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: 17.11.2023

Delivered on: 20.12.2023

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

Appeal Nos.51 to 53 of 2023
and
M.A.No.236 of 2023 in A.No.51 of 2023

1. Army Welfare Housing Organization (AWHO),
   represented by its Managing Director,
   New Delhi - 110 011.

2. The Project Director,
   Army Welfare Housing Organization (AWHO),
   Chennai - 600 103.

... Appellants in all the appeals

- Vs -

Colonel C.M. Unnithan ... Respondent in A.No.51 of 2023

Commander N.Koteeswar (Retd.) ... Respondent in A.No.52 of 2023

Capt. Nagarajan Vasudeva Rao ... Respondent in A.No.53 of 2023

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Prayer: The appeals have been filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016 to set aside the common order of the Tamil Nadu Real Estate Regulatory Authority in C.Nos.291, 293 and 294 of 2019 dated 21.12.2022 directing the appellants to register the project under the provisions of the Real Estate (Regulation and Development) Act.

For Appellants in all the appeals : Mr.V.G.Suresh Kumar
For Respondents in all the appeals : Mr.R.Ramasubramaniam Raja

COMMON ORDER

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

1. The Appellants, namely, the Army Welfare Housing Organization are the Promoters of the residential project "Dinesh Vihar" situated at Thazhambur village, Chengalpet District. The Appellants are involved in the construction of dwelling units for the serving/retired Army Personnel on "No profit No loss" basis. The Respondents are the Allottees. They have preferred separate complaints in C.Nos.291, 293 and 294 of 2019 with a prayer to direct the Appellants to register the project under the provisions of the Real Estate (Regulation and Development) Act, 2016.

2. After enquiry, the TNRERA, by invoking Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, granted exemption from registration and closed the complaint by order dated 21.05.2019. The Respondents preferred appeals in A.Nos.53, 54

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and 56 of 2019 before this Tribunal. The said appeals were allowed on 31.10.2019 and the Appellants were directed to register the project within 15 days.

3. Aggrieved over the same, the Appellants moved the Hon'ble High Court in C.M.S.A.Nos.12 to 14 of 2020. The Hon'ble High Court, vide order dated 21.01.2021, remanded the matters with certain directions to the TNRERA for fresh disposal. After remand, the TNRERA, vide order dated 25.03.2021, directed the Appellants to register the project on or before 30.04.2021. Aggrieved over the same, the Appellants preferred appeals before this Tribunal in A.Nos.67 to 69 of 2021. By order dated 06.10.2021, this Tribunal again remanded the matter to the TNRERA for fresh disposal and to follow the directions of the Hon'ble High Court made in C.M.S.A.Nos.12 to 14 of 2020. Once again, the TNRERA, vide order dated 21.12.2022, directed the Appellants to register the project on or before 31.03.2023. Aggrieved over the same, the Appellants have filed thepresent appeals.

4. Heard both sides.

5. The Appellants in A.No.51 of 2023 have filed a Miscellaneous Application in M.A.No.236 of 2023 under Order 41 Rule 27 CPC to file two additional documents. The first document is the copy of the request letter dated 25.09.2023 addressed to the Commissioner of Land Administration, Government of Tamil Nadu, requesting to permit registration of Sale Deeds in the Survey Numbers in which the project was developed. The second document is the statement showing the details of delivery of apartments to the Allottees in the project. These

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two documents are unnecessary for deciding these appeals. Hence, the M.A.No.236 of 2023 is liable to be dismissed.

6. As per Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 in the case of ongoing projects outside Chennai Metropolitan area, no provision and procedure are prescribed for issuance of completion certificate. If all the columns, beams and slabs have been erected and the same have been certified by the architect or structural engineer/licenced surveyor associated with the project with supportive photographs. Such project can be construed as structurally completed. Such projects shall be intimated to the concerned local planning authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of the Rules with a copy marked to the office of the Director of Town and Country Planning.

7. Admittedly, the Appellants have not intimated to the concerned local planning Authority that the construction is structurally completed as certified by the architect or structural engineer/licenced surveyor associated with the project supported with photographs within 15 days from the date of notification of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. Only on 10.08.2017, the Appellants belatedly intimated the Mamallapuram Local Planning Authority seeking exemption from registration with the TNRERA. The said intimation given by the Appellants was forwarded to the Principal Secretary to Government, Housing and Urban Development Department who was acting as the Chairman, TNRERA. By order dated 13.12.2017, the Principal Secretary to Government, Housing and Urban

Development Department, in the capacity as the Chairman, TNRERA, came to the conclusion that the project is partly completed and that it was an ongoing project. He further directed to register the project within 15 days from the receipt of the letter dated 13.12.2017.

8. Instead of taking steps to register the Project, the Appellants submitted another application dated 19.02.2018 seeking to condone the delay of 4 weeks in submitting the particulars as per Rule 2(h)(iii) of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and sought for exemption from registration with TNRERA. Subsequently, vide letter dated 28.08.2018, the very same Principal Secretary in the capacity as the Chairperson, TNRERA condoned the delay in submitting the particulars as per Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and accepted the project as a structurally completed project. This resulted in filing of three complaints before the regular TNRERA in the year 2019, after the constitution of the Authority.

9. Coming to the present appeals, the learned counsel for the Appellants, mainly relied upon Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and contended that the project was structurally completed as on the date of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 came into force and that the project need not be registered. On a perusal of the records, it could be seen that as directed by the Hon'ble High Court, four official witnesses have been examined and their statements were recorded by the TNRERA. From the cross examination of all the four

witnesses, it is clear that though the project was structurally completed as on 22.06.2017, it was not fully completed.

10. The then Project Director of the Appellants had deposed that on the date of his relieving, i.e., on 20.11.2018,final works were going on and the Environmental Clearance Certificate was not obtained and the same was under process. He had also deposed that the swimming pool, podium, club house, etc., were not completed as on 22.06.2017. The other three witnesses examined on behalf of the Appellants also deposed that the project was not completed fully. The evidence of the Project Director of the Appellants that the amenities such as club house, podium, swimming pool were not completed as on 22.06.2017 itself is sufficient to hold that the project was an ongoing project as on 22.06.2017. Therefore, the project is liable to be registered with the TNRERA.

11. In these circumstances, we find no reason to interfere with the order passed by the TNRERA. Hence, all the appeals are liable to be dismissed. Accordingly, all the three appeals are dismissed. The application in M.A.No.236 of 2023 in A.No.51 of 2023 is also dismissed.

CHAIRPERSON

JUDICIAL MEMBER

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Copy to :

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3. Capt. Nagarajan Vasudeva Rao
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4. The TNRERA.

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