



**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY
CHENNAI**

COMPLAINT NO.29/2018, 33/2018, 34/2018 & 45/2018

Brig. J.S. Dharmadheeran (Retd) & 3 Others ... Complainants

Versus

Army Welfare Housing Organisation ... Respondent

Col. M. Narasimman, Lt. Col. S.M. Sundaram, Major Lakshmi Narayanan and Col. R. Ganesan, the complainants appeared before the Authority. Col. S. Chakraborty, Project Director, AWHO, Coimbatore and R. Nanjundan, Counsel of the Respondent appeared before the Authority.

Coram : Thiru S. Krishnan, I.A.S.,
Principal Secretary to Government
Housing & Urban Development Dept. and
Real Estate Regulatory Authority

30th October 2018

The complainants have sought the relief that the Raman Vihar Project of the Army Welfare Housing Organisation (AWHO), Chinnavedampatti Village, Coimbatore should be registered under the Real Estate (Regulation and Development) Act, 2016 in order to enable the allottees to claim compensation for delay in hand over and other benefits under the Act. The complainants have stated that AWHO obtained planning permission from DTCP in the year 2011 for constructing 496 apartments and other facilities in S.No.177/1pt. of Chinnavedampatti Village of Coimbatore. The apartments are meant for all ranks of Defence serving Personnel as well as retired officials. The buyers are veterans who are allottees in a self financed project developed by AWHO. The project completion date was 2014 but structural

works are still in progress. Out of 496 apartments, only 400 apartments have been taken up and work not commenced for the remaining 96 apartments. In addition, common facilities like Club House, Swimming Pool and Toilet are not completed. Work on Filtration plant is not yet commenced. Further, one of the complainants Thiru M. Narasimman has submitted a copy of letter No.NCO/SFA/155472/ AR/COM/2011 dated 03.08.2017 sent by the Executive Officer (Marketing) on behalf of the Managing Director, Army Welfare Organisation, New Delhi to the Project Director, AWHO, Coimbatore with a copy marked to Thiru M. Narasimman in which the Project Officer, AWHO, Coimbatore was requested to intimate the steps taken for registration of the Coimbatore Project under RERA Act.

2. Col. S. Chakraborty, Project Director, AWHO, Coimbatore and Thiru R. Nanjundan, Counsel represented on behalf of the Respondent. The Respondent has stated that they are eligible to be exempted from the definition of on-going projects under Rule 2 (h) (iii) of the Tamil Nadu Real Estate (Regulation & Development) Rules, 2017, and hence are not required to register the project. The Respondent has furnished a copy of Letter No.B/03030/COIMB/AWHO/RERA/04/Project/ dated 07.07.2017 submitted to the Local Planning Authority, Coimbatore as evidence of having complied with Rule 2(h)(iii). The Respondent has further stated that the project is developed for serving personnel, Ex-Servicemen including War widows on "No profit No Loss" basis. There is no violation of any terms and conditions executed between the AWHO and its registrants/allottees. The Respondent further reiterated that the LPA, Coimbatore has neither raised any query on the certificate and documents furnished for exemption nor was there any communication to that effect from the LPA. Hence, they presumed that

necessary steps have been taken by the Authorities concerned for exempting the project from registration. It was further stated that the LPA, Coimbatore has for the first time informed TNRERA that the request for exemption of AWHO from RERA was not considered. The Respondent vociferously contested the stand of LPA, Coimbatore and stated that the applicant is entitled to know the action taken on the application for exemption from the Act and that the LPA, Coimbatore has never informed the rejection of the application. Out of 400 dwelling units, 20 dwelling units has already been handed over to the allottees and the dwelling units of the complainants were fully ready for handing over and that AWHO being a Welfare Society, has given special incentive against the defect liability for a period of 18 months from the date of taking over of the apartments. The Counsel has also shown a copy of brochure printed during the year 2012 which shows clearly that in the first phase 400 dwelling units would be developed and based on demand in the second phase 96 dwelling units would be taken up. Accordingly, development of the project in two phases was taken in the year 2012 itself even before the RERA came into effect. Thus, they have taken all steps to get exemption from RERA as they satisfy the Rule 2 (h) (iii) for 400 Dwelling Units. Further, they assured that they will register the remaining 96 dwelling units with RERA as and when they take up the project. Thus, they request to exempt 400 dwelling units from RERA.

3. They have further stated that one of the complainants Brig. J.S. Dharmadheeran has filed a consumer complaint in CC No.836/2017 before the National CDR Commission, New Delhi by making the very same allegations and the case is presently subjudice.

4. This Authority forwarded the copies of the complaints and the respondent's written response to the Commissioner Town and Country Planning (CTCP) for their remarks since the CTCP is the competent Authority to receive the Architect / Engineer certificates under Rule 2 (h) (iii) and to publish on its website the list of exempted projects. The CTCP in Letter No.12055/2018/CP dated 10.07.2018 has enclosed a copy of Letter No.3962/2017/LPA-3, dated 03.07.2018 from LPA, Coimbatore addressed to CTCP along with a copy of the Inspection Report. The CTCP has also enclosed another Letter dt.27.06.2018 sent by LPA, Coimbatore to CTCP. Copy of letter No.355/2018/LPA-3, dt.03.04.2018 addressed to Col. M. Narasimman by LPA was also enclosed. In the Letter dated 03.07.2018, the Member Secretary i/c, LPA, Coimbatore has stated that no exemption has been given to AWHO project at Coimbatore. It was further mentioned that in Type E-1 Block; Type D – 1 Block; Type C – 1 Block; Type B – 2 Blocks (totally 5 Blocks) and filtration plant work have not been commenced out of the original plan approval. The Club House (Ground floor + 1st floor) building is in the completion stage and Swimming Pool and Toilet blocks are under construction. The buildings constructed are as per the approved plan and OSR area is kept vacant.

5. The written statements, filed documents and oral arguments by the complainants and the Respondents have been carefully examined along with the report furnished by the CTCP. The key issue which arises for determination is whether the necessary requirements of Section 3 of the Act read with Rule 2(h)(iii) been fulfilled in this case by AWHO to have the project exempted from registration with TNRERA. In this context, the relevant questions in this case are:-

- i. Is this a project of 496 dwelling units and hence incomplete as only 400 units have been taken up or are there two distinct phases of the project as envisaged in the Explanation under Section 3(2)?
- ii. Have the necessary statutory requirements under Rule 2(h)(iii) been fulfilled in this case?
- iii. Are there any acts of omission by LPA, Coimbatore as alleged by the Respondent and if so, can this Authority grant relief to the respondent against the alleged acts of omission of the LPA, Coimbatore?

6. As far as the first question is concerned, although the planning permission was obtained for construction of 496 units, that alone cannot establish that it is a single project of 496 units under the Real Estate (Regulation and Development) Act and with only 400 units having been taken up in the first phase, it is automatically an ongoing project. The Explanation under Section 3(2) envisages phased development and each phase constitutes a separate project. In this case the intent to develop 400 dwelling units in the first phase was clearly demonstrated as early as 2012 and known to the allottees as well as is apparent from Brig Dharmadheeran's initial submissions. Hence, the 400 units will have to be treated as the first phase and as one project and the 96 remaining units as the second phase and separate project for the purposes of the Act.

7. As regards the second question of whether the relevant statutory provisions have been complied with, the first proviso to Section 3(1) requires that in the case of "ongoing projects" which have not received completion certificates, the promoter is required to register the project

under RERA within three months of the Act coming into force. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 clarify the definition of “ongoing projects” in the light of the absence of practice of issuing completion certificates in areas outside the Chennai Metropolitan Area. Accordingly, Rule 2(h)(iii) states as follows:

“in the case of projects under execution outside Chennai Metropolitan Area, as no provision and procedure has yet been prescribed for issue of completion certificate, if the construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. 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 these rules with a copy marked to the office of the Director of Town and Country Planning. The Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority”.

8. There are three distinct parts to this Rule:

- a. The project should be structurally completed, i.e. ALL columns, beams and slabs should have been erected.
- b. The details including photographs and a certificate of structural completion from an architect or structural engineer have to be submitted to the concerned LPA, with a copy to the CTCP within 15 days of the notification of the Rules.
- c. The list of all such projects should be published on the official website of the CTCP and TNRERA on the 16th day.

9. In the present case, common amenities which are part of the project like the filtration plant, swimming pool and club house were not structurally completed even when the LPA inspected the project in July, 2018 and certainly not completed when the Rules were notified. Hence, the structural completion of ALL columns, beams and slabs had not have taken place. The AWHO has furnished the Certificate under Rule 2 (h) (iii) in Letter No.B/03030/COIMB/AWHO/RERA/04/Project/ dated 07.07.2017. Since the Rules were notified on 22.06.2017, the date of the letter submitted by AWHO was on effectively the last date or the 15th day from the date of notification. However, as per the date seal on the letter, it was received by the Local Planning Authority, Coimbatore only on 10.07.2017, which falls outside the 15 days from the date of notification of the rules. Further, in the list published by the Directorate of Town & Country Planning, this project was not included for exemption. Hence Rule 2(h) (iii) has not been complied with in this case.

10. On the third question, of whether there were acts of revision by the LPA, Coimbatore and whether they can now be remedied by this Authority, if the project did not get included in the list of exempted projects when it was published by CTCP in July, 2017, AWHO ought to have taken immediate action to represent and ensure inclusion, as the rule position is clear. It is not correct to throw the burden onto the CTCP and LPA to ensure compliance. It would not be appropriate for TNRERA to now direct CTCP to include the project in the exempted list at this late stage.

11. Further, in the Letter no NCO/SFA/155472/COM/2011 dated 08.03.2017, Lt Col Pankaj Subba, EO(Marketing) of AWHO has written to Sep M Narasimman that the Probable Date of Completion of the Coimbatore

Project has been postponed to December, 2017. In Letter No.NCO/SFA/155472/ COM/2011, dated 03.08.2017 addressed to the Project Director, AWHO, Coimbatore by the Head Office, New Delhi states that necessary steps to register the project with RERA may be taken.

12. The present project is thus clearly an ongoing project and liable for registration under Section 3(1). The exemptions offered under Rule 2(h) are upon the requirements of section 3 and hence relaxations those provisions will require strict compliance.

13. In view of the above, the Authority holds that Raman Vihar project of AWHO in Chinnavedampatty Village, Coimbatore is an ongoing project and accordingly directs the AWHO to register the project with TNRERA within 15 days from the date of this order.

Sd/-.....08.11.2018

Principal Secretary to Govt., H&UD Dept.,
and
Real Estate Regulatory Authority

/TRUE COPY/FORWARDED/BY ORDER


GRIEVANCE OFFICER