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: 09.02.2024

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

Appeal No.9 of 2024

Shymosree Kulothungan ... Appellant

- Vs -

1) M/s. Ozone Projects Private Limited
represented by its Managing Director

2) M/s. Axis Bank ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 30.10.2023 in C.No.38 of 2022 passed by the Tamil Nadu Real Estate Regulatory Authority.

For Appellant : Mr.S.Shujath
For 2nd Respondent : Mr.M.R.Umavijayan

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ORDER

Challenging the order passed in C.No.38 of 2022 on the file of the TNRERA dated 30.10.2023, the complainant has filed the above appeal.

2. The complainant filed the complaint in C.No.38 of 2022 to deliver physical possession of the Penthouse Apartment G-1503, after rectifying/ repairing defects, to the complainant within a stipulated time.

3. It is not in dispute that the complainant entered into a Construction Agreement for the purchase of the apartment with the promoter for a total Sale Consideration of Rs.6,15,91,249/-. It is also not in dispute that the complainant availed loan from the 2nd respondent, namely, M/s.Axis Bank to the tune of Rs.4,80,89,492/- on 13.12.2018, agreeing to repay the loan amount in Equated Monthly Installments. Since the complainant committed default in repaying the loan amount, the loan account was classified as NPA on 10.12.2020. Thereafter, the 2nd respondent - Bank issued a Demand Notice under Section 13(2) of the SARFAESI Act on 09.05.2022.

4. The learned counsel appearing for the appellant/complainant submitted that the complainant has not sent any reply to the Demand Notice dated 09.05.2022 to the 2nd respondent - Bank.

5. Thereafter, the Bank issued Possession Notice dated 10.08.2022 and approached the 1st respondent/promoter to deliver possession of the apartment. Pursuant to the Possession notice dated 10.08.2022, the 2nd respondent also took possession of the apartment, since the appellant

committed default in repaying the loan amount. After taking possession of the apartment, now the possession is only with the 2nd respondent - Bank and not with the 1st respondent/promoter.

6. When the 2nd respondent had initiated proceedings under the provisions of the SARFAESI Act and also took possession of the apartment, the remedy open to the appellant is only to approach the Debts Recovery Tribunal and not the Tamil Nadu Real Estate Regulatory Authority. When the 2nd respondent - Bank has taken possession of the property under Section 13(4) of the SARFAESI Act, the Tamil Nadu Real Estate Regulatory Authority cannot give a direction to the 2nd respondent to hand over possession of the apartment to the complainant.

7. Taking into consideration all these aspects, the Tamil Nadu Real Estate Regulatory Authority has rightly declined to give any direction to the 1st respondent/promoter to deliver physical possession of the apartment.

8. We do not find any error or irregularity in the order passed by the Tamil Nadu Real Estate Regulatory Authority. The appeal is devoid of merits and the same is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to

1. The TNRERA.

2. M/s. Ozone Projects Private Limited,
   represented by its Managing Director
   No.63, G.N.Chetty Road,
   T.Nagar, Chennai - 600 017.

3. M/s. Axis Bank
   represented by Axis Bank - RAC,
   Arcot Plaza, Old No.38, New No.165,
   Arcot Road, Kodambakkam,
   Chennai - 600 024.

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