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 14.02.2022

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

A.No.6 of 2022

M/s. Akshaya Pvt. Ltd.,
Rep. by its Director, Mr. J. Ravi ... Appellant

-Vs-

M/s. Minica Services Pvt. Ltd.
Rep. by its Director,
Mr. M.R.Shivakumar ... Respondent

This Appeal has been preferred against the order of the Adjudicating Officer I.A.SR.No.481 of 2021 in C.C.P.No.132/2020 dated 23.11.2021. This Appeal was taken on file on 02.02.2022 and came up for final hearing on 14.02.2022 in the presence of the counsels for the appellant, M/s. Mani Sundargopal and Shree Aadya.S, and Counsels for the respondent

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M/s.T.K.Bhaskar, K.Harishankar and Srinath Sridevan. Having heard the arguments of both sides through video conferencing and this Tribunal delivered the following:

ORDER

1. The home buyer/complainant preferred a complaint against the promoter for the relief of refund of Rs.5 crores along with liquidated damages. After the appearance of the promoter/respondent, they have preferred a petition for deciding the maintainability which was in S.R. stage bearing S.R.No.481/2021. In which the promoter raised the jurisdiction of the Adjudicating Officer in deciding the dispute regarding refund. After contest the Adjudicating Officer holds that the complaint is maintainable and dismissed the petition filed by the promoter for maintainability on 23.11.2021. Aggrieved upon the same the promoter has preferred this appeal.

2. In this appeal after the appearance of the respondent/home buyer this Tribunal heard both side arguments on 14.2.2022 and passed the following order:

> ***"Advocate Mr.T.K.Bhaskar appears for the respondent, files vakalat. Heard the appellant counsel as well as the respondent counsel. The only point for consideration is that after the judgment M/s. Newtech promoters and developers pvt. Ltd. Versus State of UP & Ors. Etc. of the Hon'ble Supreme Court the Adjudicating Officer has no power to decide the matter pertaining to grant of refund. It is brought to the notice of the court by the appellant counsel even before the judgment, the appellant has filed an application on the ground of maintainability stating that the Adjudicating Officer has no power to decide the matter. That application was decided by the***

Adjudicating Officer and passed the orders on the question of maintainability on 23.11.2021. Unfortunately he could not pass the order on 23.11.2021 as, as early as on 11.11.2021 itself the Supreme Court has categorically stated that the Adjudicating Officer has no powers to decide on the question that means the officer could not also decide the question of maintainability on that day. We also take into consideration the subsequent event the authority itself by circular dated 29.11.2021 has constituted a Single Member Bench to hear all the pending cases regarding refund and it is also brought to the notice by both the advocates that the single member has already been allotted this case. Before the single member bench hearing also has taken place. Both parties have participated. In view of the matter as this case has been now posted before the proper authority as per the Hon'ble Supreme Court order this order which is quasi judicial order regarding the maintainability passed by the Adjudicating officer on 23.11.2021 is with no authority and the order could not stand the scrutiny of law. Only on the academical interest, this order is passed setting aside the order of the Adjudicating Officer in so far as to the maintainability of the petition as decided by him is not legally sustainable. In this view of the matter the appeal is allowed the order of the Adjudicating Officer is set aside making it very clear that the parties will participate before the single member bench in accordance with law. The appellant is liberty to raise all the points before concerned single member bench.

The appeal is allowed. No costs."

Connected Miscellaneous applications are 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 14th Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER