BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Reserved on: 07.08.2023

Delivered on: 11.08.2023

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

Appeal No.46 of 2023
and
M.A.No.141 of 2023

1. S.Ganesan
2. Pradeep Konnath
3. Rubi Sharobini
4. Kamalakannan
5. Unni Krishnan
6. Sivanandam
7. Anuradha
8. Muniyandi
9. Vinod Kumar ... Appellants

- Vs -

1. M/s. Real Value Promoters Pvt. Ltd.
   represented by Kolappan
2. Neelkamal Apartments Buyers Association (NABA)
   represented by its secretary G. Saravanan ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 as against the order of dismissal of the complaint in C.No.112/2022 by TNRERA dated 20.04.2023.

For Appellants : Mr.S.Ganesan (1st Appellant cum Authorized representative for the other eight appellants)

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ORDER

The facts that are relevant for the disposal of the above appeal are as follows:

1. The appellants are the allottees in the real estate project namely, "Neelkamal Residential Complex" promoted by the 1st respondent / Promoter. In all there are 551 allottees in the said real estate project. There are two allottees' Associations functioning in the project. The 2nd respondent, namely, Neelkamal Apartments Buyers' Association (hereinafter referred as NABA) claims that more than 300 allottees are members in their Association. The other Association namely, Kazhipattur Neelkamal Owners' Association (hereinafter referred as KNKOA) was not arrayed as a party in this case. All the allottees said to have paid the entire cost of construction to the 1st respondent/promoter and also took possession.

2. It is the case of the appellants that the 1st respondent / promoter abandoned the project without completing the project in all aspects. Installation of CCTV cameras, relaying of all pipe lines, terrace leak arresting, exterior wall painting, installation of generator sets, allocation of car parking, installation of fire-fighting equipment, installation of 2nd lift in all the five blocks, construction of compound wall and construction of sewage treatment plant etc., are yet to be completed by the 1st respondent/promoter.

3. It is the case of the appellants that the 1st respondent /Promoter already became insolvent and approached the National Company Law Tribunal under the provisions of Insolvency and Bankruptcy Code for necessary reliefs. In these circumstances the 2nd respondent Association

had approached the TNRERA by filing a complaint in C.No.80/2020, and sought permission to carry out the remaining construction and other common amenities in the real estate project. The said complaint was filed against the 1st respondent/promoter in the year 2020. The other Association namely, KNKOA was not arrayed as a party to the said complaint.

4. After enquiry the TNRERA by its order, passed in C.No.80/2020 dated 19.08.2021, has granted permission to the 2nd respondent Association (NABA) as prayed for. As the cost of completing the remaining constructions and amenities was estimated at Rs.14,71,90,120/- and proposed to be shared among the allottees, the TNRERA, in paragraphs 27 and 28 of the order in C.No.80/2020 dated 19.08.2021, while permitting the 2nd respondent Association to complete the remaining construction and amenities, also directed the 2nd respondent Association " to obtain written consent from the other Association/Associations of allottees in this real estate project authorizing the 2nd respondent Association to carry out the remaining construction of apartments and common amenities with commitment to bear the proportionate cost".

5. Now it is the case of the appellants that without getting the written consent from the other Association, the 2nd respondent Association, on the strength of the order passed by the TNRERA, is demanding Rs.1,20,000/- from each allottee towards contribution for completing the remaining construction and amenities. The appellants already paid several lakhs to the 1st respondent/promoter towards the entire construction cost by availing bank loan and now paying the EMI with great difficulty. Seeking redressal for their grievances, the appellants approached the TNRERA with a prayer to restrain the 2nd respondent from demanding any amount as

contribution to complete the project by preferring a complaint in C.No.112/2022. Even in the present case also the other Association namely KNKOA was not arrayed as a party.

6. After enquiry, the TNRERA has dismissed the complaint by referring to it's earlier order passed in C.No.80/2020 dated 19.08.2021. Aggrieved over the order of dismissal of the complaint, the appellants have preferred this appeal before this Tribunal.

7. Heard Mr.S.Ganesan, the 1st appellant herein, who is also the authorized representative of the other appellants.

8. On careful consideration of the materials available on record and the submissions made by the 1st appellant Mr.S.Ganesan, it could be seen that the appellants herein are the members of the KNKOA Association. However, for the reasons best known to them, they chose not to make their association as a Respondent in the present proceeding. It is not in dispute that even as on today, the appellants are continuing as the members of the said association. As already stated the 2nd respondent association namely NABA was permitted by the TNRERA vide order in C.No.80/2020 dated 19.08.2021 to carry out the remaining constructions and amenities after getting written consent from the other association/associations of allottees in this real estate project with commitment to bear the proportionate costs. As long as the order passed by the TNRERA in C.No.80/2020 dated 19.08.2021 remains intact, the appellants cannot contend that they need not pay any contribution to the 2nd respondent for completing the project.

9. The 1st appellant also contended that the associations are not functioning for the benefit and interest of the allottees and therefore, the order passed in C.No.80/2020 is not binding on the appellants. In as much

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as the appellants are questioning the functioning of the association, the said dispute between the Association of allottees and its member/s cannot be resolved under the Real Estate (Regulation and Development) Act, 2016. The appellants who are not satisfied over the functioning of their own association namely KNKOA, ought to have impleaded the said association as one of the respondent in their complaint filed before the TNRERA.

10. So far as the contention raised by the 1st appellant, with regard to the insolvency proceedings allegedly pending against the 1st respondent/ promoter before Hon'ble National Company Law Tribunal, is concerned, no directions can be given by this Tribunal to the NCLT to allocate Rs.14.70 crores in the said proceedings as prayed for by the appellants. It is for the appellants to approach the NCLT for necessary reliefs.

11. In these circumstances, we do not find any grounds to interfere with the order passed by TNRERA. The appeal is devoid of merits and the same is dismissed at the admission stage itself. Connected Miscellaneous Applications, remaining if any, are closed.

Sd-XXXX
CHAIRPERSON

Sd-XXXX
JUDICIAL MEMBER

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