BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Friday, the 21st day of April 2023

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

Appeal Nos.12 and 13 of 2023

Army Welfare Housing Organisation
Represented by its Managing Director,
New Delhi ... Appellant in both appeals

- Vs –

Colonel C.M. Unnithan (Retired) ... Respondent in A.No.12/2023

Capt. Nagarajan Vasudeva Rao ... Respondent in A.No.13/2023

PRAYER : To set aside the Common Order passed by the Adjudicating Officer attached to the Tamil Nadu Real Estate Regulatory Authority in CCP Nos.193 and 300 of 2021 dated 21.11.2022.

For Appellant : Mr. V.G.Suresh Kumar, Advocate

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COMMON ORDER

1. These appeals have been filed U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 and the same were taken on file on 21.03.2023.

The brief facts that are relevant for considering admission of these two appeals are as follows.

2. The appellant namely, Army Welfare Housing Organization, New Delhi, hereinafter will be referred to as AWHO, is a society registered under Societies Registration Act, 1860. The society was constituted and registered with the aim to provide house to serving and retired army personnel on 'No profit, No loss' basis. The appellant out of their own fund purchased an extent of 19.17 acres of land in Thazhambur Village, formerly in Kanchipuram District and now in Chenglepet District, during October 2011. The appellant proposed to develop a housing project for the benefit of the Army personnel. The project was named as 'Dinesh Vihar' consisting of 852 dwelling units in 6 towers with 31 floors each above the ground level.

3. The respondents have separately applied for one Modern Deluxe Apartment each, during November / December 2012. The tentative cost of each flat, as per the booking letter dated 24.01.2013, was fixed around Rs.35,00,000/-. The probable date of completion of the project was fixed as December 2015. Subsequently, the respondent in A.No.12 of 2023 opted for upgradation of his flat from Modern Deluxe Apartment to Super Deluxe Apartment on 02.08.2013. Accordingly, the cost of the Super Deluxe Apartment was fixed at Rs.51,38,465/- excluding car parking.

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4. The project was commenced in the year 2012. However, due to various circumstances beyond the control of AWHO, the time for completion was extended and ultimately the project was completed during May 2019. The flats were handed over during December 2019 to the allottees. According to the appellant the delay in handing over of possession was beyond their control and mainly due to Chennai floods in the year 2015 and Vardha cyclone in the year 2016 and due to the closing of sand quarries by Tamil Nadu Government from November 2013 to March 2015. The learned Counsel for the appellant also contended that the sudden announcement of demonetization by the Government of India during November 2016 and the sudden outbreak of pandemic Covid-19 also caused adverse impact in completing the project. According to the learned Counsel the AWHO is a 'No Profit, No Loss' organization and not liable to pay any compensation to the allottees. On these grounds, the appellant contended that awarding of interest as compensation for the delayed handing over of possession by the Adjudicating Officer attached with the TNRERA is unreasonable and liable to be setaside.

5. Heard the counsel for the appellant. Records perused.

6. The appellant has solely challenged the impugned order by which the learned Adjudicating Officer has awarded interest, as compensation for the delay in handing over of possession. Admittedly, the agreed date of completion was 31.12.2015. But, even according to the case of the appellant, the dwelling units were actually handed over to the allottees during December 2019. There was an inordinate delay of 4 years in handing over of possession. The appellant while admitting the delay in handing over had only contended that the delay was due to Chennai

floods in 2015, Cyclone Vardha in 2016, Effects of Demonetization, Shortage of river sand due to closing of sand mines by the Government and Covid-19 outbreak.

7. According to the appellant the delay in handing over of possession was beyond their control and mainly due to the reasons stated above. As rightly pointed out by the Adjudicating Officer all those incidents took place subsequent to 31st December 2015, i.e the date fixed for handing over of possession. Therefore, the appellant cannot cite those reasons for the inordinate delay in handing over of possession. If those incidents took place before December 2015, then the case of the appellant can be considered. Therefore, we find no merits in the contentions of the counsel for the appellant. Consequently, we find no grounds to interfere with the order passed by the Adjudicating Officer.

8. In the result, both the appeals are dismissed at the admission stage itself. After the expiry of appeal time, the respondents are entitled to withdraw the entire amount deposited by the appellant to the credit of the respective appeals U/s 43(5) of the Real Estate (Regulation and Development) Act, 2016 along with the interest accrued thereon. Connected Miscellaneous Applications, pending if any, are hereby closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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