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 : 13.09.2023

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

Appeal No.62 of 2023

M/s.RCC E-Construct Private Limited
rep. by its Director
Mohan Srinivasan alias Mohan ... Appellant

- Vs -

1.R.Ganesh
2.N.Ravichandran ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to allow the appeal and set aside the order passedby the TNRERA in C.No.60 of 2022 dated 02.06.2023 as not maintainable.

For Appellant :Mr.Adithya Suresh

ORDER

Challenging the order passed by the TNRERA in C.No.60 of 2022 dated 02.06.2023, the respondent in the complaint has filed the above appeal.

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2. It is not in dispute that the Promoter, by name,M/s.P dot G Constructions(P) Limited, entered into a Sale Agreement dated 23.01.2015 in respect of the demised property. Subsequently, on the very same day, a Construction Agreement was also entered into between the respondents herein and the said Company, wherein it was agreed by the Promoter to deliver the completed apartments within 30 months from the date of getting building plan approval from the CMDA in respect of the buildings to be constructed. The respondents contended that they have paid a total sum of Rs.2,75,000/- on 23.01.2015 itself. In support of their contention, they have also furnished the copies of the receipts before the TNRERA. The appellant contended that Corporate Insolvency Resolution process was initiated against M/s.P dot G Constructions(P) Limited on 13.07.2018 before the NCLT and in the said proceeding, an Interim Resolution Professional was appointed. It is also the case of the respondents that as per the Sale Agreement, the sale consideration was fixed at Rs.2,86,875/- and the total construction cost, including registration, was arrived at Rs.36,00,040/-. At the time of the Sale Agreement and Construction Agreement, the respondents paid a sum of Rs.2,75,000/- and further, as on 26.01.2015, the respondents/allottees paid a total sum of Rs.24,75,000/-. The Promoter, after completing the construction, handed over possession of the flat to the respondents.

3. The learned counsel for the appellant submitted that as of today, the respondents are in possession of the flat.

4. The contention of the appellant is that since the dispute was pending before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016, the RERA Act has no application.By virtue of the order passed by the NCLT, the appellant stepped into the shoes of the Promoter, viz., M/s.P dot G

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Constructions (P) Limited. The appellant further contended that the respondents failed to file the claim petition in the Insolvency proceedings, hence, they are not entitled to seek for any relief. After the order passed by the NCLT, the appellant became the new Promoter. Since the appellant had stepped into the shoes of the erstwhile Promoter - M/s.P dot G Constructions (P) Ltd., they are bound by the terms of the Sale and Construction Agreements dated 23.01.2015.

5. The respondents have also contended that they have spent a sum of Rs.2,50,000/- for completing the remaining construction work in respect of their flat. They have also stated that they are willing to pay the balance amount as per the Agreement of Sale and Agreement of Construction dated 23.01.2015, after deducting the amount they have spent for completing the incomplete portion and have prayed for execution of the Sale Deed for the undivided share for their flat. The respondents have also contended before the TNRERA that they have submitted their claims with all relevant documents to the appellant's office bye-mail as well as by Registered Post on 07.02.2020. They have also contended that they can approach the TNRERA for the relief of execution of the Sale Deed as contemplated under Section 17(1) of the RERA Act.

6. In the judgment report in (2019) SCC OnLine SC 1005 [Pioneer Urban Land and Infrastructure Limited and another Vs. Union of India and others], the Hon'ble Supreme Court held that the home buyers are at liberty to move RERA, Consumer Forum, NCLT, concurrently for adjudication of their grievance.

7. Relying upon the said judgment of the Apex Court, the respondents contended that the reliefs they sought before the TNRERA

is covered only by the RERA Act, 2016 and it is not under the jurisdiction of NCLT.

8. The TNRERA, after taking into consideration the case of both parties and also following the ratio laid down by the Hon'ble Supreme Court in the judgment referred above, disposed of the complaint by directing the appellant/Promoter to execute the Sale Deed for the undivided share of the flat under Section 17(1) of the Act after receiving the balance Sale Consideration as per the Construction Agreement as well as the incremental demand to be paid by the respondents/allottees as per the Resolution Plan approved by the NCLT.

9. It is also pertinent to note that the respondents entered into Agreements (i.e.) Sale Agreement and Construction Agreement as early as on 23.01.2015. The Insolvency proceedings before the NCLT was initiated only on 13.07.2018. It is also pertinent to note that the respondents/ allottees, having paid a sum of Rs.24,75,000/- as early as in the year 2015 and having taken possession of the flat, have filed the complaint before the TNRERA seeking for a direction to the appellant/Promoter to execute and register the Sale Deed in their favour. They have not sought for any refund or compensation from the appellant/Promoter. Therefore, on the ground of equity also, the respondents/allottees are entitled to get the Sale Deed executed and registered in their favour in respect of the demised property.

10. It cannot be disputed that the respondents are allottees under Section 2(d) of the RERA Act. The RERA also took into consideration Sections 88 and 89 of the RERA Act, which says that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force and that the

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Act shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force.

11. When the respondents have paid a sum of Rs.24,75,000/- and were put in possession of the flat, they cannot be deprived from getting the Sale Deed registered in their favour. The TNRERA has rightly directed the appellant/Promoter to execute the Sale Deed after receiving the balance Sale Consideration as per the terms of the Sale Agreement and the Construction Agreement dated 23.01.2015 as well as the incremental demand to be paid by the respondents as per the Resolution Plan approved by the NCLT. The order passed by the TNRERA is just and proper. We do not find any ground to interfere with the order passed by the TNRERA. The appeal is liable to be dismissed.

12. Accordingly, the appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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