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 : 09.09.2020

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 58 of 2019

Sare Squires ...Appellant

..vs..

1. Sare Shelters Project Pvt. Ltd.
2. Dewy Terraces (Phase I) Flat Owners' Welfare Association. ... Respondents

(Impleaded as per orders in M.A.No.83/2019 dated 16.12.2019)

This appeal has been preferred against the order of the Regulatory Authority in C.No.212/2019 dated 12.06.2019 and came up for final hearing on 12.08.2020 in the presence of Advocate Mr.Allam Aslam, Counsel for the Appellant and the 1st Respondent appeared through counsels M/s.Mr.R.Arumugam, Mr.C.Chandrasekaran, Ms.A.Priyadarshini. The 2nd respondent appeared through counsel M/s. Rohini Ravikumar Mr.Mahesh Kumar, Mr.Sankara Subramanian. Having heard the arguments of the both sides through video conferencing and having stood over for consideration till this day and this Tribunal delivered the following order:

ORDER

1. The appellant / allottees association who are comprising of Apartment Owners in Sare Squires Crescent ParC Dewy Terraces OMR Road project. The 1st respondent is the promoter and the 2nd respondent is the Dewy Terraces (Phase 1) Flat Owners' Welfare Association. The appellant association has preferred the complaint before the Regulatory Authority for registration of the 1st respondent's project under RERA Act. The 1st respondent objected the registration of the project on the ground that before the RERA Act came into force, construction of the apartment is completed and possession handed over. Accepting the plea of the 1st respondent / promoter the Regulatory Authority decided the complaint on the preliminary issue regarding maintainability and found that the complaint is not maintainable. Aggrieved upon that the allottees 'Sare Squires' appellant owners association has come forward with this appeal. In this order the parties are described as per their original ranking as allottees and promoter for easy understanding.

2. According to the appellant / allottees the construction of the common amenities and facilities such as community hall, shops etc have not been commenced. While the construction of the club house has come to a standstill since past several years. The upper floor of the club house is partially structurally complete and it is unfit for use. A portion of the ground floor of the club house is used by the respondent as its marketing office. The sewage

Verified by RealEstate

treatment plant remained in complete and is inoperable. There is no permanent source of water supply in the project as the respondent has not installed either bore well or open wells on the real project or made alternative arrangements for pipe line water supply from the Tiruporur Town Panchayat. Instead, water for all the occupiers for the real estate project is ferried by tankers at the cost of the apartment owners. Furthermore, the apartment owners have lost the right of way and right of access over the solitary DTCP Approved Layout Approach / Access Road to the Real Estate Building Project. The promoter has not adduced any shred of evidence for establishing handing over possession of 'M' block in Phase-4. The promoter has also not enclosed even a single possession certificate in proof of handing over of M block of phase-4.

3. The possession certificate for handing over of the apartments are only issued by the promoter themselves and not by the Executive Officer, Tiruporur Town Panchayat. These are the main grounds put forth by the appellant / allottees. Hence the projects construction even though completed and handed over by executing conveyance deed and the allottees took possession and paid tax to the local body still the promoter is liable to rectify the defect as per Section 11 4 (a) (b) (c) and (d) and it is the bounden duty of the promoter. Hence this project of the promoter can be construed as an ongoing project and liable to be registered. Furthermore, as per Section 11 (4) (a) to (d) the promoter is liable to rectify the defects. The above said defects were admitted by the promoter. In such circumstances without full-fledged enquiry the defects cannot be rectified by the order of the authority. Hence the appellant / allottees rightly approached the Regulatory Authority and

without giving chance to prove their case the Regulatory Authority simply negatived the claim of the allottees as not maintainable. As the allottees are having prima facie case the complaint is absolutely maintainable.

4. According to the 2nd respondent the Learned counsel would contend that the allegations made by the appellant / allottees are true and the 2nd respondent is also affected due to the non availability of the proper access to the main road and in this aspects the Learned counsel for the 2nd respondent / allottees adopted the arguments of the appellant / allottees.

5. The Learned counsel for the promoters would contend that the responsibility of approach road and maintenance of the public roads is vested with Local body authority under the provisions of the Tamil Nadu Panchayats Act 1994 and the same cannot be agitated in the present proceedings. The promoter being the purchaser of 783 plots out of 1490 plots cannot be made responsible for any flaw or defect in the Lay out approval obtained by Lay out Promoter. Hence the claim for approach road is not maintainable. The maintenance of the common amenities have been handed over on 31.01.2018 as per the directions of the Police authorities due to various reasons. The appellant association have no locus standi to file the complaint since the construction was completed and possession was handed over as early as November 2014 for which the completion certificate by the competent authority have been issued on 24.12.2014. Furthermore, the 'M' block is also outside the scope of the Act as the construction of the block is structurally completed that all columns, beams and slabs have been erected and completed and certificate have been produced before

the local body authority who issued completion certificate prior to the commencement of the Act. Therefore, the Regulatory Authority rightly negatived the claim of the appellant.

6. Points for consideration :-

1. Whether the complaint of the allottees (appellant) is maintainable?
2. Whether the appeal deserves to be allowed or not ?

Point No.1 :

7. The allottees / appellant and the 2nd respondent purchased apartments from the promoter/1st respondent and they have also obtained sale deed from the promoters are all admitted facts and not disputed. The only grievance putforth by the appellant is that the common amenities and facilities such as community hall, shops, etc have not been commenced and functioning. The sewage treatment plant remained incomplete and inoperable. The specific contention of the respondent/promoter is that they are not liable for any flaw or defect in the Lay out approval obtained by the Lay out Promoter and compliance of the conditions thereof. Further they have not purchased the entire layout along with its liabilities and responsibilities. As part of goodwill gesture, the promoter keeping in view of the welfare of their customers took initiative to enter into a lease deed with the temple authorities. Regarding other amenities the promoter denied the allegations of the allottees. Further the main contention of the side of the promoter is that already construction is completed possession handed over hence RERA Act is not attracted. So the complaint is not maintainable. Before going to the merits of the case the legal provisions

regarding the rights and liabilities of the promoters as per the RERA Act have to be looked into.

8. Section 11 of the Real Estate (Regulation and Development) Act 2106 deals with functions and duties of the promoter. In the above said provisions, the relevant provisions are extracted as follows :

> ***(4) The promoter shall –***
> ***(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the agreement for sale, or to the association of allottees, as the case may be till the conveyance of all the apartments, plots or buildings, as the case may be, to the aloottees, or the common areas to the association of allottees or the competent authority, as the case may be :***
> ***Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for which such period as is referred to in sub-section (2) of section14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be to the allottees are executed.***
> ***(b) be responsible to obtain the completion certificate or the occupancy certificate, or both as applicable from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be :***
> ***(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allotttees;***
> ***(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.***

9. As per section 11 (4) (a) proviso clause the responsibility of the promoter with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of section 14, shall

continue even after the conveyance deed of all the apartments plots or buildings as the case may be to the allottees are executed. As per this provision mere executing of conveyance deed is not a criteria to leave from the clutches of the Act. The promoter cannot simply wash their hands after the execution of the conveyance deed. They are absolutely liable to rectify the defect. Now let us discuss the case in hand. As per the above said provision the specific allegation of the allottees / appellant is that loss of right of way and right of access over the approach road to the real estate building project. The promoter claimed as patta land for the approach road but the Learned RDO in his order dated 13.7.2018 has found as follows :

> "கோவில் பெயரில் பட்டா உள்ள நிலையில் அதனை தனியாரின் பெயரில் மாற்றம் செய்வதற்கு முன்பு இந்து சமய அறநிலையத்துறையிடம் விசாரணை செய்யாமல் வள்ளி தேவஸ்தானம் என்ற தேவஸ்தானம் இல்லை என்று முடிவு செய்து தனிநபர் பெயரில் பட்டா மாற்றம் செய்தது ஏற்றுக்கொள்ளத்தக்கதல்ல."

10. The HR & CE Commissioner has also passed an order in revision preferred by the promoter herein in which he has categorically found as follows :

> ***"The petitioners are business firms / real estate promoters. They are running their firm commercially with profit motive. They are not doing any service to the General public. They are not concerned about the interest of the public, that is why they knowing constructed the apartments without the proper approach road and it is not known how they got plan approval without approach road. The petitioner who failed to disclose the fact that there was no approach road or the approach road is only temporary to their property while selling the houses to the public, cannot blame the Joint Commissioner for not considering the above facts. Further in the plan, the petitioner had shown Community hall, Fire Station and Police station will be constructed in the land belonging to the temple. It is clearly evident that the petitioners have fraudulently and***

collusively obtained plan approval and they cheated the general public who purchased the plots from them. In view of this, the Executive officer is hereby directed to send a letter and lodged a complaint before the competent authority for the fraudulent approval of the plan showing the temple land.

Therefore, for the foregoing reasons, I find no infirmity in the order passed by the Joint Commissioner, Vellore. Accordingly the order dated 27.2.2014 of Joint Commissioner, Vellore is hereby confirmed and the revision petition is dismissed as devoid of any merit."

11. In this aspect the learned counsel for the respondent has filed a Typeset in page no.57 has admitted as follows :-

"It is submitted that the Tahsildar, Tiruporur, called for a peace meeting on 04.05.2017 in response to the representation dated 18.03.2017 by complainant on the same issue wherein the following dignitaries attended the meeting :

a. Representative of the Respondent company.
b. Representatives of the Sare Squires
c. Executive Officer of A/m Kandasamy Temple
d. Executive officer, Town Panchayat, Tiruporur
e. Inspector of Police, Tiruporur Police Station
f. Revenue Inspector Tiruporur and
g. Village Administrative Officer, Tiruporur

It has been directed and permitted by the Tahsildar to relay Black Top roads of the said approach road leaving a portion of road that comes under temple land as mud road for time being till the lease is renewed further. The respondent have agreed to comply and complied with the said directions of the Tahsildar only as goodwill measure by incurring about Rs.70,00,000/- during July-August 2017.

12. So the allegation of the allottees/appellant was admitted regarding the approach road. The promoter/respondent in the written submission filed in Typeset page 56 has stated that they have purchased only 783 plots out of 1490 plots so they cannot be made responsible for any flaw or defect in the lay out approval obtained by the layout promoter. Further would contend that the responsibility of the approach road and the maintenance of the public roads are

vested with Local body authority under the provisions of the Tamil Nadu Panchayats Act 1994 and the same cannot be agitated in the present proceedings. The promoter went to the extent of saying that they are not liable for any dispute with regard to the approach road. The promoter/respondent has denied the liability in page no. 56 of the written submission. In page No. 53 and 54 of the said written submission has stated as follows :

> ***"The respondent company had purchased the 1460 approved plots, 16 farm lands, children school and 2 stops from M/s.Jubliee Plot & Housing Pvt Ltd., administering about 24,79,286 ft^2 vide sale deed dated 28.12.2007 that was registered as document number 11625 of 2007. The respondent company having acquired the said lands obtained the DTCP approval for building plan vide order bearing No.Na.Ka. 99/2010/BA2 dated 19.03.2010 Building Plan sanction No.BP.DTCP/50 dated 19th the 2010 wherein the mandatory conditions like installation of solar water heating system, rainwater harvesting, permanent water supply for drinking and other purposes at the expenditure of the respondent company, to prove adequate fire extinguishers, removal of Sewerage, car parking facility etc. Mamallapuram Local Planning Commission Authority vide their proceedings dated 25.05.2010 emphasized compliances of the DTCP imposed conditions by the respondent company. Further Tiruporur Town Panchayat vide its order dated 04.06.2010 imposed a similar conditions imposed by the DTCP and directed compliance of the same.***

The facts stated in the above said paragraph is contra to the facts narrated in page no. 56 at paragraph no.7(A) and (B).

13. Now let us see the layout approval i.e., DTCP approval No.30/06 dated 22.02.2026 in which the conditions narrated at page no. 30 to 33 of the typeset of the appellant in which in condition no. 19 (a) simply in regard to the technical approval, stated as follows:

> "மேற்படி மனைப்பிரிவிற்ககு நகர் ஊரமைப்புத்துறையால் தொழில் நுட்ப ஒப்புதல் மட்டுமே வழங்கப்பட்டுள்ளது என்பதால் மனைப்பிரிவிற்கான இட உரிமைத் தொடர்பாக வில்லங்கம் ஏதேனும் இருப்பின் உள்ளாட்சியினரால் பரிசீலித்து முடிவு எடுக்கப்படவேண்டும்.

மனுதாரர் சமர்பித்துள்ள நில உரிமை ஆவணங்களின் படி நில உரிமம் குறித்து பரிசீலிக்கப்படுகிறது. எனவே உண்மையின் நில உரிமம் இல்லாத இடத்திற்கு மனைப்பிரிவு அங்கீகரிக்கப்பட்ட காரணத்திற்காக எந்த உரிமையும் கொண்டாட முடியாதெனவும் தெரிவிக்கப்படுகிறது."

14. In Section 11 (4) (c) it was specifically mentioned that "be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land specifying the period of lease". Admittedly the allottees obtained lease only for 3 years. They have not renewed the same. After the order of the HR & CE Commissioner the Executive Officer of the Temple made a complaint and portion of the road situated in the temple land was dismantled hence the trouble started. The allottees agitated before the Taluk Office and peace committee was formed and after negotiation the Tahsildar directed and permitted to relay Black top roads of the said approach road leaving a portion of road that comes under the temple land as mud road for time being till the lease is renewed further. It was also admitted by the promoter in page no. 90 of their typed set. The promoter in their revision petition have stated as follows :

> ***"There are about 1500 families who are using the subject property for ingress and egress from their flats to the public road. All the school going children of the said residents are also using the approach road to reach their schools daily. All the users of the subject property would be put into irreparable loss and hardship in the event of preventing them from using the same. The Joint Commissioner has failed to consider the public utility, interest and benefit at large involved in the present matter. There is no other alternative access for the public in large except through the subject property."***

15. The above said admission itself is substantial evidence for the allegations of the appellant / allottees while obtaining approval the

promoters have not disclosed the said fact as per Section 11 (4) (c). That is why the temple Executive Officer took steps by way of complaint on the basis of the Order of the Commissioner HR & CE. The above said evidences and admissions clearly proved that there is no alternative access for the allottees. The approach road was not properly gifted to the Town Panchayat. In the gift deed also the disputed land, belonging to the temple does not find place. So the access road is a major defect and moreover it amounts to structural defect for the rectification of the said defect mere execution of conveyance deed alone is not sufficient and till the defect is rectified the allottees need not approach any other forum excepting RERA Authority. There is a force in the arguments of the Appellant's Advocate that the learned Regulatory Authority failed to consider this aspect even failed to mention about the access road in its order.

16. Regarding other common amenities namely Gym, Swimming pool, Indoor Games room, Reading Room, Childrens' play area, Air conditioned Multipurpose function hall and dining area for which they have provided 12, 146 sq. ft proportionate to the said project how far it is true or not have to be assessed only by way of evidence. Regarding Sewage Treatment Plant the promoter has said that it was handed over on 31.01.2018 as per the direction of the Police authorities. The direction of the police itself clearly proves that till their direction they have not completed so without thorough enquiry the amenities in-complete and in-operable cannot be assessed. The promoter shall be responsible for providing and maintaining essential services till the taking over of the same by association of the allottees. Regarding the completion certificate and occupancy certificate by the competent authority as per the local

laws mere getting letter from the alottees alone is not sufficient. The completion certificate and occupancy certificate shall be issued only by the competent authority by certifying that the Real Estate Project has been developed according to the sanction plan, layout plan and specification as approved by the competent authority and local laws. 2922 sq. ft have been complied or not for which on the side of the promoters they have not given any proper answer.

17. They have produced s.no.1 to 25 as possession certificate in their typed set page no.1 to 24. They have not issued as per the above said definition. In such circumstances this Tribunal comes to a conclusion that the allottees/appellant are having a prima facie case and the complaint is maintainable as per Section 11 (4) (a) to (d) of the Real Estate (Regulation and Development) Act 2016. The point is answered accordingly.

Point No.2:

18. The Learned authority came to a conclusion that in view of the completion and handing over of the apartments to the members of the complainant Association much before the coming into effect of the RERA Act the question of registration of project Phase 1 to 4 does not arise.

19. The allegations putforth by the allottees/appellant how far it is true and relevant and whether it can be agitated before the Regulatory Authority has not been discussed. Handing over of possession before the Act came into force is a single line order by itself is not sufficient to

decide the rights of the parties. The intention of legislature has to be followed in letter and spirit.

20. The Real Estate (Regulation and Development) bill was introduced in 2013 and passed by the parliament and came into force in the year 2016. In between the period this bill was introduced in Rayasabha on 20.08.2013 and was referred to standing committee of urban development on 09.09.2013 for examination and report thereon. The Committee had sought public opinion through a press release and analysed the memoranda/suggestions received from various stakeholders/experts such as CII, FICCI and Associations working in the field of real estate and the committee filed this report on 12.02.2014. Background of the bill is stated as follows :

> ***"Over the past two decades the demand for housing has increased manifold. In spite of Government's efforts through various schemes, it has not been able to cope up with the increasing demands. Taking advantage of the situation, the private players have taken over the real estate sector with no concern for the consumers. Though availability of loan both through private and public banks have become easier, the high rate of interest and the higher EMI has posed additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. At this juncture the need for the Real Estate (Regulation and Development) Bill is felt badly for establishing an oversight mechanism to enforce accountability of the Real Estate Sector and providing adjudication machinery for speedy dispute redressal.***

1.2 The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.

21. The committee concluded that there is absence of professionalism and standardization and lack of adequate consumer protection. The lack of standardization has been a constraint to the healthy and orderly growth of the industry. In this case the promoter has purchased from the layout promoter 1460 approved plots, 16 farm land, children school and 2 shops. But now the promoter took a defence that the approach road maintenance is vested with the local body authority and more over layout approval obtained by the layout promotor and this promoter is not liable. This promoter steps into the shoes of his vendor. All the conditions responsibilities imposed to the vendor is applicable to this promoter also. But the promoter simply evaded the responsibility and only at the instigation of public body namely Tahsildar and police officials alone making arrangements to comply the requirements namely the common amenities. The purpose of the act is sale of Real Estate project in an efficient and transparent manner and to protect the interest of consumers in the Real Estate sector and to establish an adjudication machinery for speedy dispute redressal.

Verified by RealEstate™

22. In this case the promoter has not acted transparently to the allottees. They have obtained the approval by suppression of facts regarding access roads and regarding other amenities. If any defect structural or otherwise is brought to the notice of the Real Estate Authority, the authority is having ample power to set it right. If the power vests with the Real Estate Authority is not invoked it may defeat the purpose of the Act itself. The order of the Learned Authority without discussing the merits and demerits of the complaint is liable to be set aside. Therefore this Tribunal comes to a conclusion as appeal is absolutely deserves to be allowed.

23. In the result this appeal is allowed with costs. The order of the Real Estate Regulatory in C.No.212 of 2019 dated 12.06.2019 is set aside and the complaint in C.No.212 of 2019 is maintainable. The Regulatory Authority is directed to restore C.No.212/2019 to file and dispose the complaint by providing opportunity to both sides for letting in evidence and dispose the complaint within three months. The connected Miscellaneous Applications are closed.

This Order is dictated to the Stenographer, transcribed and typed in the computer by her, corrected and pronounced by us in the open court on 09.09.2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

Verified RealEstate