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 Nos.25 and 26 of 2022

M/s. Homefinders Housing Ltd.,
Rep by its Chairman & Managing Director
K.S.Ramalingam ... Appellant in both Cases

-Vs-

Mrs. Santhi Pitchaiya Nattar ... Respondent in both Cases

These are appeals U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Common order passed by the Single member, Tamil Nadu Real Estate Regulatory Authority in C.C.P.Nos. 92 and 93 of 2020 dated 28.02.2022.

Mrs. Santhi Pitchaiya Nattar ... Complainant in both Cases.

-Vs-

M/s. Homefinders Housing Ltd.,
Rep by its Chairman & Managing Director
K.S.Ramalingam ... Respondent in both Cases

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These appeals were taken on file on 06.07.2022 and came up for admission on 23.09.2022, in the presence of M/s. P Mano Rajan and Mithreyi Kasthurirangan, Counsels for the appellant. The appellants having failed to appear through video conferencing and also failed to comply with the order of this Tribunal, to deposit the amount as per Section 43(5), this Tribunal after perusal of the records delivered the following:

COMMON ORDER

The common facts of the case that are relevant for the disposal of these appeals are as follows:

1. The respondent/allottee in both the appeals was allotted two apartments by the appellant/promoter in his house project near Tindivanam, Villupuram Taluk. The construction agreement was executed on 07.06.2012. The total cost of the two apartments was fixed at Rs.21,00,000/- The appellant/promoter agreed to hand over the apartments within 18 months from the date of the agreement. The respondent/allottee paid a sum of Rs.10,32,062/- for each apartment. Thus, in total he paid Rs.20,64,124/- for two apartments. The appellant/promoter failed to hand over the apartments as agreed by him. Hence, the respondent/allottee opted to withdraw from the project and demanded refund of the amount paid by him along with interest and compensation. Hence the Complainant / Allottee filed two separate complaints seeking refund and compensation.

2. The appellant/promoter contended that the construction of the flats was over and the apartments were made ready on 20.06.2014. The same

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was communicated to the respondent/allottee through emails and phone calls. The total sale consideration for both the apartments was fixed at Rs.21,00,000/-. The respondent/allottee has to pay a balance amount of Rs.58,603.50 for each flat and Rs.1,17,207/- in aggregate for two apartments.

3. After hearing both sides the Single Member of TNRERA has passed a common order in both the complaints on 28.02.2022, directing to refund a sum of Rs.19,60,045/- (aggregate amount for both cases), along with interest 10.05% per annum after deducting the balance amount of Rs. 1,17,207/- payable to the appellant / Promoter with interest at the same rate.

4. Aggrieved over the same the appellant/promoter preferred these two appeals before this Tribunal. Along with the appeals the appellant also filed application in M.As. 73 and 74 of 2022, seeking waiver of the pre deposit amount under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016. However on 29.07.2022, when the matter came up for admission, the appellant was directed by this Tribunal to deposit the entire amount (100%)as ordered by the Single Member, TNRERA in the impugned order. Initially one month time was granted till 29.08.2022. Subsequently, the appellant filed application and sought extension of time to deposit the amount. The same was allowed and the time was extended till 22.09.2022 and the matter was posted for report of compliance on 23.09.2022.

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5. Today when the matter was taken up through video conferencing, there was no body to represent the appellant, inspite of the digital link sent in advance, to the counsel for the appellant for the video conferencing. A memo was caused to be filed on behalf of the appellant seeking permission to deposit 30% of the amount ordered to be deposited. This is not only contrary to the order passed by this Tribunal on 29.07.2022 but also contrary to the judgment of the Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Private Limited Vs. State of U.P. & Ors. Hence the memo was rejected as not maintainable. Consequently, both the appeals are hereby dismissed for failure of the appellant to deposit the entire pre-deposit amount under Section 43(5) of the Act.

6. In the result, both the appeals are hereby dismissed for non compliance of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016. No costs. Connected Miscellaneous applications pending if any 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 23rd Day of September 2022.

Sd/- xxxx
ADMINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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