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: 17.04.2024

Delivered on: 26.04.2024

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

Appeal No.19 of 2024
and
M.A.No.52 of 2024

The Tamil Nadu Housing Board
rep. by its Managing Director
Shunchonngam Jatak Chiru ... Appellant

Vs.

Vijaya Bharathi L ... Respondent

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 12.04.2023 in C.C.P.No.427 of 2021 passed by the learned Single Member, TNRERA and to dismiss the complaint.

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For Appellant : Mr.Ganesh V Aranala

For Respondent : Ms. N. Nandhini
for Mr. B.Deepak Narayanan

ORDER

Challenging the order passed in C.C.P.No.427 of 2021 on the file of the learned Single Member, TNRERA, the Tamil Nadu Housing Board has filed the above appeal.

2. The respondent filed the complaint in C.C.P.No.427 of 2021 seeking refund of the amount paid to the Tamil Nadu Housing Board towards purchase of a flat with interest and costs.

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

(i) The appellant/promoter developed a residential project, namely, "Korattur LIG Self Finance Scheme". The respondent applied for allotment of LIG flat on 15.07.2016. The appellant/promoter provisionally allotted Flat No.L-45/12 to her. The tentative cost of the flat was fixed at Rs.28,54,000/-. As per the provisional allotment letter, the respondent paid 10% of the cost of the flat (i.e.) Rs.2,85,400/- on 30.08.2016. Subsequently, on 09.09.2016 regular allotment letter was issued in her favour along with payment schedule. The appellant contended that the respondent never paid the installments on or before the due date and that the payments were made belatedly. Therefore, the appellant levied

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penal interest for the delayed payment as per the conditions mentioned in the regular allotment order dated 09.09.2016.

(ii) It is not in dispute that the possession of the apartment was handed over to the respondent on 21.05.2019. On the same day, an Agreement of Sale of flat was executed between the parties. As per Clause 13 of the said agreement, the decision of the appellant as to the final price of flat is binding on the purchaser and that the respondent agreed to pay the said final price as may be fixed by the appellant Board. Subsequently, after a lapse of 1½ years (i.e.) on 05.11.2020, a demand letter was sent to the respondent by the appellant, fixing the final cost of the flat at Rs.31,73,000/- and requesting her to pay the difference amount of Rs.3,19,000/- after adjusting the tentative cost of Rs.28,54,000/- already paid. By demand letter dated 05.09.2019, the appellant called upon the respondent to pay an additional sum of Rs.56,533/-, however, did not give any break up for the said amount. In these circumstances, the respondent filed the complaint seeking for refund of the extra amount paid by her to the appellant and for interest for delay in delivery and litigation costs.

(iii) The TNRERA, by order dated 12.04.2023, directed the appellant to refund the additional amount paid by the respondent to the tune of Rs.2,62,467/- together with interest for delay in delivery on the amount paid by her with effect from 30.09.2018, which is the due date for the delivery of possession to 21.05.2019, the date on which the possession

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was actually handed over. The TNRERA also awarded a sum of Rs.25,000/- towards litigation expenses. Challenging the order passed by the learned Single Member, the promoter has filed the above appeal.

4. Heard Mr.Ganesh V Aranala, learned counsel for the appellant and Ms. N. Nandhini, learned counsel for the respondent.

5. The only contention of Mr.Ganesh V Aranala, learned counsel for the appellant, was that the complaint filed by the respondent before the TNRERA is liable to be rejected on the ground that the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 has no application. The learned counsel submitted that the appellant had applied for the Completion Certificate even before the Act came into force.

6. Countering the submission made by the learned counsel for the appellant, Ms.N.Nandhini, learned counsel for the respondent submitted that the contention of the learned counsel for the appellant is liable to be rejected on the ground that the appellant applied for the Completion Certificate only on 07.06.2017 (i.e.) after the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 came into force as early as on 01.05.2016.

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the only contention of the learned counsel for the appellant is with regard to the application of the Act. The learned counsel contended that as per Rule 2(h)(ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, if the promoter applies for

issuance of Completion Certificate with the Authority, in such a case, the project cannot be construed as an on-going project. The learned counsel submitted that the appellant applied for the Completion Certificate on 07.06.2017. It cannot be disputed that the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 came into force on 01.05.2016. That being the case, the contention of the appellant to the effect that the appellant had applied for the Completion Certificate much prior to the date of commencement of the Act, cannot be accepted. The Act came into force on 01.05.2016, whereas the appellant applied for the Completion Certificate only on 07.06.2017. Therefore, the project should be construed as an on-going project.

8. Section 3 of the Act came into force on 01.05.2017. The exemption mentioned under Rule 2(h)(ii) of the Rules shall be applicable only to those projects for which application for Completion Certificate has been submitted with the appropriate Authority prior to Section 3 of the Act coming into force and the same is pending for issuance of Completion Certificate. In the case on hand, the appellant had applied for the Completion Certificate only on 07.06.2017 (i.e.) after Section 3 of the Act came into force. Therefore, the exemption contemplated under Rule 2(h)(ii) of the Rules is not applicable to the appellant's project. The contention of the learned counsel for the appellant with regard to the application of the Act is rejected.

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9. The appellant has filed an application in M.A.No.52 of 2024 under Order 41 Rule 27 of the Code of Civil Procedure for producing additional documents.

10. As the issue involved in the present appeal can be decided even without those documents, we are of the view that the said documents are not necessary for the adjudication of the matter. Further, the appellant has not given any acceptable reason for not producing the documents before the TNRERA. In such view of the matter, we are not inclined to allow the application and the application is liable to be rejected.

11. Since the contention raised by the learned counsel for the appellant with regard to the application of the Act is held against the appellant, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. The application in M.A.No.52 of 2024 is also dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to

1. The Single Member, TNRERA.

2. Vijaya Bharathi L.
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