BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
CHENNAI

Friday the 23rd day of September 2022

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

Appeal No.20 of 2022

Srinivasan Kesavachari ... Appellant

-Vs-

M/s Real Value Promoters Pvt. Ltd.
Represented by it's Authorised Signatory ... Respondent

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Regulatory Authority in C.C.P.No.60 of 2021 dated 24.02.2022.

Srinivasan Kesavachari ... Complainant

-Vs-

M/s Real Value Promoters Pvt. Ltd.
Represented by it's Authorised Signatory ... Respondent

This appeal was taken on file on 14.06.2022 and came up for final hearing on 16.09.2022 in the presence of M/s.Vivrti Law, Bharadwajaramasubramaniam R, Diwaagar R.S, Aishwarya Rukmani

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Krish.K and Shilpa Subramanian, Counsels for the appellant. The notice issued to the respondent by RPAD was returned as no such person. Hence notice by publication in news paper effected. Held sufficient service. Respondent called absent. Having heard the arguments on the side of the appellant through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

The facts that are relevant for the disposal of this appeal in brief are as follows:

1. The Appellant herein preferred a Complaint in CCP 60 of 2021 on the fie of the Single Member of the TNRERA, Chennai, seeking refund of advance amount of Rs.12,41,178/- paid by him to the respondent under the Agreement for sale of undivided share of land and Agreement for Construction dated 25.09.2013. The total costs of the apartment was fixed at Rs.33,33,797/- apart from other charges. The appellant availed loan from State Bank of India and paying interest for the loan amount availed. The respondent agreed to complete the construction and handover the apartment within three years from the date of obtaining statutory approval or from 14.01.2014 whichever is later with a grace period of 6 months. But to the shock and surprise of the Appellant no construction was commenced so far. Inspite of repeated requests over phone call and email communications, the respondent did not come forward to start the construction. The Appellant demanded refund of the amount paid by him vide email dated 23.06.2015. But there was no response. Therefore the

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Appellant preferred the complaint before the TNRERA for refund of the amount paid by him along with interest at 12% P.A. and also for compensation of Rs.15,00,000/- for the mental agony suffered by the Appellant.

2. The case records in C.C.P.No.60/2021 was called for from the Single Member, TNRERA, Chennai and perused. Initially the complaint was preferred before the Adjudicating Officer, TNRERA, Chennai and the same was taken on file in C.C.P.No.60/2021 on 11.03.2021. Till 28.12.2021 the respondent was not served with notice and the same was pending for taking steps against the respondent. On 28.12.2021 the entire case records were transferred to the Single Member bench of TNRERA for disposal, following the orders of the Chairperson, TNRERA dated 17.12.2021. In the mean time the counsel for the complainant also reported no instruction on 26.10.2021.

3. After such transfer the matter was tried by the Single Member, TNRERA. The matter was posted on 19.01.2022 for the appearance of complainant. Both the complainant and the respondent were absent. Again the matter was reposted to 15.02.2022. Once again the matter was reposted to 24.02.2022. The proceedings were held through video conferencing on those days except on 15.02.2022. Inspite of the video link sent to the complainant for the hearing on 19.01.2022 and on 24.02.2022 the complainant did not turn up. Ultimately, the learned Single Member, TNRERA dismissed the complaint for default. As against such dismissal order the complainant has preferred this appeal. The Regulations

formulated by TNRERA do not contain any provision for restoration of the complaint that was dismissed for default.

4. Heard the counsel for the appellant. The notice of appeal sent to the respondent through registered post was returned as no such person. Therefore, paper publication in both Tamil and English newspaper was ordered. Accordingly, publication was effected as substituted service of notice to the respondent. Inspite of the publication effected the respondent was called absent. Records perused.

5. **Point for consideration:-**

1. Whether the appeal is deserves to be allowed?

Point No.1:

6. The present appeal has been preferred as against the order dismissing the complaint on the ground of non appearance of the complainant on the date fixed for the hearing. The appellant was residing at Canada and the counsel who appeared on his behalf withdrew his vakalat and the appellant was searching some other advocates to represent his case. As he was residing at Canada he was not able to come to India due to travel restrictions on account of Covid 19 pandemic. The failure to appear through video conference could be due to different timings between India and Canada. The case was at the stage of service of notice to the respondent. There was some difficulties in serving the notice to respondent by registered post. Even in this appeal notice of appeal could not be served through registered post. This is a case of refund of Rs.12,41,178/- being the advance amount paid by the appellant towards

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the purchase of flat in the project promoted by the respondent. The construction agreement was entered into between the parties before 9 years, during September 2013. Considering the facts and circumstances of this case the appeal is allowed. We answer this point accordingly.

7. In the result, the appeal is allowed and the order of the Single Member, TNRERA passed in C.C.P.No.60 of 2021 dated 24.2.2022 is hereby setaside, subject to the condition that the appellant shall deposit a sum of Rs.5000/- to the Tamil Nadu Chief Minister's Relief Fund on or before 07.10.2022, failing which the appeal stands dismissed automatically. Upon filing the proof of such deposit by the appellant/Complainant, the learned Single Member of TNRERA is hereby directed to restore the complaint on file. After hearing both sides the complaint shall be disposed according to law, within 3 months from the date of such restoration. Connected miscellaneous applications if any pending are hereby 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 this 23rd Day of September 2022.

Sd-/xxxx
ADMINISTRATIVE MEMBER

Sd-/xxxx
JUDICIAL MEMBER

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