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 08.12.2020

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

Appeal Nos. 68 and 69 of 2019

Appeal No.68 of 2019

M/s. Sabari Realtors Pvt. Ltd., ... Appellant

..vs..

1) M/s.Fifth Estate Communications Private Limited
Rep by its Managing Director
Mr.Ganesh Baliga

2) M/s.Pioneer Homes ... Respondents

Appeal No.69 of 2019

M/s.Pioneer Homes ... Appellant

..vs..

1) M/s.Fifth Estate Communications Private Limited
Rep by its Managing Director
Mr.Ganesh Baliga

2) M/s. Sabari Realtors Pvt. Ltd., ... Respondents

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These Appeals were filed against the order of the Regulatory Authority, Chennai in C.No.219/2019 dated 4.9.2019 and was taken on file on 29.11.2020 and came up for final hearing on 11.11.2020 in the presence of M/s.D.Bennington, R.Sibi Chakravarthy, Counsel for the Appellant in A.No.68/2019 & 2nd respondent in A.No.69/2019 and M/s.S.Rajaskear, Sashidhar Sivakumar, Ashutosh Potharaju, Counsel for 1st respondent in A.Nos.68 69 of 2019 and M/s.K.Pradeep Raj, Sathish Kumar.P., Counsel for the 2nd respondent in A.No.68/2019 & appellant in A.No.69/2019 and Advocate Mr.Koushik, for RP. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this day and this Tribunal delivered the following:

COMMON ORDER

1. The Appellant is the promoter. The 1st Respondent is the Allottee/Complainant. The 2nd respondent is the Financial partner of the Appellant. The 1st respondent/allottee is a Private Limited Company and is doing Advertising Agency business. The 1st respondent company was engaged by the appellant company and its group companies namely Sabari Inn Pvt. Ltd., Sabari Nest Inn Pvt. Ltd and they were clearing the bills initially, later started defaulting and the outstanding towards the unpaid bills became very high to the tune of Rs.58,80,196/-. In acknowledging the debt, the appellant group in settlement of the pending liability, offered to allot two flats in their project, Margosa Tower Flat No.601 on the 6th floor., Flat No.906 on the 9th floor and accepted by the 1st respondent and allotment letter, were issued by the appellant. Then UDS sale deed was executed in favour of the 1st respondent and construction agreement was also entered into between the appellant and the 1st respondent. Since the

appellant was not able to complete the project, without notice to the allottees the appellant handed over the project to the 2nd respondent. The 2nd respondent also is not interested to complete the project. Hence the 1st respondent/allotee preferred a compliant before the authority for registration of the project and compensation for the delay in handing over of flats. After contest the authority directed to register the project and to hand over the flats to the 1st respondent/allotee. Aggrieved upon that both the appellant and the 2nd respondent preferred separate appeals A.Nos.68/2019 and 69/2019 before this Tribunal on 30.10.2018.

2. One of the allottee of the Appellant by name Rakesh.P.Sheth entered into agreement to purchase flat from appellant and paid Rs.13,90,100/- on 02.07.2011. Since the appellant failed to complete the construction as promised and cancelled the agreement on 17.3.2012. For which the appellant replied on 08.12.2016 along with cheque for Rs.1,00,000/- towards refund. Then after exchange of legal notice the said allotee preferred an application in IBA 471/2019 before NCLT Chennai and ordered on 30.09.2019 by appointing RP to take over the management of the appellant company and the RP Mr.S.Amarendran filed an affidavit to that effect. The appellant counsel also filed a copy of NCLT order along with memo.

3. In both the appeals both the appellants have raised 19 grounds. Out of 19 grounds 13 grounds in both appeals are the same grounds. The remaining 6 grounds alone are different in both the appeals. The grounds No.1,2,17,18,19 are all formal grounds. According to the appellants the authority has no jurisdiction to pass any direction to complete the project and hand over within the stipulated time. The grounds Nos.'e' and 'm' 'n'

are one and the same. The grounds in A.No.68/2019 'h to l' are with regard to passing of consideration. The grounds No.'p' in A.no.68/2019 with regard to financial partnership and not related to construction and completion.

4. In A.No.69/2019 the specific grounds with regard to the appellant related with financial relationship and not as a construction partner and not as a promoter. Complaint u/s 31 can be against the promoter, allottee or real estate agent alone and not against financial partner. According to the appellant, the appellant is neither promoter nor allottee, or a real estate agent.

5. From the above narrated grounds of appeal of both the appeals the main grounds are:

a) No consideration was passed from the 1st respondent to promoter.

b) The appellant in A.No.69/2019 is only a financial partner and not a promoter.

c) The authority has no jurisdiction to pass any direction to complete the project and handover the same within the stipulated time.

How far the above facts are sustainable and tenable as per the provisions of the Real Estate Act, 2016 to be analysed. For which the following points has arisen for consideration.

6. Points for consideration:-

1. Whether the allegation that the consideration for the sale of two flats has not passed is true?

2. Whether the Regulatory Authority is empowered to direct the promoter to complete the project and hand over to the allotee within the stipulated time?

3. Whether the allegation that the appellant in A.No.68/2019 is not a promoter and only a financial partner is true?

4. Whether these appeals deserves to be allowed or not?

Point No.1:

7. According to the appellants no consideration was passed for the sale of flats. According to the 1st respondent/allottee, the amount due from the appellant/promoter for the bills to advertising service was accepted as consideration and to that effect to prove the same the allottee/1st respondent produced evidences in typed set pages

Page 35:

> ***"Sub : Outstanding dues to Fifth Estate Communications Pvt. Ltd.***
>
> ***Dear Sir,***
>
> ***We hereby confirm that as on date we owe M/s.Fifth Estate Communications Pvt. Ltd. a sum of Rs.26,83,258.00. The details of these outstanding amounts are in the attachment.***
>
> ***We confirm that we will make every endeavour to settle these bills at the earliest.***

Page 36:

> ***We hereby confirm that as on date we owe M/s.Fifth Estate Communications Pvt. Ltd. a sum of Rs.31,96,938.00. The details of these outstanding***

amounts are in the attachment and accounted in Sabari Group of Companies book.

Page 44:

The Allottee has already paid the entire aforesaid sum of Rs.31,17,146/- (Rupees Thirty one Lakhs seventeen thousand one hundred and forty six Only)

Page 72 :

The Allottee has already paid the entire aforesaid sum of Rs.23,10,874/- (Rupees Twenty Three Lakhs Ten Thousand Eight Hundred and Seventy Four Only)

Page 111 :

'Whereas the Vendors herein have offered to sell 480,99 sq. ft. of Undivided Share in the Land described in the Schedule 'A' hereunder, which is more fully described in the Schedule 'B' hereunder, to the Purchaser and the Purchaser herein has agreed to purchase the Schedule 'B' property for the consideration of Rs.6,15,798/- (Rupees Six lakhs fifteen thousand seven hundred and ninety eight Only) free from all encumbrances and the Vendors herein have agreed for the same :

NOW THIS DEED OF ABSOLUTE SALE WITNESSETH AS FOLLOWS:

That in consideration of the aforesaid recitals, agreements and in consideration of the sum of Rs.6,15,798/- (Rupees Six lakhs fifteen thousand seven hundred and ninety eight Only) already paid by the Purchaser to the Power Agent of the Vendors herein, the receipt of which sum the Vendors herein do hereby admit and acknowledge and acquit the Purchaser from the payment of any further amount, the Vendors do hereby grant, transfer, convey, sell and assign UNTO the Purchaser by way of absolute sale the property

Page 146 :

As there was a less cash flow, it appears instead of making the payments as per invoices, Sabari realtors

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have allotted 2 flats in the tower called Margosa flat no.601 and 906.

How far the above evidences are tenable, acceptable and legally valid to be analyzed legally. For which the answer is available at statute itself namely The Transfer of Property Act,1882.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Such a transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the settler places the buyer, or such person as he directs; in possession of the property.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

MULLA

THE TRANSFER OF PROPERTY ACT

8th Edition at Page No.405

Recital of payment – A false acknowledgment of receipt of price by a recital in a deed does not estop the seller from giving evidence as against the buyer that he has not received payment. The Privy Council in Shah Lal Chand Vs. Indarjit said that it was "settled law, that notwithstanding an admission in a sale deed that the consideration has been received, it is open to the vendor to prove that no consideration has been actually paid. If it was not so, facilities would be afforded for the grossest frauds." But such a recital may give rise to a presumption of payment. Bai Devmani v. Ravishankar (1929) 53 Bom. 321, 116 I.C. 236, (29) A.B. 147, and see Raghavendra v. Venkatasami (1920) M.W.N.752, 124, I.C. 277, (30) A.M. 251; Goli Ramaswami v. Narla Jagannadha Rao (1962) A.Andh.Pra 94)

8. As per the above commentaries it is very clear that though the sale deed may recite that the consideration had been paid, the parties can adduce evidence to show that the recital was not correct. Section 92 of Evidence Act does not bar such evidence. In this regard Honble Supreme Court has laid down the law that an admission is the substantial evidence against the person those who admits earlier which is reported in

AIR 1977 SC 1724

Thiru John & Anr vs Returning Officer & Ors

It is well-settled that a part's admission as defined in sections 17 to 20 fulfilling the requirements of section 21, Evidence Act is substantive evidence proprio vigore. An admission, if clearly and unequivocally made is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that 'what a party himself admits to be true may reasonably be presumed to be so' and until the presumption was rebutted the fact admitted must be taken to be established. In the instant case, there are a number of clear admissions in prior declarations precisely and deliberately made in solemn documents by Shri John. These admissions were made ante litem motam during the decade preceding the election in question. These admissions were entitled to great weight. They had shifted the burden on the appellant (Shri John) to show that they were incorrect. The appellant had miserably failed to show that these admissions were incorrect.

9. In the above case the appellant declared his age and date of birth. But subsequently he changed his date of birth. Unless and until already declared date of birth is proved as false that date of birth holds good.

10. On the guidance of the law laid down by the Apex court in the above case we have to analyse the case in hand. In this case the appellant/promoter admitted the consideration as already paid. Now the appellant took the defence that no consideration was passed. It is their

bounden duty to disprove the recitals in the sale deeds as false. But the appellants have not adduced any piece of evidence to that effect. In such circumstances mere allegation alone is not sufficient against the registered document. But such a recital may give rise to a presumption of payment. Therefore this tribunal comes to a conclusion that the allegation that consideration for the sale of flats has not passed, is not true. The point is answered accordingly.

Point No.2:

11. The specific contention of the Learned counsel for the appellant is that the authority has no power and jurisdiction to issue direction to complete and hand over possession within the stipulated period. To answer this question referring the following provision of Real Estate Act is relevant one. They are as follows:

Section 34:

The functions of the Authority shall include—

(a) to register and regulate real estate projects and real estate agents registered under this Act;

(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;

(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, for public viewing, and enter the names and photograhps of real estate agents who have applied and registered under this Act, with such

details as may be prescribed, including those whose registration has been rejected or revoked;

(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

Section 37:

Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned. 38. (1) The Authority shall have powers to impose penalty or interest,

Section 38:

Powers of Authority.

(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.

12. As per section 17 of the Act it is the responsibility of the promoter to execute conveyance deed within 3 months from the date of issue of completion certificate. Handing over of physical possession, handing over of necessary documents etc is the responsibility of the promoter. If the promoter fails to comply the authority is empowered to issue direction u/s 34 and 37 of the Act. Then the authority is empowered to levy penalty and compensation as contemplated u/s 59 to 69 of the Act. The point is answered accordingly.

Point No.3:

13. The specific defence of the appellant in A.No.69/2019 is that on 28.11.2018 email itself the 1st respondent accepted the appellant in A.No.69/2019 as a financial partner alone and not as a promoter. The above said email is produced in page No.148 of the typed set. In which the representatives of allottees sent a mail to the appellant in A.No.69/2019 one Ms.Shanthi.

" Dear Ms.Shanti,

When Mr.Ramani introduced you and Pioneer Homes to the investors at the Gandhi Nagar Club, he mentioned three things.

1. ***Pioneer Homes is coming in as a financial partner and the construction and completion of the project is Sabari's responsibility.***
2. ***The project will be completed by January 14,209.***
3. ***The Club House and other facilities will also be built.***

Subsequently, by shifting Sabari's office to Pioneer Homes office and terminating all Sabari staff you also took over Sabari's responsibility of "project management" and completion of the project on time. This was in addition to your responsibility as a financial partner.

While accepting the responsibility of being a financial partner, you should have done a proper estimation of the financial requirements, the construction requirements and carried out a through project evaluation.

So having taken over the project, now you cannot attempt to change history. You were aware of the fact that close to 50 apartments were investors relocated from other towers. You cannot say now that these relocation's are invalid. You might not have done it if you were handling the project since inception, but that is not the case here. You came into the project half way through and so you inherited both the good and bad decisions about the project taken by the earlier management.

Given the above, you demand that relocated investors have to pay Rs.500/- more per sq. ft. is wrong and unacceptable. Please do not insist on this amount from the investors. Any amount required to complete the project over and above what has already been contractually signed for by the individual investors, must be brought in by Sabari and Pioneer Homes. It is your responsibility to organize for the same.

We investors are not concerned about the price at which you intend to sell the unsold apartments. Market conditions and pioneer Homes ability to sell will define it.

14. In the above email narrated the wording mentioned by Mr.Ramani to the investors the three points. The next sentence "This was in addition to your responsibility as a financial partner. You come into the project half way through and so you inherited both the good and bad decision.

15. The words spoken by Mr.Ramani as a financial partner is repeated by investors representatives from mail and not by the 1st respondent herein. So mere sending of mail alone cannot change the status of the appellant in A.No.69/2019 as a promoter. Further more if a document is referred it must be read as whole, it should not be referred as pick and choose. So the entire mail reveals that the appellant in A.No.69/2019 undertook the management of the appellant in A.No.68/2019. Hence both the appellants are sailing in the same boat in the capacity of promoter alone. The point is answered accordingly.

Point No.4:

16. Both the appellants took the plea to relieve from the clutches of the Act. But the above three points are answered against the appellants. So the grounds put forth by the appellants are not sufficient to interfere with the findings of the Authority. Therefore this Tribunal comes to a conclusion that these two appeals does not deserves to be allowed. The point is answered accordingly.

A.No.68/2019

17. In the result the appeal is dismissed with costs. The order of the authority in C.No.219/2019 dated 4.9.2019 is confirmed. The connected Miscellaneous Applications are closed.

A.No.69/2019

18. In the result the appeal is dismissed with costs. The order of the authority in C.No.219/2019 dated 4.9.2019 is confirmed. The connected Miscellaneous Applications are closed.

This order is directly dictated to the Stenographer and typed by her in the computer and corrected and pronounced by us in the Open Court on 08th day of December, 2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

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