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: 21.02.2024

Delivered on: 06.03.2024

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

Appeal No.11 of 2024
and
M.A.Nos.10 & 11 of 2024

M/s.Alliance Projects,
rep. by its Authorized Signatory ... Appellant

- Vs -

M/s.Palm Flat Owners Welfare Association (POWA)
rep. by its Secretary ... Respondent

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 22.08.2022 in C.No.279 of 2021 passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai and to dismiss the complaint.

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For Appellant : Mr.PL. Narayanan, Senior Counsel
for Mr.A.Joseph Dorairaj

For Respondent : Mr.P.L.Narayanan

ORDER

Challenging the order passed in C.No.279 of 2021 dated 22.08.2022 on the file of the Tamil Nadu Real Estate Regulatory Authority, the Promoter has filed the above appeal.

2. The respondent - Flat Owners Welfare Association filed the complaint in C.No.279 of 2021 before the TNRERA for the following reliefs:

> "(i) to register the Project "ALLIANCE ORCHID SPRINGSS" under TNRERA Act;
>
> (ii) to handover the proportionate Corpus Fund of more than Rs.2.36 Crores pertaining to Palm Block along with interest accrued till date of full payment to the complainant;
>
> (iii) to direct the respondent to rectify the lapses, shortcomings, deficiencies and undelivered promises as mentioned in the Focus Area paragraph above and to complete the said list of deliverables in a structured time schedule with mile stone to be fixed by the Authority;
>
> (iv) to handover all original documents of undivided share of land with taxes and other charges cleared up to date;
>
> (v) if there is any shortfall in the undivided share of land, the same may be compensated with interest and penalties and handover the details of drawings, certificates obtained from relevant authorities for compliance requirements and also transfer annual service contracts with service providers to the complainant;

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(vi) to handover the entire maintenance of Palm Block to the complainant including handing over of assets i.e. lifts, DG sets, OHTS and other common areas/common amenities within the Palm along with actual built up drawings of plumbing/electricals pertaining to Palm Block and common amenities like WTP, STP, etc to a Central or Apex Association;

(vii) the respondent has sold 200 apartments as against the CMDA approval of 198 apartments. Therefore, this is a clear "*fraus est celare fraudem*" and the complainant humbly request the Authority to take necessary penal action against the respondent;

(viii) respondent has sold car parking instead of allotment and has to be penalized for undue profits. Also the respondent has sold more than the approved car parks reducing the UDS/Green cover."

3. The appellant/Promoter filed their counter before the TNRERA disputing the averments stated in the complaint. The respondent/ Association filed their rejoinder in C.No.279 of 2021. Taking into consideration the case of both parties, the TNRERA disposed of the complaint in C.No.279 of 2021 with the following directions:

"...

36. Therefore, this Authority directs the Respondent Promoter to handover the proportionate corpus fund, relating to the Palm Block along with the actual interest earned, before 31.10.2022 to the Complainant Association.

37. This Authority notes that this real estate project has 8 Blocks and Palm Block is Block No.6.

38. This Authority also notes that the Complainant Association has taken over the maintenance of common areas exclusive to the Palm Block with effect from 01.04.2021.

39. This Authority also records the undertaking of the Respondent Promoter that it has no intention to latch on to the maintenance of the common areas forever.

40. Therefore, this Authority directs the Respondent Promoter to ensure that the maintenance of common areas in this real estate project are handed over to the concerned Block Level Association of Allottees for maintenance of common areas exclusive to the concerned Blocks before 31.10.2022 as Completion Certificates from CMDA for the respective Blocks by the Respondent Promoter have already been obtained.

41. The Respondent Promoter shall also enable the formation of Apex/Federation Association of the 8 Block level Associations so that the maintenance of common areas common to all 8 Blocks are maintained by the Apex/ Federation level Association. Formation and registration of Apex/Federation level Association of the 8 Blocks level Associations of Allottees and handing over maintenance of common areas common to all Blocks to Apex/Federation level Association shall be done before 31.12.2022.

42. The Authority also does not accept the contention of the Respondent Promoter that the Respondent Promoter will maintain the common areas till all the unsold apartments are sold in this real estate project.

43. Regarding provision of common amenities as per Schedule D of the Construction Agreement (page 36 & 37 of the typed set of papers filed by the complainant), the Authority directs the Respondent Promoter to provide the same before 31.10.2022 without fail, if not done already.

44. This Authority also directs the Respondent Promoter to handover all relevant documents relating to this real estate project namely the original title deeds for this real estate project, approved plans and drawings, structural design and drawings, Architectural drawings, plumbing and electrical

drawings to Apex Association of Block Associations of Allottees before 31.12.2022.

45. The Respondent Promoter shall also handover the relevant documents such as electrical wiring drawings and plumbing drawings relating to the individual Blocks to the respective Block Association of Allottees including the Complainant Association before 31.10.2022. This includes the lifts being used in the respective Blocks in terms of the License for the lifts and DG sets of the respective Blocks, manual and AMCs, warrantees, if any, relating to the lifts and DG sets of the respective Blocks.

46. Regarding STP, Water Treatment Plant, Water Drainage system/Storm Water Drainage, the Respondent Promoter is directed to act as per Section 14(3) of the Act.

47. This Authority also directs the Respondent Promoter to obtain transfer of domestic electricity service consumer cards in the name of the individual Allottees before 31.10.2022, if not done already.

48. With the above findings and directions, this Complaint as well as the I.A.No.56 of 2021 filed by the Respondent Promoter are disposed of."

4. Challenging the order passed in C.No.279 of 2021 dated 22.08.2022, the Promoter has filed the above appeal.

5. The Real Estate (Regulation and Development) Act, 2016 was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds & delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of

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accountability and a fast-track dispute resolution mechanism. It also proposed to induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run.

6. In para-36 of the order impugned in this appeal, the TNRERA directed the Promoter to handover the proportionate corpus fund relating to the Palm Block along with the actual interest earned before 31.10.2022 to the complainant/Association.

7. At the time of filing of the appeal, the appellant had deposited Rs.2,03,23,500/- being the amount alleged to have been collected towards corpus fund. However, the appellant has not deposited the interest as directed by the Authority. Since the pre-deposit was not made as per the provisions of Section 43(5), when the matter was listed for hearing on 04.01.2023 for maintainability, Mr.PL. Narayanan, learned senior counsel appearing for the appellant submitted that the amounts collected from the allottees towards corpus fund were deposited in the Current Account of the Appellant/Promoter and the said amount was utilized for the maintenance of the Block. Further, the learned senior counsel submitted that the appellant has not earned any interest from the corpus fund collected from the allottees.

8. As per Rule 18 of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, in case the allottee wishes to withdraw from the project, the Promoter is liable to return the amount received by them from the allottee with interest at such rates as may be prescribed

in this behalf including compensation as provided under the Act. Where an allottee does not intend to withdraw from the project, he shall be paid, by the Promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

9. In all the matters, where interest is awarded in favour of the allottees, the rate of interest shall be the highest marginal cost of lending rate fixed by the State Bank of India plus 2%.

10. Though there was no material to show that the Promoter had earned interest over and above the lending rate of the State Bank of India, in the interest of justice, we directed the appellant/Promoter to calculate interest at the rate fixed for the Fixed Deposits by the Nationalized Banks. Accordingly, we directed the appellant/Promoter to make the pre-deposit, calculating interest @ 5.5% p.a. on the corpus fund paid by the allottees. The order dated 04.01.2023 was challenged by the appellant/Promoter before the Hon'ble High Court in C.M.S.A.No.15 of 2023.

11. The Hon'ble Division Bench of the Madras High Court, by judgment dated 16.11.2023, disposed of the appeal in C.M.S.A.No.15 of 2023 with the following observations:

> "...
> 9. This court is of the opinion that the issues involved herein are triable in nature and the same require detailed analysis based on the evidence and documents produced by the parties. Therefore, the substantial question of law raised herein are left open to be decided by the Appellate Tribunal,

which shall take up the appeal filed by the appellant and decide the same, on merits and in accordance with law, after affording reasonable opportunity to both the parties, within a period of three months from the date of receipt of a copy of this judgment. The parties are at liberty to raise all the contentions, including the deposit of interest accrued on the corpus fund and the quantum of such interest, etc., before the Appellate Tribunal, with supportive materials.

10. Accordingly, this appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

12. The Madras High Court left the substantial questions of law raised in the C.M.S.A. open to be decided by this Tribunal. The appellant raised the following substantial questions of law in the C.M.S.A:

"(i) When there is no provision under the RERA Act and its 2017 Rules for depositing the maintenance fund in any bank's fixed deposit or interest earning deposit, can the Tribunal direct the appellant to pay interest along with the total amount to be paid to the allottee?

(ii) When there is no proof of the appellant having utilized the maintenance/corpus fund for any other purpose, can the Tribunal assume and impose payment of interest on the ground equity?

(iii) Should equity follow law or vice versa, when on facts the appellant had not earned any interest from his current account and when there is no statutory provision in this regard?"

13. After remand, when the appeal was listed for hearing on 09.02.2024, Mr.PL.Narayanan, learned senior counsel appearing for the

appellant and Mr.Purushothaman Lakshmi Narayanan, learned counsel appearing for the respondent submitted that they may be permitted to make their submissions with regard to the questions of law raised in the C.M.S.A. as preliminary issue on the date fixed by this Tribunal. Further, the learned counsels submitted that the substantial questions of law were raised only in connection with the provisions of Section 43(5) of the Act. Recording the submissions made by the learned counsel on either side, subject to the maintainability of the appeal, the Registry was directed to number the appeal and list the same for hearing on 21.02.2024. On 21.02.2024, the learned counsel on either side made their submissions with regard to the preliminary issue.

14. Mr.PL.Narayanan, learned senior counsel for the appellant submitted that the TNRERA had erroneously directed the appellant/ Promoter to handover the proportionate corpus fund relating to the Palm Block along with the actual interest earned to the respondent/ Association, when the appellant/Promoter has not earned any interest. Further, the learned senior counsel submitted that the amounts collected towards the corpus fund were deposited by the appellant in the Current Account and was utilized for the maintenance of the Block. The learned senior counsel further submitted that the appellant/Promoter is not liable to pay any interest on the corpus fund collected from the allottees.

15. In support of his contention, the learned senior counsel relied upon Annexure 'A' of the Tamil Nadu Real Estate (Regulation and

Development) Rules, 2017, wherein a format of the Construction Agreement has been provided. In the said format of the Construction Agreement, the learned senior counsel relied upon recital No.7, which reads as follows:

> "... In case maintenance of the project is done by the promoter after handover, promoter shall be entitled to collect advance maintenance charges as mutually agreed with the Allottee/s
>
> 7. A sum of Rs.[]/- (Rupees [] only) towards corpus fund, to be utilized for major expenditure in maintenance of the building and other infrastructural facilities and amenities in the Project shall be paid at the time of handing over possession of the SCHEDULE "C" PROPERTY. The Promoter shall transfer this amount after deducting any expenses incurred for the purpose of maintenance of the buildings; without interest to the agency to be appointed by them or the Association/ Society to be formed by the Allottee."

16. On a reading of the recital No.7, it could be seen that the corpus fund collected from the allottees should be utilized for major expenditure in maintenance of the building and other infrastructural facilities and amenities in the project shall be paid at the time of handing over possession of the property. Further, it has been stated that the Promoter shall transfer this amount, after deducting any expenses incurred for the purpose of maintenance of the buildings, without interest to the agency to be appointed by them or the Association/ Society to be formed by the allottee.

17. The learned senior counsel for the appellant submitted that the excess corpus fund should be returned to the allottee/Association without interest, therefore, the order passed by the TNRERA, directing the Promoter to pay the corpus fund with interest, is not correct.

18. But, on a perusal of the recital No.7 of the format of the Construction Agreement, it is clear that only if the project is completed within the time as promised by the Promoter, in such a situation, at the time of handing over possession of the property, the Promoter shall transfer the corpus fund, after deducting any expenses incurred, without interest to the allottee/Association.

19. Countering the submissions made by the learned senior counsel for the appellant/Promoter, Mr.Purushothaman Lakshmi Narayanan, learned counsel appearing for the respondent/Association submitted that as per the provisions of Section 43(5) of the Act, it is mandatory that the appellant must make the pre-deposit for entertaining the appeal and in the absence of making pre-deposit in entirety, the appeal is not maintainable. Further, the learned counsel submitted that the Hon'ble Supreme Court in the judgment reported in **(2021) 18 Supreme Court Cases 1 [Newtech Promoters & Developers Private Limited Vs. State of Uttar Pradesh and others]** held that the Promoter who files an appeal before the Appellate Tribunal must comply with the provisions of Section 43(5) in entirety. In these circumstances, the learned counsel for the

respondent submitted that the appeal filed by the Promoter without making the entire pre-deposit, is not maintainable.

20. In the case on hand, though the project was launched as early as in the year 2006, the project was completed only in December 2017 and the Completion Certificate was obtained only on 22.12.2017. However, the respondent/Association alleged that there were lots of pending works even in December 2017 and there are pending works even thereafter.

21. It is pertinent to note that though the project was launched in 2006, even the initial approval from CMDA was obtained only in 2010 and thereafter, the Promoter kept on submitting revised plans to CMDA till 2015. Therefore, it is clear that there was inordinate delay in completing the project by the appellant/Promoter. In these circumstances, the TNRERA directed the appellant/Promoter to handover the corpus fund with interest. In view of the inordinate delay in completing the project, the contention of the learned senior counsel with regard to recital No.7 in the format of the Construction Agreement (Annexure 'A'), cannot be accepted. That apart, in the Construction Agreement dated 18.06.2012 made between the appellant/Promoter and one of the Members of the respondent/Association, in Annexure "AA", it was specifically agreed that the maintenance deposit as corpus fund @ Rs.50/- per sqft of the super built-up area shall be paid by the purchaser at the time of possession and the interest received on such corpus fund shall be utilized for

maintenance. The relevant portion of the recital in the Construction Agreement mentioned in Annexure "AA" reads as follows:

> "...
>
> 4. The Maintenance Deposit as Corpus fund @ 50/- per sqft of the super built up area shall be paid by the Purchaser at the time of possession. The interest received on such corpus fund shall be utilized for maintenance. Apart from Corpus fund, a Monthly Maintenance Charges @ Rs.2.50/- per sqft of the super built up area (Renewable) to be paid in advance for every Twelve Months, along with applicable taxes on such expenses for maintenance shall be paid by the Second Party to the Developer/nominee/s of Developer."

Therefore, from the said recital it is clear that the appellant/Promoter themselves have admitted that they will earn interest on corpus fund collected from the allottees. Therefore, the contention of the learned senior counsel that the appellant/Promoter has not earned any interest from and out of the corpus fund collected by them from the allottees, is liable to be rejected. Accordingly, the same is rejected.

22. Section 18(1) of the Act spells out the consequences that if the Promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the Agreement for Sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed.

23. On a plain reading of the proviso to Section 43(5), it is clear that where a Promoter files an appeal with the Appellate Tribunal, the appeal shall not be entertained without the Promoter first having deposited with the Appellate Tribunal at least thirty percent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard. It would be appropriate to extract Section 43(5) of the Act, which reads as follows:

> **"43. Establishment of Real Estate Appellate Tribunal.-**
> (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:
> Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.
> Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

24. In the case on hand, the TNRERA had directed the appellant/ Promoter to handover the corpus fund along with the actual interest

earned to the respondent/Association. When there is an order passed by the Authority, directing the Promoter to return the corpus fund along with the actual interest earned, which is the subject matter of the above appeal, the appellant/Promoter cannot circumvent making the pre-deposit contending that they have not earned any interest from the corpus fund. When the appellant/Promoter themselves have agreed in Annexure "AA" to the Construction Agreement dated 18.06.2012 that the interest received on the corpus fund shall be utilized for maintenance, the contention now raised before this Tribunal that they have not earned any interest, cannot stand.

25. In the judgment reported in **(2021) 18 Supreme Court Cases 1 [Newtech Promoters & Developers Private Limited Vs. State of Uttar Pradesh and others]**, the Hon'ble Supreme Court categorically held that if an appeal is to be preferred at the instance of the Promoter, the appeal can be entertained only after due compliance of pre-deposit as envisaged under Section 43(5) of the Act. It would be appropriate to extract the relevant portion in the said judgment, which reads as follows:

> "...
>
> 78. To safeguard the interests of the parties, on being decided by the regulatory authority/adjudicating officer, it is always subject to appeal before the Tribunal under Section 43(5) provided condition of pre-deposit being complied with can be further challenged in appeal before the High Court under Section 58 of the Act and, thus, the legislature has put reasonable restriction and safeguards at all stages.
>
> ....

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Question no. 4: - Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

120. Before we examine the challenge to the proviso to Section 43(5) of the Act of making pre-deposit for entertaining an appeal before the Tribunal, it may be apposite to take note of Section 43(5) of the Act, 2016. Section 43(5) reads as follows:—

> **"43. Establishment of Real Estate Appellate Tribunal-**
> (1) - (4) * * *
> (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:
> Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.
> Explanation - For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

121. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the Appellate Tribunal against the order of an Authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of Authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 % of the penalty amount or

such higher amount as may be directed by the Appellate Tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the Appellate Tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.

122. The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of Authority/adjudicating officer cannot remain dependent on fulfilment of pre-deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre-deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.

123. The learned counsel further submits that if the entire sum as has been computed either by the Authority or adjudicating officer, is to be deposited including 30% of the penalty in the first place, the remedy of appeal provided by one hand is being taken away by the other since the promoter is financially under distress and incapable to deposit the full computed amount by the Authority/adjudicating officer. The right of appreciation of his defence at appellate stage which is made available to him under the statute became nugatory because of the onerous mandatory requirement of predeposit in entertaining the appeal only on the promoter who intends to prefer under Section 43(5) of the Act which according to him is in the given facts and circumstances of this case is unconstitutional and violative of Article 14 of the Constitution of India.

124. The submission in the first blush appears to be attractive but is not sustainable in law for the reason that a perusal of scheme of the Act makes it clear that the limited

rights and duties are provided on the shoulders of the allottees under Section 19 of the Act at a given time, several onerous duties and obligations have been imposed on the promoters i.e. registration, duties of promoters, obligations of promoters, adherence to sanctioned plans, insurance of real estate, payment of penalty, interest and compensation, etc. under Chapters III and VIII of the 2016 Act. This classification between consumers and promoters is based upon the intelligible differentia between the rights, duties and obligations cast upon the allottees/homebuyers and the promoters and is in furtherance of the object and purpose of the Act to protect the interest of the consumers vis-a-viz, the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been differently and separately dealt with under the various provisions of the Act.

125. Therefore, the question of discrimination in the first place does not arise which has been alleged as they fall under distinct and different categories/classes.

126. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the 2016 Act, the complaints for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allotee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the Authority at least must be safeguarded if the promoter intends to prefer an appeal before the Tribunal and in case, the appeal fails at a later stage, it becomes difficult for the

consumer/allottee to get the amount recovered which has been determined by the Authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the Authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him.

127. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for re-appraisal of the evidence on record provided substantive compliance of the condition of pre-deposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage.

128. There are multiple statutes which provide a condition of pre-deposit of a stipulated statutory amount to be deposited before an appeal is entertained by an appellate forum/tribunal for reappraisal of facts and law at the appellate stage and it has been examined by this Court as well. Proviso to Section 18 of SARFAESI Act, 2002 of the Act which provides pre-deposit is as follows:

> **"18. Appeal to Appellate Tribunal (1)*** * *
>
> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso."

129. The intention of the legislature appears to be to ensure that the rights of the decree-holder (the successful party) is to be protected and only genuine bona fide appeals

are to be entertained. While interpretating Section 18 of SARFAESI Act, this Court in Narayan Chandra Ghosh v. UCO Bank, [(2011) 4 SCC 548 : (2011) 2 SCC (Civ) 362] observed as under:—

> "8. It is well settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."
>
> 130. In *Har Devi Asnani v. State of Rajasthan*, [(2011) 14 SCC 160 : (2012) 4 SCC (Civ) 801] the validity of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 came up for consideration in terms of which no revision application could be entertained unless it was accompanied by a satisfactory proof of payment of 50% of the recoverable amount. Relying on the earlier decisions of this Court including in State *of A.P. v. P. Laxmi Devi* [(2008) 4 SCC 720] the challenge was repelled and the view expressed in P. Laxmi Devi [(2008) 4 SCC 720]

was repeated *in Har Devi Asnani* [(2011) 14 SCC 160 : (2012) 4 SCC (Civ) 801] wherein this Court held as under:—

> "27... '29.In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide Maneka Gandhi v. Union of India [(1978) 1 SCC 248]. Hence, the party is not remediless in this situation.' as observed in State *of A.P. v. P. Laxmi Devi* [(2008) 4 SCC 720]"

131. At the same time, Section 19 of the Consumer Protection Act, 1986 prescribes a condition for pre-deposit which provides that an appeal shall not be entertained unless 50% of the amount awarded by the State Commission or Rs.35,000 whichever is less is deposited before the National Consumer Disputes Redressal Commission (NCDRC). This Court while placing reliance on *State of Haryana v. Maruti Udyog Ltd.[(2000) 7 SCC 348]*, in *Shreenath Corpn. v. Consumer Education and Research Society [(2014) 8 SCC 657 : (2014) 4 SCC (Civ) 598]* held that such a condition is imposed to avoid frivolous appeals.

> "7. Section 19 of the Consumer Protection Act, 1986 deals with the appeals against the order made by the State Commission in exercise of its power conferred by sub-clause (i) of clause (a) of Section 17 and the said section reads as follows:
>
> "19. Appeals.—Any person aggrieved by an order made by the State Commission in exercise of its

powers conferred by sub-clause (i) of clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less."

On plain reading of the aforesaid Section 19, we find that the second proviso to Section 19 of the Act relates to "pre-deposit" required for an appeal to be entertained by the National Commission.

* * *

9. The second proviso to Section 19 of the Act mandates pre-deposit for consideration of an appeal before the National Commission. It requires 50% of the amount in terms of an order of the State Commission or Rs.35,000, whichever is less for entertainment of an appeal by the National Commission. Unless the appellant has deposited the pre-deposit amount, the appeal cannot be entertained by the National Commission. A pre-deposit condition to deposit 50% of the amount in terms of the order of the State Commission or Rs.35,000 being condition precedent for entertaining appeal, it has no nexus with the order of stay, as such an order may or may not be passed by the National Commission. The

condition of pre-deposit is there to avoid frivolous appeals."

132. Similarly, under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, any appellant, other than the supplier, is required to make a pre-deposit of 75% to maintain an appeal against any decree, award or order made either by the Micro and Small Enterprises Facilitation Council or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council. Section 19 reads as follows:

> "**19.** ***Application for setting aside decree, award or order.***—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:
>
> Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

133. Similarly, the condition of pre-deposit has been examined recently by this Court in *Tecnimont (P) Ltd.* v. *State of Punjab* [(2021) 12 SCC 477] , where the validity of Section 62(5) of the Punjab Value Added Tax Act, 2005 (PVAT) which imposes a condition of 25% of pre-deposit for hearing of first

appeal has been upheld. Section 62(5) of the PVAT Act reads as follows:

> "**62.** ***First appeal.*** – (1) (4) * * *
>
> (5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any."

134. To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.

135. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question.

136. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the homebuyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the Authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Article 14 or Article 19(1)(*g*) of the Constitution of India.

...

141. The upshot of the discussion is that we find no error in the judgment [*Newtech Promoters & Developers (P)*

Ltd. v. *State of U.P.*, 2021 SCC OnLine All 858] impugned in the instant appeals. Consequently, the batch of appeals is disposed of in the above terms. However, we make it clear that if any of the appellant intends to prefer appeal before the Appellate Tribunal against the order of the Authority, it may be open for him to challenge within 30 days from today provided the appellant(s) comply with the condition of pre-deposit as contemplated under the proviso to Section 43(5) of the Act which may be decided by the Tribunal on its own merits in accordance with law. No costs."

26. In the above judgment, the Hon'ble Supreme Court had categorically held that to safeguard the interest of the parties, on being decided by the Regulatory Authority/Adjudicating Officer, it is always subject to appeal before the Tribunal under Section 43(5) provided condition of pre-deposit being complied with can be further challenged in appeal before the High Court under Section 58 of the Act and thus, the legislature has put reasonable restriction and safeguards at all stages. Further, the Apex Court held that the provisions of Section 43(5) are mandatory. The obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself and the Promoters, who are in receipt of money which is being claimed by the home buyers/ allottees for refund and determined in the first place by the Competent Authority, if legislature in its wisdom intended to ensure that money once determined by the Authority be saved if appeal is to be preferred at the instance of the Promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said

to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India. While disposing of the batch of appeals, the Apex Court ultimately gave liberty to the appellant therein to prefer appeal before the Appellate Tribunal against the order of the Authority provided the appellant complies with the condition of pre-deposit as contemplated under proviso to Section 43(5) of the Act.

27. Since the TNRERA has not quantified the rate of interest, this Tribunal thought it appropriate to direct the appellant/Promoter to calculate interest at the rate paid by the Nationalized Banks for Fixed Deposits. Accordingly, we directed the appellant/Promoter to deposit the interest @ 5.5% p.a. on the corpus fund as pre-deposit. However, the appellant/Promoter has not made any pre-deposit with regard to the interest.

28. For the reasons stated above, applying the provisions of Section 43(5) of the Act and also following the ratio laid down by the Hon'ble Supreme Court in the judgment reported in **(2021) 18 Supreme Court Cases 1 [Newtech Promoters & Developers Private Limited Vs. State of Uttar Pradesh and others]**, cited supra, the appeal cannot be entertained and is liable to be dismissed. The substantial questions of law raised by the appellant are decided against them.

29. The appellant/Promoter filed an application in M.A.No.11 of 2024 seeking to receive additional documents and photographs. Since we have held that the appeal is not maintainable without making the pre-

deposit and further, the documents sought to be marked are pertaining to the merits of the matter, the application is liable to be closed. Accordingly, the application in M.A.No.11 of 2024 stands closed. M.A.No.10 of 2024 is also closed.

30. Though, we have passed an order as early as on 04.01.2023 directing the appellant/Promoter to make the pre-deposit together with interest, calculating interest @ 5.5% p.a., the appellant has not made the pre-deposit till today (i.e.) even after a lapse of more than 14 months. Inspite of the same, in the interest of justice and in order to give one more final opportunity, we grant a week's time from today (i.e.) till 13.03.2024 to make the pre-deposit together with interest, calculating interest @ 5.5.% p.a. In the event of the appellant/Promoter making the pre-deposit in entirety on or before 13.03.2024, the appeal as well as the Miscellaneous Applications which are closed in this order will be taken up for hearing and will be decided on merits and in accordance with law. In case the appellant/Promoter fails to make the pre-deposit together with interest, calculating interest @ 5.5% p.a. on or before 13.03.2024, the appeal shall stand dismissed automatically as not maintainable without any further reference to this Court.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Verified by RealEstate

Copy to

1. The TNRERA.

2. M/s. Palm Flat Owners Welfare Association (POWA),
   represented by its Secretary
   No.808, Palm Block, Alliance Orchid Springs,
   Water Canal Road,
   Chennai - 600 076.

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