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 15.09.2021

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

Appeal No. 46 of 2020

M/s.Casa Grand Builder Private Limited,
Represented by its Authorized Signatory,
Y.Mohan Raj ... Appellant

-Vs-

Mrs.V.Sangeetha ... Respondent

This appeal was taken on file on 08.06.2020 and came up for final hearing on 07.07.2021 in the presence of M/s.Ganesh and Ganesh, counsels for the appellant and the respondent party in person represented through her husband Mr.Satheesh Kumar. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. This appeal has been preferred by the appellant/promoter against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.436/2019 dated 27.02.2020. The appellant is the promoter and respondent is the allottee. To avoid confusion the parties are referred in this appeal as per their original rankings as promoter and allottee. The promoter has proposed to develop a property measuring 9.51 acres situated at Thirumudivakkam Village, Sri Perumbudur Taluk, Kanchipuram District, comprised in S.Nos.389/2B, 391/2, 389/2A, 381/2B, 388/4, 390/2, 389/1, 402/2, 387/1B and 387/2. The above said lands were owned by one N.Mathivannan and 15 others. The promoter as power agent of the above said 16 owners of the land executed sale deed in favour of the allottee/respondent herein on 29.10.2018 through document No.6202/2018 and also the promoter entered into a construction agreement with the allottee Mrs.S.Sangeetha on 29.10.2018 through document No.6201/2018 with regard to the property comprised in S.Nos.389/2A and 389/1 measuring 1989 sq. ft. as plot No.18 and built up area measuring 1866 sq. ft. in the residential project Casa Grand Bloom. Since the promoter failed to hand over possession within the stipulated time and claim of the excess demand by the promoter to the tune of 3.5 lakhs plus GST, change of location of club house, the allottee claiming interest as well as compensation and also sought for reduction of cost due to shortage of built up area the allottee came forward with the complaint before the Regulatory Authority.

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2. After contest the Regulatory Authority found that the promoter violated the provisions of RERA and imposed a fine of Rs.40 lakhs and directed the promoter to hand over the possession on or before 31.01.2020, and directed the promoter to reduce the land cost and construction cost proportionately and directed the allottee to move to the Adjudicating Officer, TNRERA for claiming interest on the delayed construction and compensation etc. Aggrieved upon the same the promoter came forward with this appeal on the following grounds with respect to the imposition of penalty of Rs.40 lakhs only. Regarding other findings of the Regulatory Authority the promoter has not challenged.

3. When the development is formulated as individual plots and the construction of the respective villa is governed by individual building permission and license by the competent authorities, the technicality of registering the project as group residential project before RERA does not arise and the same is not technically feasible. The promoter cannot apply for and obtain the project approval from RERA which is contravening to the nature of approvals and licenses granted by the developments authorities. Therefore, the promoter has not committed any violations of the provisions of the RERA and has not committed any misrepresentations.

4. When the promoter applied with RERA for project approval on 31.07.2017, which is in early stages of implementation of the Act and Rules, the department after scrutinizing the file has informed the promoter that technically the promoter cannot prefer residential building project approval from RERA as the promoter has got plot approval layout sanctioned by CMDA and the proposal of the promoter to construct individual villas governed by the individual building

permissions granted by development authority shall not attract group building residential projects on the file of RERA. The promoter was also informed that in group development the internal road gifting will not take place and the same shall take place only in plot layout approvals.

5. The promoter has gifted the internal roads, patta obtained in the name of individual Villa owner and the park area by way of registered gift deed to local body which only shows that the subject project shall not be treated as group development residential project as per the approvals.

6. The Villas offered for construction in the respective plots as governed by individual approvals has also been marketed by the promoter. The question of deception or committing unfair practice does not arise as the plots, common amenities and individual villa constructions were all respectively offered by the promoter and the same has also been delivered appropriately with all applicable statutory compliances. The promoter has established that the allottee has voluntarily made the said payment for their personal reasons as explained in the pleadings. The promoter has not demanded any sums in excess of 10% prior to the registration of the agreements. Therefore the said penalty of Rs.5 lakhs is liable to be set aside and the same shall not be legally tenable.

7. In addition to the above grounds during the course of arguments the learned counsel for the promoter would submit that Regulation for Group Development speaks about minimum width of the public road on which the site abuts or gains access shall be 10 meters. Further would submit that in case of group development, where there is uniformity in constructed areas and common areas abutting the constructed areas, one allottee cannot unilaterally alter the

physical features of the constructed area at any point of time. This is one of the essential features differentiating a group development with that of individual houses. In the case on hand the villas are constructed as per the will and pleasure of the allottee and there is no uniformity in the construction. Hence the concept of Group Development does not arise in the project of the promoter. Therefore, concealment of facts, misrepresentation, etc., are not applicable to the project of the promoter. The learned Authority without considering the above narrated facts imposed a fine to the tune of Rs.40 lakhs is certainly legally not sustainable. Therefore the appeal has to be allowed.

8. The allottee/party-in-person through her husband would submit that the promoter has not only selling the land alone but also the Villas. For all the 180 villas having the same common amenities namely swimming pool, gym, cafeteria, Gazebo, Snooker room, TT room, multi-purpose hall, board games room, arts/music room, indoor kids play area, video games room, golf simulator, AV room. The above said amenities are all common for all the Villa allottees. One allottee cannot unilaterally alter the physical features of the above said amenities and construction. Therefore, the project of the promoter is certainly a Group Development Building Project and the Regulatory Authority has rightly imposed penalty. Hence appeal has to be dismissed.

9. Points for consideration:

1. Whether the plea of the promoter as the project of the promoter is not the Group Development Building Project is sustainable?
2. Whether the appeal deserves to be allowed or not?

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Point No.1:

10. The appellant/promoter challenged the order of the Regulatory Authority mainly on five grounds. The first three grounds are with regard to registration of the project. The fourth ground with regard to collection of amount more than 10% before entering into agreement. The fifth ground with regard to Regulation for Group Development. Now let us discuss ground wise.

11. The specific contention of the promoter is that the development is formulated as individual plots and the construction of respective Villa is governed by individual building permission. Therefore, the technicality of registering the project as Group Residential Project before RERA does not arise and the same is not technically feasible. Furthermore, the promoter went to the extent of saying that when the promoter applied for project approval with RERA on 31.07.2017, which is in early stages of implementation of the Acts and Rules the Department after scrutinizing the file has informed the promoter that technically the promoter cannot prefer residential building project approval from RERA. Further would submit that the promoter has gifted the internal roads to local body hence the subject project shall not be treated as Group Residential Project.

12. The Real Estate (Regulations and Development) Act, 2016 came into force on 26.03.2016. Particularly, Section 3 came into force on 1.5.2017. The Real Estate (Regulation and Development) Rules, 2017, came into force on 22.6.2017. Admittedly, the promoter applied with RERA for the project approval only 31.7.2017 i.e. after the implementation of the Real Estate (Regulations and Development) Act, 2016. As per the RERA website the project of the promoter/appellant registered as TN/01/Layout/0001/2017 dated 16/08/2017, in

which Project Commencement Date 01-08-2017 and Project End Date 31-08-2019 mentioned respectively. In the website of the RERA on the page of the promoter's project there is no specific mention about the allegation as "the department after scrutinizing the file has informed the promoter that technically the promoter cannot prefer residential building project approval from RERA". The promoter has not produced any piece of paper to show that the department has stated as such. The promoter has applied for the layout project registration on 31.07.2017 and registration granted on 16.08.2017. The promoter has not applied for any residential building project before the RERA. Gifting of internal road to the local body by registered document is the mandatory one for the approval of the same. The promoter has applied for the layout project alone. Hence after scrutinizing the compliance of the Rules and Regulations of the layout approval the Authority has granted layout approval and on that basis the promoter has applied for registration before the Regulatory Authority and got registration. The promoter has applied for layout project approval on 20.07.2018 and approval was granted 23.07.2018. The local body approved the layout on 16.08.2018. The allottee applied for Villa No.18 (Bloom) on 27.08.2018. In the booking form issued by the promoter the project details mentioned as follows:

Project Details	Dated 27.08.2018
Name of the project	**Bloom**
Apartment/villa/Plot No.	**Villa No.18**
Area	**LA2098/BA1951**
Total	**108.23**
GST	**12.99**
Grand Total	**121.22**

Source of enquiry	**Online**
Payment details - Amount	**9.25/49.75/19L Cheque No./Credit card No. 000004 BOB 000115 1001000117**

Now let us consolidate the crucial dates with regard to the project.

Development agreement between land owners and promoter on	**Applied for RERA registration :**	**RERA registration granted on :**	**Building plan for plot No.18 sanctioned on**	**Layout approval :**	**Allottee applied for Villa on**
23.12.2015	**31.7.2017**	**16.08.2017**	**24.10.2017**	**23.07.2018**	**27.08.2018**

13. As per the dates mentioned above the promoter and land owner entered into a development agreement in the year 2015, to develop a group of residential villas. On 31.07.2017, after the RERA Act came into force, applied for the RERA Registration and got Registration on 16.08.2017. After that obtained the building plan sanctioned on 24.10.2017 for Plot No.18, then the sanction of building plan for Plot No.18 the promoter got lay out approval on 23.07.2018. After that the allottee applied for villa on 27.08.2018. According to the promoter even though they have obtained layout plan approval and RERA Registration they have got building sanction for a single villa and not for the group villas. Hence, they are exempted under Section 3(2)(1)(a) of The Real Estate (Regulations and Development) Act, 2016. This is the only contention raised by the appellant/promoter. How far this contention is sustainable has to be analyzed.

14. The development agreement dated 23.12.2015 between the promoter and the land owners in which page No.10 of the said agreement (Typed set of the appellant at Page No.10) it has been specifically agreed as follows:

> ***"The developer shall construct the building/develop a group of residential villas and undertake such other concomitant activities subject to approvals, on schedule A property as per the applicable development control regulations and as approved by the statutory authorities.***
>
> ***The developer accepts to carry out the development of the entire extent i.e., schedule A property."***

15. The Real Estate (Regulations and Development) Act, 2016 Section 3 came into force on 01.05.2017 after that the developer obtained the project registration and building plan approval for one villa in plot No.18. Even though the developer accepts to carry out the development of the entire extent of 9 Acre 51 cents and obtained layout registration from RERA but they have obtained building plan sanction only for a single villa on 24.10.2017. After Section 3 came into force the promoter applied and got sanction of the project registration to avoid from the clutches of Section 3. Section 2(zn) of The Real Estate (Regulations and Development) Act, 2016 clearly states that the development of a building or land into plots for the purpose of selling all or some of the said apartments or plots or building as the case may be and includes the common areas amounts to Real Estate Project. The developer and promoter has clearly and categorically agreed on 23.12.2015 itself to develop the entire extent of 9 Acre 51 Cents. The developer has published a brochure in which it has been specifically disclosed about the intention of the developer which runs as follows:

"Well, Casagrand is bringing the outdoors to your doorstep with bloom, an exciting new villa project in Thirumudivakkam.

A mere 10 minutes away from GST road, bloom boasts of 159 units laid out over an expanse of 10 pristinely manicured acres. Each spacious 3 & 4 BHK villa and 3 BHK row house is a new age architectural piece, complete with its own private garden...

Big reasons to buy

- ***159 units on a 10 Acre expanse... "***

16. But the developer suppressing the above said facts to take shelter under the provision of Section 3(1)(a) to invoke exemption from registration. At this juncture it is relevant to mention the object and reasons stated in the Select committee report on The Real Estate (Regulations and Development) Bill, 2013. In which the background for the enactment of the Central Legislation namely the Real Estate (Regulation and Development) Bill, 2013 which runs as follows:

REPORT

Background

The Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha on 14th of August 2013. The Bill contains the Statement of Objects and Reasons which spells out the reasons behind initiating the legislation by way of this Bill. It inter alia states as follows-

"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, with absence of professionalism and standardisation 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 not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance he interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispu_te resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

17. After hectic efforts the above said bill was passed by the Parliament on 10.03.2016. The preamble of the Act runs as follows:

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or 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 adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

18. The ultimate aim of this Act is to ensure sale of real estate project in an efficient and transparent manner and to protect the interest of the consumers. Admittedly, the project of the developer is a Real Estate Project and the developer entered into development agreement with the land owners for the

development for the purpose of sale of villas to the allottees. Even though the developer entered into an agreement with the land owners for the development of entire extent of 9 Acre 51 cents to the tune of 159 units the developer obtained building plan sanction only for one villa by suppressing the above said facts. The developer clearly and categorically stated in its brochure about the development of 159 units but obtained building plan approval as if the developer is going to develop only one villa below the 500 sq. m. If the allottee himself obtained building plan sanction for his plot alone within the limit of 500 sq. m. the plea of the developer can be accepted. The building plan sanction obtained only by the developer and not by the allottee and the allottee applied for villa in the later date. Admittedly, both the developer and the land owners entered into an agreement for the development of group of residential villas. Hence the plea of the developer/appellant that it is not the group development building project is not sustainable. The point No.1 is answered against appellant.

Point No.2:

19. In point No.1 it is decided that the plea of the developer is negatived. The learned counsel for the appellant would submit that gifting of internal roads and park area to the local body which only shows that the subject project shall not be treated as group development residential project as per the approvals. Further would submit that in the group development scheme all the construction and common areas abutting the constructed areas are in uniformity and one allottee cannot alter according to his will and pleasure. Hence it is not a group development. Furthermore, in the group development minimum width of the public road shall be 10 meter but here it is not so hence it is not a group

development. According to the appellant the width of the road, uniformity in construction and gifting of internal roads and park area these are the ingredients for the group development.

20. Admittedly the developer and the land owners entered into agreement for development of group of residential villas. The road width is shown as 12 meters in the approved layout. The developer proposed to construct villas namely 3 BHK and 4 BHK as per the land area of the allottee. The gifting of road and parking area is for the purpose of development of the land and maintenance of the road etc. So mere gifting of road and park area alone is not sufficient to alter the purpose and intention of the developer. The total project proposed to be developed by the developer to the tune of 159 units on a 10 Acre expanse is a group development project. Hence the Learned Regulatory Authority has rightly negatived the claim of the appellant. There is no infirmity on the findings of the Learned Regulatory Authority. Therefore this Tribunal comes to a conclusion that this appeal is not deserves to be allowed. The point No.2 is answered accordingly.

21. In the result, the appeal is dismissed. The order of the Regulatory Authority in C.No.436/2019 dated 27.02.2020 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 15th Day of September, 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER