BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
CHENNAI

Friday the 26th day of AUGUST 2022

CORAM : Miss. LEENA NAIR, ADMINISTRATIVE MEMBER
&
Mr.R.PADMANABHAN, JUDICIAL MEMBER

Appeal No.18 of 2022

1. M.N.Varadarajan, Promoter of Tapovan Complex
2. Tapovan Senior Citizens Foundation Trust,
   Rep. by its Secretary, Ramanathan Subramanian

... Appellants

-Vs-

1. Tapovan Residents Welfare Association,
   Rep. by its President, N.P.Iyer
2. Tapovan Senior Citizens Foundation
3. Tapovan Kovai Retirement Homes Pvt. Ltd.

... Respondents

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Tamil Nadu Real Estate Regulatory Authority in C.No.128 of 2021 dated 21.03.2022.

Tapovan Residents Welfare Association,
Rep. by its President, N.P.Iyer ... Complainant

-Vs-

1. M.N.Varadarajan, Promoter of Tapovan Complex
2. Tapovan Senior Citizens Foundation

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3. Tapovan Senior Citizens Foundation Trust,
4. Tapovan Kovai Retirement Homes Pvt. Ltd.

... Respondents

This appeal was taken on file on 27.05.2022 and came up today for hearing in the presence of M/s. B.Satish Sundar, Dr.S.Krishnanandh, N.Balaji, V.Santharam, C.G.Kumar, and M.Harri Viswaanath, Counsels for the appellants and M/s.Karthik Sundaram, Deepika Murali, Pavan Kumar Gandhi and Anusha Peri, Counsels for 1st respondent. No representation for R2. One Mani Thirumurthy appeared party in person for R3. Today the matter was posted for report of the compliance of pre deposit U/s 43 (5). After hearing both sides on this preliminary point through video conferencing this Tribunal passed the following:

ORDER

The relevant facts of the case in brief are as follows:

1. The 1st appellant is the owner of the land. He with a view to provide accommodation to senior citizens, formed a society. The same was registered on 8.2.2008 under the Tamil Nadu Societies Registration Act, 1973, in registration number 33/2008. The name of the society was "Tapovan Senior Citizens Foundations". The 1st appellant was also one of the trustees of the said society. The lands belonging to the 1st appellant was divided into plots and managed by the said society. Some of those plots were sold to senior citizens. The proportionate undivided share of land was also sold to such buyers of plots. Based on the requirement of the

senior citizens residential building was also constructed by a construction company namely 'Tapovan Kovai Retirement Homes Private Limited'. The said construction company was also managed by the family members of the first appellant. The buyers of such plots formed a welfare association by name 'Tapovan Residents' welfare association' which is arrayed as 1st respondent in this appeal. There was some serious dispute between the promoters, builder and the members of the welfare association.

2. Before the dispute came to RERA the parities have agitated their claims before various forums such as consumer court, police station, Registrar of Co-operative societies. Finally the dispute brought to the RERA by the 1st respondent namely Tapovan Residents' welfare association in the form of a complaint. The same was taken on file in C.No.128/2021. After enquiry the RERA has allowed the complaint and issued various directions. Further the RERA has imposed a penalty of Rs.10 lakhs for non registration of the real estate project to be paid on or before 31.5.2022. Apart from the imposition of penalty the RERA has also directed to refund the excess charges collected from the allottees towards the rental charges for dining hall and meditation hall or on before 30.6.2022. Here the amount to be refunded was not quantified by the RERA in it's order at paragraph 79. Aggrieved over the same the appellants have preferred this appeal before this Tribunal.

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3. The entire facts were not discussed in detail as this appeal was disposed upon failure to deposit the amount ordered by this Tribunal under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.

4. While entertaining the appeal this Tribunal has directed the appellants to deposit 50% of the penalty amount. Accordingly the appellants had deposited Rs.5 lakhs towards 50% of the penalty amount. Later notice was ordered to the respondents. The 1st respondent after entering appearance by citing the directions of the RERA at paragraph 79 of it's order, filed M.A.No.80/2022 praying this Tribunal to direct the appellants to make further pre deposit of Rs.1,07,10,533/- (Rupees One Crore seven Lakhs ten thousand five hundred and thirty three only) collected by the appellants from the allottees towards the rental charges for dining hall and meditation hall. The appellants disputed the claim of the 1st respondent and submitted that unless and until the amount to be refunded was quantified it would not be possible for the appellant to make the pre deposit U/s 43(5).

5. Admittedly the RERA has issued such a direction in paragraph No.79 of its order without quantifying the amount to be refunded by the appellants herein. To resolve this issue this Tribunal has directed both the parties to file their statement of account showing the details of the amount collected from the allottees towards the rental charges for dining hall and meditation hall. Accordingly, both the parties have submitted their statement of account. The appellants have filed statement of account on

18.07.2022 along with an affidavit stating that a sum of Rs.42,37,756/- was the amount collected by the appellants towards rental charges for dining hall and meditation hall from the year 2013 onwards. The counsel for the 1st respondent, without prejudice to his right to raise his objection in future over the quantum of the amount, he has fairly conceded for the appellants to deposit atleast the admitted amount of Rs.42,37,756/-.

6. With a view to hear the arguments and dispose off the main appeal, this Tribunal has directed the appellants to deposit the above said admitted amount of Rs.42,37,756/- on or before 25.8.2022. In the mean time the appellants have preferred a Civil Revision Petition before the Hon'ble High Court in CRP No.2676/2022 as against the docket order passed by this Tribunal dated 25.07.2022. The Hon'ble High Court by its order dated 24.08.2022 dismissed the CRP.

7. Again when the matter was taken up before this Tribunal for compliance report on 26.08.2022, the counsel for the appellants expressed his client's inability to deposit the amount as directed by this Tribunal. He left the matter to the discretion of this Tribunal. As per Section 43(5) the appeal cannot be entertained without depositing the said amount. The validity of Section 43(5) was already upheld by the Hon'ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. Vs State of UP & Ors. case.

8. Therefore this Tribunal has no other option except to dismiss the appeal for non compliance of the order passed by this Tribunal dated

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25.07.2022 directing the appellants to deposit Rs.42,37,756/- . Accordingly the Appeal is hereby dismissed U/s 43(5) of the Real Estate (Regulation and Development) Act, 2016. Connected Miscellaneous Applications pending if any are closed.

9. Out of the total penalty amount of Rs.10 lakhs, the appellants already deposited a sum of Rs.5 lakhs (in two installments) towards 50% of the penalty before this Tribunal and the same was remitted to the Government. **The appellants are directed to remit the balance 50% of the penalty amount i.e., Rs.5 lakhs before the RERA immediately. The Office of this Tribunal is directed to communicate a copy of this order to the RERA for taking necessary action to recover the balance penalty amount from the appellants.**

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 26th Day of August 2022.

Sd/-xxxx
ADMINISTRATIVE MEMBER

Sd/-xxxx
JUDICIAL MEMBER

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