 CPC. As per the above said provision the party seeking to produce additional evidence, establishes that the exercise of due diligence, such evidence was not within his knowledge or could not be produced by him before the Regulatory Authority at the time of filing proof affidavit. But, the promoters have not stated anything about the same. Of course, the Appellate Tribunal shall not be bound by the procedure laid down by the CPC as per Section 53 of the Act, the promoter ought to have stated the reason for non production of the documents now produced.

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6. The orders of the Regulatory Authority without giving any finding with regard to the prayer. Hence this Tribunal inclined to remand the matter for fresh disposal along with C.No.226/2021 which is pending before the Regulatory Authority. In such circumstances both the parties are having ample opportunities to produce further documents before the Regulatory Authority at the time of hearing. At this juncture, the documents relied by the promoters at the appellate stage is not necessary to decide the issue. Therefore, this Tribunal comes to a conclusion that these applications are not deserve to be allowed. The point is answered accordingly.

7. In the result, M.A.Nos.17 to 20 of 2022 are dismissed and the applicants/respondents/promoters are at liberty to file the additional documents if necessary before the Regulatory Authority. No costs.

This Order is directly dictated to the Stenographer, typed in the computer by her, corrected and pronounced by us in the open court on 21st Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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