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 30.03.2022

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.R.Padmanabhan, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No.08 of 2022

1. K.Venkataramanan
2. Latha Venkataramanan ... Appellants

-Vs-

1. SPR & RG Constructions Private Limited,
   Rep. by its Managing Director,
   Hiteshkumar P. Kawad

2. Hiteshkumar P.Kawad,
   Managing Director,
   SPR & RG Constructions Private Limited.

3. M.G.Surendranath,
   Director,
   SPR & RG Constructions Private Limited. .... Respondents

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This appeal was taken on file on 04.3.2022 and came up for final hearing on 28.3.2022 in the presence of M/s.Paul & Paul, J Hudson Samuel & Partners, Counsels for the appellants and M/s. A. Palaniappan, P.Mohan kumar and S.Ramprasanth, Counsels for the Respondents. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. This appeal has been preferred by the home buyers against the order of the Regulatory Authority in Letter No.TNRERA/A4/1742/2022 dated 31.1.2022.

2. The home buyers are the appellants and the promoters are the respondents. In this appeal hereinafter the appellants are called as Home buyers and the respondents are called as promoters as per their original rankings.

3. Originally the home buyers preferred complaints against the promoter in C.No.21, 39 to 41 of 2020 for the reliefs namely for registration of project, to provide club house, to provide local body inspection reports to produce evidence to show structurally safe, refrain from alteration against terms of agreement, for all amenities to provide car park, to pay compensation to initiate action for violation to hand over original documents and to transfer corpus fund.

4. During the pendency of the complaints the promoter preferred maintainability petition in I.A.No.5 to 9 of 2021 and after contest Regulatory Authority dismissed the same. Then promoter preferred appeal before this Tribunal

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in A.Nos.13 to 17 of 2021 and after contest Tribunal dismissed those appeals. Again the promoter preferred 2nd appeal before Hon'ble High Court in CMSA Nos.49 to 53 of 2021 and after contest they were dismissed. Then preferred Petition for Special Leave to appeal (Civil) No(s).12449-12453/2021 before Hon'ble Supreme Court and obtained stay the further proceedings until further orders on 23.8.2021.

5. In the mean time the promoter complied the order of the Authority regarding registration of the project on 28.1.2022 and Regulatory Authority withdrew its order dated 4.2.2021 on 31.1.2022. Then the promoter has withdrawn the special leave petition before the Hon'ble Supreme Court on 16.3.2022. Now the home buyers preferred this appeal against the order of the RERA dated 31.1.2022 on the following main grounds:

- While stay order granted by Hon'ble Supreme Court was pending the RERA has passed impugned order without notice to home buyers.
- Interim order of RERA dated 4.2.2021 was passed on the various grounds raised by the home buyers.
- Without considering the C.No.39/2020 is pending as orders reserved.
- Reduction of UDS consequently any sale would be illegal.
- When further proceeds are stayed and C.No.39/2020 is pending for orders in such a situation variation cannot be made.
- Interim protection granted in C.No.39/2020 upheld by High Court cannot be varied or withdrawn.
- Direction of authority is unsustainable in law.

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6. The learned counsel for the appellants would submit that the above grounds were not considered and no opportunity was given to the home buyers to defend the order hence the order of the authority has to be set aside.

7. The learned counsel for the respondents/promoters would submit that their submission made on 18.3.2022 only in interim application and merits of the case to be dealt in detail.

8. Point for consideration:

1. Whether the appeal deserves to be allowed or not?

Point:

9. Perused both side contentions. On perusal the scope of this appeal is very limited. According to the home buyers/appellants the Authority can't withdraw its interim order dated 4.2.2021 without notice to them. According to the promoter/respondent the authority has directed the promoter to register the project. Since promoter failed to comply it has directed for registration. When direction for registration is complied with, the authority has withdrawn its earlier order of direction not to register the documents by the Sub Registrar. Hence no prejudice is caused to home buyers.

10. Admittedly C.No.21,39 to 41 of 2020 were pending for orders for the reliefs sought for by the home buyers due to stay of Hon'ble Supreme Court. Now the promoter has complied with the direction of registration before authority and has withdrawn his SLP before Hon'ble Supreme Court. The authority has also withdrew

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its 4.2.2021 order and the same is challenged by home buyers by way of appeal and put forth their grounds. The appellants have not challenged the power of the Authority. Their only contention is that during pendency of stay no order can be passed. But the learned counsel sent a mail regarding Section 34(6), 34(9) they are unwarranted since it was not questioned in this appeal.

11. At this juncture this Tribunal feels that speedy dispute redressal is the preamble of this Real Estate Act 2016. Already due to consecutive appeals the matter is pending. The authority has not passed any orders on merits regarding the prayer in C.No.21, 39 to 41 of 2020. The order passed by the authority is not at all an appealable order as per the following verdict of Honble Supreme Court which runs as follows: (Page No.32 and 33 of the Typed set of the appellant)

AIR 2006 SC 2190

"Midnapore Peoples' Co-Op. Bank Vs Chunilal Nanda & Ors.

16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :
(i) Orders which finally decide a question or issue in controversy in the main case.
(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.
The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in

Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent.

12. As per the verdict the order of the authority may cause some prejudice to the promoter but which do not finally determine the rights and obligations of the parties is not at all judgments for purpose of filing appeals. Therefore this Tribunal concluded that the main appeal itself has to be decided to avoid further delay and to implement the Act in Letter and spirit.

13. Now let us see the order of the Authority dated 4.2.2021 which runs as follows:

"As this Real Estate project which is ongoing project as per the orders of the Hon'ble Division Bench has not been registered with this Authority till date as per Section 3 of the Real Estate (Regulation and Development) Act 2016, this Authority restrains the Respondent Promoter from marketing or booking or selling the unsold flats in this Real Estate project until further orders by this Authority.

Accordingly this Authority also directs the concerned Sub Registrar Office not to register any agreement or sale deed in respect of unsold apartments in this Real Estate project until further orders. "

14. The specific direction of the Authority for the conclusion of restraining the promoter for selling unsold flats reflects in its order at page No.32 and 33 of the Typed set of the appellants. The only reason adduced by the authority for issuing

direction to Sub-Registrar is non compliance of registration. The authority has emphasized the words:

"till date as per Section 3 this authority restrains the respondent from marketing or selling unsold flats"

15. In fact it is the home buyers/appellants main case itself is that the project is an ongoing project it is to be registered this was resisted by the builder till the Supreme Court even at the maintainability stage. That is why the authority to help the home buyer and specifically to implement the order of the Hon'ble Division bench of the Hon'ble High Court directed the builder to register the project. In fact to make him to obey the order of the Hon'ble High Court even though the Home buyers did not seek for any direction to Sub Registrar for not to register, the authority even as early as on 4.2.2021 passed the specific order that not to sell and also direction to the Sub Registrar not to register any sale. Aggrieved against that order the builder did not file any appeal.

16. After this order even later on the builder has now registered the project obeying the orders of the Division Bench of the Hon'ble High court. Therefore the purpose of the order is fulfilled the moment the project is registered. Hence the authority thought it fit after the compliance by the builder to withdraw the restriction namely only that portion of the direction to the Sub-Registrar not to register was withdrawn. This is not an order on merits. This is only purely taking note of the compliance of the original orders the restrictions were withdrawn. Intention of the authority is to make the promoter to comply with the Division bench order to register

under Section (3) which has been fulfilled. Therefore it is only a consequential order and not an appealable order.

17. Now let us discuss the merits of the appeal ground wise. The first and the main ground is during pendency of stay the order passed by authority without notice. The proceedings pending before the authority for the relief cited by home buyer and defence put forth by promoter is enquired on merit and the same is pending for orders and no order was passed on merits as per the Honble Supreme Court verdict stated supra. Hence this ground is not sustainable.

18. The next ground regarding interim order passed as various grounds raised by the home buyer. It is not so because the learned authority has clearly elicited why it has passed such order in page 32 of the Typed set as stated supra. The only ground taken into account by the authority is non registration. When the case was posted for 18.2.2021 for filing counter as last chance. But the authority while dismissing the maintainability petition on 4.2.2021 suo moto passed orders by restricting the promoter for marketing until further orders. So the authority has not spoken about any grounds put forth by the home buyers. Therefore this ground is also not sustainable.

19. C.No.39/2020 is pending for orders on merits. The restriction for marketing imposed while directing maintainability petition for non complying of registration. After compliance the authority has withdrawn its direction. It is not an order on merits. After compliance of its order it restored its order. Therefore this ground is not sustainable.

20. Reduction of UDS is challenged by the home buyer and pending for adjudication on merits. Before reaching finality it can't ne construed as illegal. Hence this ground is not sustainable.

21. The next ground with regard to when the matter is stayed any order passed in variation is not permissible. No merit order has been passed. Still mater is pending and the orders have to be passed. This ground is a repetition one.

22. The next ground interim protection given and upheld by Hon'ble High Court. Maintainability of compliance was challenged by promoter and negatived by authority and Tribunal and the same was confirmed by Honble High Court. The promoter has not challenged the order of interim restriction imposed by the authority from selling. Therefore the ground itself was not sustainable.

23. Direction of authority is unsustainable under law is the last ground. Under Section 34 of the RERA Act 2016 the function of the authority shall include to ensure compliance of its orders. The learned authority has ensured the compliance by way of direction under Section 37. The learned Authority has directed the promoter to comply the order to register the project and after compliance withdrew the order without prejudice to the home buyer and merits of the case of both parties. Hence this is not an illegality.

24. Therefore the grounds put forth by the appellants are devoid of merits. Furthermore the ultimate aim of this Act is to ensure sale of real estate properties in

transparent manner and speedy dispute redressal. In this case the promoter knowing fully well that his own project is an ongoing project has decided by the Division Bench of Hon'ble High Court of Madras, even then the promoter as a 2nd round of litigation challenged the maintainability of the complaint. Hence the learned authority rightly took the stand as ongoing project and to restrict further litigation by imposing restriction of further sale without registration of project. After registration it relaxed the restriction. The authority has passed the order for the benefit of the home buyers and it has not passed any orders which will prejudice the home buyers. In fact they are protected as any sale after registration can also be scrutinized and the promoter is answerable to Real Estate Regulatory Authority.

25. In such a situation this Tribunal comes to a conclusion that this appeal is devoid of merits and not deserves to be allowed.

26. In the result, the appeal is dismissed. No costs. The order of the Regulatory Authority in Letter No.TNRERA/A4/1742/2022 dated 31.1.2022 is confirmed.

Connected Miscellaneous applications are closed.

This Order is dictated to the Stenographer, transcribed by her and typed in the computer by her, corrected and pronounced by us in the open court on 30th Day of March 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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