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 02.11.2021

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

Appeal No. 71 of 2020

1. Mr.N. Sriram
2. Mrs.R.D.Dhanalakshmi ... Appellants

-Vs-

M/s.Casa Grand Builder Pvt. Ltd.
Rep. through its Authorized Signatory .... Respondent

This appeal was taken on file on 20.11.2020 and came up for final hearing on 27.09.2021 in the presence of M/s. Hari Radhakrishnan, G.Derrick Sam, G. Vijayabalan, N.Ahilandeeswari, J.Ganesh Ram, Counsels for the appellants. The respondent appeared through M/s.Ganesh and Ganesh, Advocates. 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 against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.480/2019 dated 3.9.2020. In this appeal the parties are called as per their original rankings as home buyers and promoter.

2. The Home buyer purchased a plot No.78 measuring 1327 sq. ft. in survey No.402/2, in CMDA approved layout No.3/17, situated at Thirumudivakkam Village, Sriperumbudur Taluk, Kanchipuram District on 12.06.2019 from one Mathivanan and 15 others through the power agent the promoter herein. On the same date the promoter and the home buyer entered into construction agreement and the promoter agreed to hand over the villa after complete construction by August 2019. Being aggrieved by the inordinate delay of the promoter, delay in handing over the completion certificate and for some other defects the home buyers came forward with the complaint before the Regulatory Authority in C.No.480/2019 for the reliefs namely hand over of villa as promised, to register the project as group development building project, to furnish completion certificate or occupation certificate for the villas as well as for common amenity, proportionate reduction and return of money for shortage of built up area, to install STP to handle 180 units, to share UDS calculation details and register under the individual owner name instead of

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association, to restrain the promoter to extend the amenities to other projects and to fix the water seepage issue.

3. After contest the Regulatory Authority directed the promoter to hand over possession with electricity connection or alternative arrangement on or before 30.09.2020, directed the promoter to register the Bloom project, directed the promoter to refund excess cost of land value of the club house and the construction cost of the club house to the allottees of the 159 villas and also directed not to extend the club house facility outside bloom. The authority further directed to refund excess amount collected from the allottee due to short fall in the actual built up area if any. Regarding STP and wall tampness and water seepage issues the authority accepted the explanation of the promoter. Hence aggrieved upon the same the home buyers preferred this appeal on the following grounds:

- The authority ought to have issued a positive direction to restrain the promoter from effecting any further sale till the project is registered.
- The authority ought to have imposed penalty for non registration as well as for misrepresentation as layout project.
- The authority ought to have imposed penalty of non furnishing of occupancy certificate
- The authority ought to have restrained the promoter for further sales without obtaining environmental clearance certificate.

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- The authority ought to have followed its earlier orders in C.No. 436/2019 dated 27.2.2020 and C.No.214/2019 dated 17.10.2019.
- The authority ought to have taken into account the proposed construction of 180 villas and even if on an average 4 persons per villa taken into account total comes to 720 hence STP installed is insufficient.
- The authority ought to have directed the promoter to release the mortgage with regard to club house construction and directed to hand over the documents to the association.
- The authority ought to have restrained the promoter from insisting for a NOC from the home buyers.

4. In addition to the above grounds the learned counsel for the appellant/home buyers would submit that the leniency shown by the authority towards the promoter caused further loss to the home buyers. Therefore this appeal has to be allowed.

5. The learned counsel for the promoter would submit that first of all it is not a group development, it is only a layout project and in group development the internal road gifting will not take place and the same shall take place only in plot layout approval. Further, the completion certificate is applicable only for special buildings, group developments, multi-storied buildings and industrial buildings. Boom project is only ordinary residential

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building and completion certificate is not applicable. Anyhow, the promoter has obtained occupancy certificate issued by the local authority and it was issued to all the buyers. The homebuyers are provided a club house which is not part of the layout approval and the same has been provided as approved vide a separate approval. The club house is common for all phases. The said collection of Rs.4 lakhs is towards the part of the construction and development of the recreational facilities provided. The project of the promoter falls under individual development category and as the same is plot layout approval which does not attract EIA and STP layouts. Therefore this appeal has to be dismissed.

6. Point 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?

Point No.1:

7. 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 promoter. How far this contention is sustainable has to be analyzed.

8. 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."***

9. 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.78. 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 2.8.2017. 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 land owners have clearly and categorically agreed on 23.12.2015 itself to

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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... "***

10. 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.

11. 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.

12. 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 promoter that it is not the group development building project is not sustainable. The identical fact of this case was already decided by this Tribunal in A.No.46/2020. The point No.1 is answered accordingly.

Point No.2:

13. The appellants/homebuyers have put forth as main grounds namely the authority has not passed an order by imposing penalty. Further would refer earlier cases ordered by the authority by imposing penalty and restraining the promoter from further sales. But in this case the authority has not passed such an order. This is the main grievance.

14. The authority has ordered the promoter to hand over the villa after completing it in all respects along with common amenities as promised in the construction agreement before 30.09.2020 with specific direction for provision of EB service connection. The authority has already ordered to register the project of the promoter. The authority has also ordered about the refund of cost of land value of the club house and construction cost of the club house to the allottees of 159 villas and also ordered to refund deficit construction area. These are the directions issued by the learned Regulatory Authority. If the above said directions are not complied with, the authority is empowered under Section 59 and 63 of the Real Estate (Regulations and Development) Act, 2016 to impose penalty and also liable to impose imprisonment for a term which may extend upto 3 years or with fine. Further, there is a specific provision in the Real Estate (Regulations and Development) Act, 2016 under Section 40 and Rule 27 of the Real Estate (Regulations and Development) Act and Rules, that the home buyers are entitled to enforcement of the order.

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15. The appellants/ home buyers have referred to previous orders of this authority in C.No.214/2019 dated 17.10.20219 and C.No.436/2019 dated 27.02.2020. Each and every case has to be decided on its own merits and depends upon the necessity and urgency of the facts of the case the situation arose for imposing penalty or restraining the developer from further selling in the order itself. The home buyers/appellants are absolutely entitled to invoke provisions under Section 40 and Rule 27 by way of implementation of the order to bring the notice of the Regulatory Authority to initiate further action. It is the only way open to the home buyers known to the law. The home buyers cannot direct or dictate the authority to pass the same order in a previous case. Therefore, the homebuyers seeking direction to pass the same order is not sustainable.

16. The authority has negatived the claim of the home buyers with regard to STP on the ground of absence of documentary evidence. The appellants/home buyers have not produced any technical proof regarding STP. The appellants have stated in the grounds of appeal in paragraph No.H by stating that "It is submitted that as per the approval obtained by the respondent, the maximum capacity shown is only for 500 persons. However, 180 villas are proposed to be constructed and even if on an average 4 persons per villa is taken, the total number of persons who would be residing in the project would be 720. Therefore, the STP installed is grossly insufficient when compared to the needs of the project." The home buyers/appellants have shown the mere arithmetical calculation and no technical proof was filed by

the home buyers. In such circumstances without any technical proof the findings of the Regulatory Authority cannot be set aside.

17. The grounds put forth by the appellants/home buyers are not sufficient to interfere with the findings of the Regulatory Authority. Furthermore, the Regulatory Authority has not passed any order against the home buyers and the home buyers are having right and opportunity to put forth their grievances by way of implementation of the order under Section 40 of the Real Estate (Regulations and Development) Act, 2016 read with Rule 27 of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. Therefore this Tribunal comes to a conclusion that this appeal is not deserves to be allowed. The point No.2 is answered accordingly.

18. In the result, the appeal is dismissed. No costs. The order of the Regulatory Authority in C.No.480/2019 dated 3.9.2020 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 02nd Day of November 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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