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 01.12.2021

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

Appeal No. 40 of 2020

1. J. Sethu Ragu Raman
2. D.Sathiyapriya ..... Appellants

-Vs-

1. M/s. XS Real Properties Private Limited
   Rep. by its Chief Executive Officer
2. Mr.Sudhakara Gupta
   Chief Executive Officer
3. The Deputy Director,
   Directorate of Town and Country Planning,
   Gokulapuram, Chengalpattu. ... Respondents

This appeal has been preferred by the appellant against the order of the Tamilnadu Real Estate Regulatory Authority in C.No.353 of 2019, dated 09.01.2020. This appeal was taken on file 03.02.2020 and came up for final

hearing before this Tribunal in the presence of Advocate M/s. Ralph.V.Manohar, R.Ramana, and K. Lekkha, Counsels for the Appellant and M/s.Shivakumar and Suresh, Counsels for the respondents 1 & 2. 3rd respondent appeared in person. 3rd respondent not appeared in video conferencing. Having heard the arguments of both sides through video conferencing and having stood over for consideration of this Tribunal till this date and delivered the following:

ORDER

1. The home buyers are the appellants and the respondents are the promoters. To avoid confusion, herein after, the parties are called in this appeal, as per their original rankings as home buyers and promoter. According to the homebuyers, they had purchased on the basis of the brochures and advertisements of the promoters. In the above said advertisements it has been stated that Viva city was perceived to be a project consisting of 7 Blocks (A,B,C,D,E,F & G) and with a total number of 352 residential units. Various amenities are also promised. The promoters obtained planning permission for construction of 4 Blocks namely Block-A consisting of 32 dwelling units and Block-B consisting of 48 dwelling units, Block-C consisting 48 dwelling units, Block-D consisting of 48 dwelling units each altogether a total number of 176 dwelling units are to be constructed, according to the

approval plan. The promoter has completed Blocks B and C and sold the residential units to various persons including the appellant. The residential units were handed over to the homebuyers in the month of April, 2017. After handing over the Block-B and C in the project of Viva City, the promoter behind the back of the purchasers had revised the original approved plan dated 07.02.2013, without the knowledge of the allottees in Blocks – B and C. None of the allottees were informed with regard to the new approved plan. The allottees were made to believe through the brochures and advertisements of the promoters that the project would consist of only 352 dwelling units with ample open space and broad driveways. But now to the contrary the promoter had obtained a revised plan wherein he has proposed to construct 4 Blocks namely A,D,E, and F consisting of 475 dwelling units. The home buyers further stated that the increase in the total number of dwelling units by more than 50% will definitely cause drainage problem and disposal of garbage will be a herculean task. The huge number of two wheelers in the "En Veedu" project will cause congestion in the internal roads and approach roads causing difficulties for B and C blocks residence. Even the movement of emergency vehicles such as fire engine or ambulance will be difficult. The OSR provided in the project is not sufficient and adequate for such a huge ground. The project VIVA City as advertised by the promoter had a good appreciative value for the purchasers. As per the site plan provided to

the home buyers and other purchasers of blocks B and C the entire project VIVA city was neatly done by providing adequate parking spaces for all the residences along with all amenities. Now, the new revised plan which has been obtained by the promoter without consulting and informing the purchasers of blocks B and C had depreciated the value of the residential units in blocks B and C thereby affecting the resale value and the rental value. Hence the purchasers preferred this appeal on the following main grounds:

- The promoter has obtained consent from the purchasers without full disclosure was not an informed consent and the same is a blanket consent. Such blanket consent is invalid and does not bind the purchasers.
- As per Section 14 of the RERA Act any alteration and modification of the approved plan cannot be permitted without the consent of the purchasers.
- The purchasers in Blocks B and C are co-owners in the entire land and their consent is mandatory to revised approved plan, irrespective of the fact that the construction of the Blocks B and C had already been completed.
- The revised plan dated 31.10.2017 was obtained only after the notification of the RERA Act and therefore the purchasers of Blocks B and C are entitled to approach the Regulatory Authority for the reliefs under the RERA Act.

- The justification of the home buyer that he had utilized the Government Scheme "Housing for all" for the increase in the units in the project cannot be considered as the unilateral decision of the promoter cannot bind the purchasers.

2. The learned counsel for the home buyers would submit that the above said grounds were not considered by the Regulatory Authority and simply accepted the defence put forth by the promoter and reproduced the same in paragraph 57 of the order. Therefore the order of the Regulatory Authority is liable to be set aside and this appeal has to be allowed.

3. The learned counsel for the promoter would submit that the grounds put forth by the home buyers are not sufficient since they are against the Rule No.4 of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and construction agreement and sale deed dated 13.07.2013 and 8.8.2013 respectively. Therefore the order of the Regulatory Authority is not liable to be set aside and this appeal has to be dismissed.

4. Points for consideration:

1. Whether the promoter is exempted under Section 14 (2) (ii) of the Real Estate (Regulation and Development) Act, 2016?

2. Whether the appeal deserves to be allowed or not?

Point No.1:

5. The home buyers and the promoter entered into construction agreement and sale deed on 13.7.2013 and 8.8.2013 respectively with regard to their residential units in Blocks B and C. Possession of the residential units was handed over in the month of April 2017. These are the admitted facts and there is no dispute.

6. The real dispute between the home buyers and the promoter is that the promoter obtained building plan approval for blocks A, B, C & D and the promoter constructed B and C blocks only and handed over possession in the month of April 2017. After the coming into force of the Real Estate (Regulation and Development) Act, 2016 the promoter obtained revised plan on 31.10.2017 and proposed to construct buildings in the space provided for future development in the original approved building plan. In the above said area the promoter proposed to construct blocks E and F under the Prime Minister Housing Scheme – Pradan Mandri Avas Yogna in the name as "En Veedu" in low budget. Under this scheme number of dwelling units increased more than 50% and it will cause congestion in the internal roads and approach roads causing difficulties for B and C block residents. The OSR provided in the project is not sufficient. The promoter has not disclosed the above said facts in the brochure as well as in the advertisements. The promoter changed his project for more dwelling units on the basis of the

announcement of Prime Minister's Housing Scheme. Due to this scheme the promoter is very much benefitted at the cost of the home buyers of B and C blocks and cause inconvenience to the blocks B and C purchasers. The specific contention on the side of the home buyers is that the modification or revised building plan without the consent of the 2/3rd of the purchasers of blocks B and C amounts to violation of Section 14. How far the arguments of the home buyers are sustainable has to be analyzed. For analyzing the same the relevant provision and relevant Rules are necessary one which runs as follows:

Section 14 of the Real Estate (Regulation and Development) Act 2016

Section 14 (2) (ii): Adherence to sanctioned plans and project specifications by the promoter.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Rule 4(1) of the Tamil Nadu Real Estate (Regulation and Development) Rules 2017

4. Disclosure by promoters of existing projects.-

(1) On the date of coming into force of sub-section (1) of section 3 of the Act, promoters of all ongoing projects shall within the time specified in the said sub-section, make an application to the Authority in the form and manner provided in rule 3.

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Explanation I.- Any agreement already entered between the promoter and the allottee before commencement of these rules shall not be affected.

Explanation II .- If the project has been conceived to be developed in phases, where the plans for the initial phase are approved by the planning authority prior to the date of coming into force of sub-section (1) of section 3 of the Act, then for such projects the requirement of obtaining two third consent from existing allottee, under clause (ii) of sub-section (2) of section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phase/s of development, provided the scheme of developing the project in phased manner has been agreed upon by the allottee and promoter in the agreements executed between them;

Explanation III.- If the approval from the planning authority is obtained for larger extent of land, but where the development is conceived to be in phases, the promoter shall be permitted to register each phase as an independent project with the Authority. In such case, the requirement of obtaining two third consent from existing allottee under clause (ii) of sub-section (2) of section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phases of development, provided the development in phases has been agreed upon by the allottee and promoter in the agreements executed between them, when there is no reduction in the common area and there is no change in the total built up area of the registered phase/project.

7. As per section 14(2)(ii) of the Real Estate (Regulation and Development) Act 2016 any other alteration or addition in the sanctioned plan within the project without the previous written consent at least 2/3^{rds} of allottees is not possible. But the Tamil Nadu Rules is having exemption for certain categories which is explained in the Rule 4(1) Explanations II and III. As per the Explanation II if the project has been conceived to be developed in phases, where the plans for the initial phase are approved by the planning

authority prior to the date of coming into force of subsection (1) of section (3) of the Act, for such project requirement of obtaining two third consent is exempted for revised plans. As per Explanation III if the approval from the planning authority is obtained for larger extent of land, but where the development is conceived to be in phases, in such cases requirement of obtaining two third consent is exempted. In Explanation II, plan approval obtained prior to the commencement of the Section 3. In Explanation III, plan approval obtained for larger extent but the development is conceived to be in phases. Now in the case in hand the promoter obtained approval prior to this Act for blocks A,B,C & D. He has constructed only B and C blocks. Blocks A, D, E F not yet constructed and obtained revised plan after the commencement of the Act. Originally, the promoter has obtained approval for larger extent of 4 blocks but constructed only two and after the enforcement of this Act revised the plan for blocks A, D, E & F. The promoter is absolutely entitled to revise the plan as per Explanation III with a proviso clause that the development in phases has been agreed upon by the allottee and promoter in the agreements executed between them and when there is no reduction in the common area and there is no change in the total built up area of the registered phase/project. According to the promoter, there is no reduction in the common area and no change in the total built up area. According to the home buyers also there is no allegation of reduction in common area and change in the total built up area of the registered project. The home buyers have also admitted that the development in phases has

been agreed in the construction agreement and as well as in the sale deed. But the only contention on the side of the home buyers is that the so called consent in the agreement was obtained without full disclosure and it amounts to blanket consent and it is not an informed consent. In support of the arguments of the home buyers the learned counsel has relied the following Judgment of the Hon'ble Supreme Court:

(2008) 2 SCC page 1.

Supreme Court of India
Samira Kohli vs Dr. Prabha Manchanda & Anr on 16 January, 2008

> **14. Consent in the context of a doctor-patient relationship, means the grant of permission by the patient for an act to be carried out by the doctor, such as a diagnostic, surgical or therapeutic procedure. Consent can be implied in some circumstances from the action of the patient. For example, when a patient enters a Dentist's clinic and sits in the Dental chair, his consent is implied for examination, diagnosis and consultation. Except where consent can be clearly and obviously implied, there should be express consent. There is, however, a significant difference in the nature of express consent of the patient, known as 'real consent' in UK and as 'informed consent' in America. In UK, the elements of consent are defined with reference to the patient and a consent is considered**
> **to be valid and 'real' when (i) the patient gives it voluntarily without any coercion; (ii) the patient has the capacity and competence to give consent; and (iii) the patient has the minimum of adequate level of information about the nature of the procedure to which he is consenting to.**

8. The above referred Supreme Court verdict case is the consent between the doctor and patient. The above set of facts are not applicable to the case in hand. In this case the home buyers and the promoter entered

into registered development agreement and sale deed. In both the documents both the parties have signed after accepting the terms and conditions. It is not the case of the home buyers that the agreement itself obtained by fraud or coercion and they were not seeking any cancellation of the said document and in particular they have approached the civil court for the relief of bare injunction and not for the declaratory relief. The further reference of number of citations referred on the side of the home buyers (Judgment compilation serial number 1 to 4) are not related to the Real Estate Act and they are related with repealed Act. Further reference of serial No.5 to 7 Judgments are not applicable to the facts of this case. Therefore this Tribunal comes to a conclusion that the Tamil Nadu Real Estate (Regulation and Development) Rules 2017 Rule No.4 Explanation II and III are clearly applicable to the facts of this case and the promoter is clearly exempted from requiring two third consent from the allottees. The point No.1 is answered accordingly.

Point No.2:

9. In this appeal the only contention raised by the appellants/home buyers only with regard to Section 14 of the Act. For which it is answered in point No.1 against the home buyers. The remaining grounds with regard to inconvenience caused to the home buyers by way of congestion and further allegation regarding OSR. The home buyers have produced approved site plans before and after RERA. Before RERA approval plan produced in page

No.19 and after RERA revised plan produced in page No.132 of typed set. In both the plans there is only one entry to the entire approved layout. In the before RERA plan there is a specific provision for future residential development and in the same plan a provision of 10% OSR 1555 sq. m. were provided for open space reservation, the same space shown in the revised plan after RERA the only difference shown as volley ball court, badminton court, ball court and play area. But in the old plan i.e. before RERA there is no specification in the plan. The only difference is increasing the number of dwelling units. Further, before RERA plan for the future residential development area the promoter has not disclosed how many dwelling units will be built up in that area. After the proclamation of the Prime Minister's Housing Scheme alone the promoter has shifted his stand for low cost dwelling units. Originally the promoter has obtained building plan for the construction of 352 dwelling units and now altered the same for 475 dwelling units instead of 352. When there is no bar under the Act for the revised plan and when there is exemption is permitted under law the inconvenience and traffic congestion alone is not a ground to deny the rights of the promoter. There are vast difference in the population of Chennai between 1980 and 2021. Due to increase in population leads to scarcity of spaces for independent houses. Now the concept of independent house is completely changed for the concept of gated community within the metropolitan city area. Still some people those who didn't accept the same and wish to live away from the crowd shifted their residence in the outer area

and set up their home as farm houses. These are the changes acceptable by everyone not only in Chennai but also in every city and town. So, the allegations of mere inconvenience and congestion are alone is not sufficient to interfere with the findings of the order of the Regulatory Authority. Therefore this Tribunal comes to a conclusion that there is no infirmity in the findings of the Regulatory Authority and this appeal is not deserves to be allowed. The point No.2 is answered accordingly.

10. In the result, this appeal is dismissed. No costs. The order of the Regulatory Authority in C.No.353 of 2019 dated 9.1.2020 is confirmed.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 01st Day of December 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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