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: 08.01.2024

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

Appeal (SR) No.493 of 2023
and M.A.No.237 of 2023

1. P.Abhishek
2. Usha Kumari

... Appellants

- Vs -

1. G.Baskaran
2. M/s.Optima Homes Pvt. Ltd.,
   Rep by Authorized Signatory
3. S.Venkatesan
4. C.Shanthilal Jain (Died)

... Respondents

Prayer: Appeal has been filed to set aside the order made in C.No.18 of 2022 dated 09.02.2023 and to dismiss the complaint in C.No.18 of 2022 on the file of the TNRERA.

For Appellants : Mr.M.Vishnu Prasad

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ORDER

The respondents 2 & 5 in C.No.18 of 2022 on the file of the TNRERA have filed the above appeal without making the pre-deposit as contemplated under Section 43(5) of the Act.

2. The TNRERA, by order dated 09.02.2023 in C.No.18 of 2022, directed the respondents, other than the 4th respondent in C.No.18 of 2022, to jointly refund to the complainant/allottee the sum of Rs.40,26,210/- paid by the allottee by way of cash and supply of building materials to the respondents on or before 31.03.2023 with interest thereon till the date of settlement.

3. The contention of learned counsel for the appellants is that the appellants, who were the respondents 2 & 5 in C.No.18 of 2022, are not liable to refund the amount to the allottee.

4. As per the provisions of Section 43 (5) of the Act, any person aggrieved by any direction or order made by the authority under the Act may prefer an appeal before the Appellate Tribunal, provided that the promoter makes the pre-deposit of the amount directed to be paid by them to the complainant/allottee. The provision of Section 43 (5) clearly stipulates that an appeal shall not be entertained without the pre-deposit amount made by the promoter/appellant. The provisions of Section 43(5) with regard to pre-deposit was also confirmed by the Hon'ble Supreme Court in the judgment reported in ***2021 SCC OnLine SC 1044***

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[M/s.Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others].

5. In the absence of any provision under the Act for waiver of the pre-deposit or for reducing the pre-deposit amount and also in view of the ratio laid by the Hon'ble Supreme Court, it is clear that the appeal filed by the appellants without making the pre-deposit is not maintainable.

6. Following the ratio laid down by the Apex Court in the judgment reported in *2021 SCC OnLine SC 1044*, cited supra, the appeal is rejected as not maintainable. Consequently, M.A.No.237 of 2023 is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to :

1. G.Baskaran
   Plot No.70, Thamayanthi Street,
   Etty Annal Nagar, Poonamalle, Chennai - 600 056.

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2. M/s.Optima Homes Pvt. Ltd.,
   rep. by Authorized Signatory
   No.6 & 7-A, 1st Floor, SSVK Sangamam,
   Periyar Salai, Gnanamurthy Nagar,
   Ambattur, Chennai - 600 053.

3. S.Venkatesan
   Director of M/s.Optima Homes Pvt. Ltd.,
   No.6 & 7-A, 1st Floor, SSVK Sangamam,
   Periyar Salai, Gnanamurthy Nagar,
   Ambattur, Chennai - 600 053.

4. C.Shanthilal Jain (Died)
   Rep by Power Agent
   M/s.Optima Homes Pvt. Ltd.,
   No.30/54, N.M.Road,
   Avadi, Chennai - 600 054.

5. The TNRERA.

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