BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate (Regulation And Development) Act 2016)

Friday the 10th day of March 2023

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Ms.Leena Nair, Administrative Member
Mr.R.Padmanabhan, Judicial Member

Appeal Nos.31 and 32 of 2022

M/s. Sameeraa Foundation Private Ltd.,
Rep. by its Authorised Signatory,
B.Thiruselvan .... Appellant in both appeals

..Vs..

1. A.Prashanth,
2. Karthiga
3. M/s. BBCL Properties Private Ltd.
   Rep. by its Director, Vummudi Bharath ... Respondents in both appeals

These appeals have been filed U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by Adjudicating Officer attached to the Tamil Nadu Real Estate Regulatory Authority in E.P.No.48 of 2021 and E.A.S.R.No.10 of 2022 in C.C.P.No. 297 of 2019 dated 31.03.2022 and the same were taken on file on 26.07.2022.

These appeals came up for final hearing on 06.03.2023 in the presence of M/s. S.Namasivayam, S.Rajkumar, A.Muthusubramaniam, Praveen Kumar D, B.V.Diveyadharsini and P.Kaviyarasi, Counsels for the appellant and Mr.D.V. Rao, Counsel for the 1st and 2nd respondents and

M/s. AAV Partners through M/s. P.H. Manoj Pandian N. Zahid Ahmed and S. Abishek Jerrold, Counsels for the 3rd respondent. Having heard both sides and having stood over for consideration till this date, this Tribunal delivered the following:

COMMON ORDER

1. The brief facts that are relevant for the disposal of these two appeals are as follows.

2. The appellant is the land owner of a vast extent of land measuring 52.55 acres situated at Vengambakkam village, Tambaram Taluk, Chengalpet District. The appellant obtained necessary approvals from the CMDA on 08.05.2015, for forming a residential layout proposed to be developed in the said property. Earlier the appellant had executed a gift deed on 30.01.2015 in favour of the local body i.e Commissioner, Chitlapakkam Panchayat Union in respect of the portions of lands that are earmarked for public purpose in the proposed layout.

3. Later, the appellant had executed a registered General Power of Attorney deed on 07.03.2016 in favour of the 3rd respondent herein. As per the said power of attorney deed the appellant appointed the 3rd respondent as his agent to develop the land as per the approved layout in all respects. Accordingly the 3rd respondent formed the layout and named the project after "BBCL AURACITY ". The 1st and the 2nd respondents herein are the allottees of plot No. 267. Initially they entered into an Infrastructure Development Agreement with the third respondent herein by paying Rs.10,94,970/- towards development charges. They jointly purchased the plot No.267 by means of a registered sale deed dated

30.06.2017 for a valid sale consideration of Rs. 6,49,230/- and also incurred registration expenses of Rs.1,71,050/-.

4. Subsequently there arose some dispute between the appellant and the 3rd respondent herein. As a result, the appellant cancelled the General Power of Attorney deed by executing a registered cancellation deed dated 31.03.2018 and renamed the project as " SAMEERA GRAND CITY". Consequently the 3rd respondent abandoned the project. After coming to know about the dispute between the appellant and the 3rd respondent, the allottees namely the respondents 1 and 2 herein preferred a compliant before the Adjudicating Officer in C.C.P.No.297 of 2019 against the appellant and the 3rd respondent herein with a prayer to direct refund of the development charges, sale consideration along with interest and also for compensation for the alleged mental agony suffered by them.

5. After due enquiry the learned Adjudicating Officer attached with TNRERA, by his order dated 11.03.2021 directed the appellant and the 3rd respondent herein(respondents in CCP No.297 of 2019) to pay jointly and severally the sale consideration and the development charges amounting to Rs.19,68,363/-by way of refund along with interest at the rate of 8.05 % from the date of respective payments. The learned Adjudicating Officer also directed to refund the registration expenses incurred by the 1st and the 2nd respondents amounting to Rs. 1,71,050/. Further the learned Adjudicating Officer also awarded a sum of Rs.2,00,000/- towards compensation for the mental agony suffered by the respondents 1 & 2 herein. Further a sum of Rs.25,000/- was also ordered to be paid towards

litigation expenses. As already stated all the above amounts are directed to be paid jointly and severally by the appellant and the 3rd respondent herein to the respondents 1 and 2 herein.

6. Challenging the said order both the appellant and the 3rd respondent herein preferred separate appeals before this Tribunal in A.No.148/2021 and A.No.132/2021 respectively. However for non compliance of Section 43(5) of The Real Estate (Regulation and Development) Act, 2016 both the appeals were dismissed by this Tribunal on 21.01.2022.

7. In the mean time the 1st and 2nd respondents herein have filed an Execution Petition in E.P.No.48 of 2021 for recovery of the amounts due to them. The learned Adjudicating Officer has passed the impugned order dated 31.03.2022 directing the issue of recovery warrant under Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 26 of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and further directed to forward the same to the District Collector, Chennai for recovery of the E.P. amount under the provisions of Revenue Recovery Act. As against the said order dated 31.03.2022, the appellant has preferred the present appeal in A.No.31 of 2022.

8. During the pendency of the said E.P.No.48 of 2021, the appellant herein, preferred an interim execution application in E.A.S.R.No.10 of 2022 under Section 47 of CPC, challenging the very executability of the order passed in C.C.P.No.297 of 2019 dated 11.03.2021 in the light of the judgment of the Hon'ble Supreme Court rendered in M/s. Newtech Promoters and Developers Pvt. Ltd. –Vs- State of U.P. and others. The

said E.A.S.R.No. 10 of 2022 was dismissed in limine by the learned Adjudicating Officer vide order dated 31.03.2022 as not maintainable. As against the said order of dismissal of the E.A. S.R.No. 10 of 2022, the appellant preferred another appeal in A.No.32 of 2022.

9. Heard both counsels. As both the appeals are arising out of orders passed in a single execution petition and the question involved in these two appeals are common in nature both the appeals are disposed by this common order.

10. It is pertinent to note that the Hon'ble Supreme Court in M/s Newtech Promoters and Developers Pvt Ltd. –Vs- State of UP and others, after referring to the various provisions of the Real Estate (Regulation and Development) Act, 2016 has held at paragraph 86 as follows:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating*

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officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. As per the verdict of the Hon'ble Supreme Court, it has been clarified that when the complaint is in respect of refund of the amount and interest on the refund amount or directing payment of interest for delayed delivery of possession or penalty and interest thereon it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. The Adjudicating Officer has no jurisdiction to examine and determine the issue of refund of the amount and interest on the amount of refund.

12. In the case on hand, the complaint has been filed before the Adjudicating Officer in the year 2019 for refund of the amount with interest and for compensation. After hearing both sides the learned Adjudicating Officer has passed an order directing refund of the entire amount as prayed for with interest and to pay compensation. Such an order has been passed on 11.03.2021 i.e eight months prior to the judgment of the Hon'ble Supreme Court. It may be remembered that the present appeals were not directed against the order passed in C.C.P. 297 of 2019 dated 11.03.2021 by the Adjudicating Officer. The impugned orders in these appeals were in fact passed by the Adjudicating Officer, in the subsequent execution proceedings on 31.03.2022 i.e. after the judgment of the Hon'ble Supreme Court dated 11.11.2021 above cited.

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13. After the judgment of the Hon'ble Supreme Court cited above, except to determine compensation or to execute any award relating to compensation, the Adjudicating officer has no power to examine or determine or even to execute any order touching the issue of refund. Therefore the impugned order, passed by the learned Adjudicating Officer in Execution Petition No.48 of 2021 in C.C.P.No.297 of 2019 dated 31.03.2022 is liable to be set aside as the same was passed without jurisdiction. Consequently the recovery warrant issued by the Adjudicating Officer in pursuance of the order dated 31.03.2022 is hereby recalled. Accordingly both the appeals are allowed.

14. However the respondents 1 and 2 are not left without any remedy. The respondents 1 and 2 are at liberty to file separate execution petitions afresh before the Tamil Nadu Real Estate Regulatory Authority / Adjudicating Officer as per the law laid down by the Hon'ble Supreme Court in the M/s Newtech case cited above. Upon filing of such fresh execution petitions the Tamil Nadu Real Estate Regulatory Authority / Adjudicating Officer shall enquire and decide the execution petitions afresh within a period of four weeks. The appellant is at liberty to contest the same as per law.

15. In the result, both the appeals are allowed with the following directions.

i. The A.No.31 and 32 of 2022 are allowed. Consequently the impugned orders of the Adjudicating Officer passed in E.P. 48 of 2021 and in E.A. SR 10 of 2022 dated 31.03.2022 in C.C.P. 297 of

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2019 are set aside. The recovery warrant issued by the Adjudicating Officer is hereby recalled.

ii. The respondents 1 and 2 are at liberty to file separate execution petitions afresh before the Tamil Nadu Real Estate Regulatory Authority / Adjudicating Officer as per the law laid down by the Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd. –Vs- State of U.P. and others.

iii. Upon filing of such fresh execution petitions by the respondents 1 and 2 herein, the Tamil Nadu Real Estate Regulatory Authority / Adjudicating Officer concerned shall enquire and dispose of the execution petitions within a period of four weeks. The appellant is at liberty to contest the same as per law.

Connected Miscellaneous applications pending if any are hereby closed.

Dictated to the Stenographer directly and typed by her in the computer, corrected and pronounced by us in the open court on this 10th Day of March 2023.

Sd/-xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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