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. 8 and 9 of 2020

1. Ms. Shobana Subramanian
2. Mr. Varun Gopal.K. ... Appellants in Appeal No.8 of 2020

1. Ms.Sadhana Subramanian
2. Mr. V.Subramanian ... Appellants in Appeal No.9 of 2020

-Vs-

1. M/s. L & T South City Projects Pvt. Ltd (Now known as M/s.Pragnya South City Projects Pvt Ltd)
2. M/s.L & T Realty Limited ... Respondents

These appeals have been preferred against the order of the Regulatory Authority in C.No.246 and 247 of 2019 dated 06.11.2019 and were taken on file on 30.12.2019 and came up for final hearing on 09.11.2020 in the presence of Appellants Ms.Shobana Subramanian and Mr.Subramanian respectively, as party-in-person and Advocates Mr.Krishna Ravindran, Mr.A.Charles Darwin, S.Praveen Kumar, counsel for the 1st respondent. The 2nd respondent appeared through its Advocate Mr.M.Balaji. Having heard the arguments of both sides and having stood over for consideration till this date and this Tribunal delivered the following:

COMMON ORDER

2. Both the appellants preferred complaints in C.No.246 of 2019 and C.No.247 of 2019 respectively against the respondents/developers before the Tamil Nadu Real Estate Regulatory Authority for the relief of registration of project, Execution of sale deed, handing over of possession and direction to complete the amenities. The learned Regulatory Authority dismissed both the complaints on the ground of maintainability. Hence these appeals.

3. This appellant in both the cases are allottees and respondents in both the cases are developers. Both the appellants and the respondents are described in the original ranking as allottees and promoters. The appellants/allottees preferred complaint before TNRERA for the relief of registration of the project, execution of sale deed and handing over of possession and direction to complete the amenities, 2nd respondent is directed to indemnify the allottees and for protecting corpus fund from unauthorized utilization.

4. The respondents objected the complaints on the ground that already Tamil Nadu Real Estate Regulatory Authority itself exempted from registration as per its letter dated 1.12.2017. Hence complaint itself is not maintainable and also insisted for the determination of maintainability of these complaints. After contest the Learned Authority came to a conclusion that the project has got structural completion certificate from DTCP as per the RERA rules. Hence this phase of project is not required to be registered with the Authority and dismissed the complaints as not maintainable. Aggrieved upon that the allottees preferred these appeals. On the side of the appellants in both the cases the 1st appellant who have appeared in person through video conferencing put forth their arguments which are as follows:

Verified RealEstate™

5. In the year 2013, the developer offered apartments in Eden Park Phase II with 15 towers to be developed in phased manner in the area of 45 acres with many amenities including club house, swimming pool, auditorium and multipurpose hall/lawns etc. Both the cases appellants booked apartments and paid some installments. As per the sale agreement and construction agreement the completion of apartments with grace period was to end on 4.6.2017. Possession notice was issued only in December 2018 with delay of 20 months for which no compensation was paid. The final payment was made by the appellants on 04.02.2019 with default interest. The undivided share of land of 339 square feet out of 12.828 acres is offered in this sale deed, whereas UDS land agreed upon was 339 square feet out of 37.362 acres as per the sale agreement, construction agreement, common areas and amenities agreement. Revised FSI for the 12.828 acre works out to 2.65 instead of original approved FSI is only 2.00 for total land of 46.41 acre. Thus FSI was modified by the promoter without obtaining approval from the planning authority. No approval was obtained for subdivision of land for the revised land area from 37.362 acre to 12.828 acres. Further there is no mention of OSR earmarked in the 12.828 acre land. The amenities like club house, swimming pool and other amenities such as multipurpose lawn is not part of land area in the 12.828 acre is now being offered to the appellants against the land area of 37.36 acres. In the land area of 12.828 acres consisting of 5 apartment building for which RERA registration was obtained for two buildings along with club house in which land area of 37.36 acre. The above said amenities were not yet completed till date. The Regulatory Authority and Adjudicating Officer of Tamil Nadu Real Estate Regulatory Authority had given pronouncements in several complaints of unregistered projects. So the complaint is absolutely maintainable for the above said grounds.

Verified by PropEstate™

6. The learned counsel for the developer would submit that as per Section 3 (2) (b) the promoter has received completion certificate prior to the commencement of RERA Rules 2017 and also the Regulatory Authority has issued exemption certificate by its letter dated 1.12.2017. Furthermore, the agreement entered into between the appellants and the respondent was in the year 2013 and prior to the commencement of this Act, so RERA approval is not applicable to this project. Therefore the Regulatory Authority rightly dismissed the complaints. The grounds put forth by the appellants are not sufficient to set aside the findings of the authority, since the allegations are false and the rights of the appellants are not at all affected, hence both the appeals have to be dismissed.

7. Points for consideration:

1. Whether both the complaints are maintainable?
2. Whether both the appeals deserve to be allowed?

Point No.1 :

8. According to the appellants even though they have entered into sale agreement and construction agreement in the year 2013 possession notice was offered by the builder only in December 2018, with a delay of 20 months. On the date of coming into force of the RERA Act the developer has not completed the project and the common amenities as promised by the developer which is not completed before the commencement of this Act. Hence the developer's project being an on-going project they have obtained the completion certificate fraudulently and on the date of commencement of the Act this project is not a usable commodity.

9. It was also admitted by the developers in their mail dated 11.10.2018 in which they have specifically admitted as ***'We shall be in a position to hand over***

both these apartments in habitable condition to you by 30th November 2018" (page 114 of the Typed set of the appellant). So on the date of commencement of the Rules on 22.06.2017 the project of the developer is not in a habitable condition. Therefore this project squarely comes under the purview of RERA Act. So the complaints are maintainable.

10. According to the respondents/developers on 14.11.2017 the developer sent a letter to the RERA and requested for letter of exemption, in which they have stated that on 26.07.2017 they have applied to the MLPA/DTCP, they have provided Architect Certificate and photos and requested for exemption from the applicability of RERA since the structure of the building have been completed." For the above said letter on 01.12.2017 (page No.107 of the Typed set of appellants), the TNRERA has sent a letter by stating that "*with reference to your letter cited, it is informed that the status of each project is indicated in the last column by the DTCP. The Blocks which are completed structurally as certified by the DTCP are exempted from TNRERA".* So as per Section 3(2) of RERA Act on the date of commencement of the Act completion certificate was issued by the competent authority. Registration under RERA is not required on considering the above said fact. The authority has rightly dismissed the complaint.

11. Both the appellants and respondents have claimed relief under Section 3 of the RERA. According to their documents the learned authority has relied completion certificate from DTCP as prescribed u/r 2(h)(iii) and negatived the claim of the complainants as not maintainable. Before going to discuss the merits of the case we have to look into the relevant provisions of the RERA Act.

> ***2 (e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by***

any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

Section 3(2)(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

Tamil Nadu Real Estate Rules 2017

Section 2 (h)

(i).....

(ii).....

(iii) in the case of projects under execution outside Chennai Metropolitan Area, as no provision and procedure has yet been prescribed for issue of completion certificate, if the construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. Such projects shall be intimated to the concerned Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of these rules with a copy marked to the office of the Director of Town and Country Planning. The Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority.

Verified RealEstate

12. It is the specific contention of the appellants that on the date of commencement of the Real Estate Rules 2017, the developer's project is an ongoing project. But it was denied by the respondent/developer on the ground that DTCP has published the list of builders who have applied for completion certificate and granted. As per Rule 2(h)(iii) in the above said list in S.No.98 it has been stated as 'Tower A1,B1, C1 structurally completed as per plan other works under progress. In addition to that the RERA in its letter dated 01.12.2017 has specifically stated that "The blocks which are completed structurally as certified by the DTCP are exempted from TNRERA" which is produced by the appellant in page 107 to 109 of the typeset. In the DTCP published list which runs as follows:

> ***DTCP approved No.106/13 dated 2.5.2013 MLPA approved No.33/13 dated 9.7.2013, "Tower A1, B1, C1 structural completed as per plan other works under progress".***

In the above said list in S.No.1 to 7 at page 108 of Typed set, the Status of the project it has been mentioned as completed. In page no.107 S.No.95-100 it has been mentioned as structurally completed. Already this Tribunal gave a finding with regard to Section 2(e) & 2(j), in A.No.1/2018 specifically held that on interpreting Section 2(e) and 2(j) and it was decided that the completed project must be used or intended to be used for any residential or commercial purpose and it must be a completed project or usable commodity.

13. In this case the developer himself in his letter dated 11.10.2018, it has been specifically admitted as follows:

> ***"We are actively working on your apartments (MGD 1412 & MGD 1615) for final finishing works on priority. We shall be in position to handover both these apartments in habitable condition to you by 30.11.2018".***

So as per the admission of the respondent himself on the date of coming into force of the Rules i.e. on 22.06.2017 the apartments MGD 1412 and MGD 1615 are

not in habitable condition it will be in habitable condition only on 30.11.2018 against that condition, as per Section 2(e) & 2(j) and as per findings of this Tribunal in A.No.1/2018 dated 23.5.2018, structurally completed alone is not sufficient to construe as a completed project viz beam, slabs or structures will not be correct unless it is completed in all respects including the amenities.

14. The respondent claims himself as exempted under RERA on the strength of the letter issued by the Tamil Nadu Real Estate Regulatory Authority dated 1.12.2017. In the said letter it is specifically stated that the Blocks which are completed structurally as certified by the DTCP. In the above said letter also relevance is made only as per the entry of DTCP website. In the previous paragraph it has been specifically held that the structural completion alone is not sufficient to construe as a completed project. Hence the above said letter dated 1.12.2017 has no value at all. As per Section 2(e) and 2(j) on the date of that letter dated 1.12.2017 the apartment/building is not in a position to be used as residential one. This Tribunal has already interpreted the same in A.No.1/2018 dated 23.5.2018 and now the Honble Madras high Court Division Bench in CMSA No.22/2013 Subashini Thulasiram Vs 1.M/s.SPR & RG constructions Pvt Ltd. and others case laid down the law by confirming the finding of this Tribunal which runs as follows:

> ***24.As rightly pointed out by the learned senior counsel appearing on behalf of the appellant, it is well settled law that the parent Act will prevail over the rules and there cannot be any rules contrary to Act. Assuming that Rule 2(h)(ii) gives some relief to the 1st respondent, it is in contrary to Section 3 of the Act. When the Act has come into force on 01.05.2017, the first respondent should have complied with. The principle that the subordinate legislation cannot be in violation of the Act is supported by following decisions of the Apex Court:***
>
> ***1.Ramesh Mehta Vs. Sanwal Chand Singhvi reported in 2004 (5) SCC 409.***
>
> ***2.Global Energy Ltd., Vs. Central Electricity Regulation Commission reported in (2009) 15 SCC 570.***

The State Government Rule 2(h)(ii) is contrary to Section 3 of the Act and therefore the first respondent cannot take advantage of the same and claim exemption from registration.

As per the above ruling of the Honble Madras high Court Division Bench Act will prevail over Rules. The Act came into force on 1.5.2017. On that date the developer has not obtained any completion certificate. Hence the project of the developer is an ongoing project.

15. The next contention raised by the appellant is that reduction in UDS land area in Sale deed. According to the appellant UDS land of 339 square feet of 12.828 acres is offered in the sale deed, whereas UDS land agreed upon was 339 square feet of 37.362 acres as per Sale agreement, construction agreement, common area and amenities agreement. Originally the developer agreed to sell to the purchasers out of 37.362 acres UDS mentioned as 339 square feet. Now in the draft sale deed the Undivided share of land mentioned as 339 square feet out of 12.828 acres only When the purchasers questioned the same the developer justified the reduction as the UDS measurements is not at all reduced to the purchasers only the total land area was reduced from 37.362 acres to 12.828 acres. That reduction will in no way affect the rights of the purchasers, but the purchasers have not accepted the justification projected by the developers. Whether the reduction is justifiable or not has to be analyzed.

16. As per the sale agreement page 10 of typed set in which the total property is explained as follows:

"Whereas, the vendor has formulated a scheme to develop a residential township on the Schedule A property, namely Eden Park Phase II pursuant to the scheme formulated, the vendor had reserved 9 acres and cents and already conveyed an extent of 8 acres and 4 cents out of the Schedule A property to the concerned local authorities under Two Gift Deeds registered as document Nos.7834 and 7835 of 2013 in the office of the SUB-Registrar, Thiruporur, for the purpose of Open Space Reservation and to from Eden Park Main Road and Approach Road for

Verified RealEstate

private land and obtained necessary approvals for the envisaged development and after reducing the lands contributed as aforesaid, the vendor is now owning an extent of 37 acres and 36 cents of land, morefully described in the Schedule B hereunder and hereinafter referred to as the Schedule B property.

Under the said scheme, persons who are desirous of constructing and owning an apartment in Eden Park Phase II has to purchase undivided share in the Schedule B Property proportionate to the apartment to be constructed through the Vendor"

At page No.11 of the Typed set

Now therefore the parties have agreed to and this agreement witnesseth :

"The Purchaser doth hereby covenant with the Vendor that the Purchaser shall own and enjoy the undivided share and interest hereunder agreed to be conveyed in common with the other purchasers of the undivided share, right, title and interest in the Schedule B property."

17. As per the sale agreement itself both parties clearly and categorically admitted that the vendor is the owner of the B schedule Property agreed to convey in common with the other purchasers of the undivided share, right, title and interest in the Schedule B property. In the schedule of property as schedule B the measurement is mentioned as "admeasuring an extent of 37 acres and 36 cents within the Chengulpet Taluk and Kancheepuram District". So as per the agreement the vendor namely the developer agreed to convey 339 square feet of UDS out of 37.362 acres and now proposed to execute sale deed out of 12.828 acres only. There is reduction in the common area of the total land. The developer has got approval for the entire 37.362 acres now without the consent and knowledge of the purchasers has attempted to reduce the common area extent to 1/3rd. Whether the developer is entitled to reduce the same as per his will and pleasure. For which the answer is available in Section 2(n) (i) and 11 of the RERA Act.

2 (n) "common areas" mean—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

Section 11. (1) ....

(2) ....

(3) ...

(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 case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, 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 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.

18. As per the above said provision the obligations and responsibilities of the developer with regard to structural or any other defects the developer is responsible even after the execution of conveyance deed to all the apartments. According to the purchasers the reduction in common area land out of 37.362 acres is now reduced to 12.828 acres. The developer has shown for the purpose of approval in respect of the other phases also as 37.362 acres when it is a registered project after the coming into force of the Act. The total common area of the project land shown in the sale agreement in the B schedule and in the sale deed gets reduced if the entire extent is reduced from 37.362 acres to 12.828 acres. Especially taking into consideration that certain services like treatment plant etc., even falls outside the 12.828 acres. The common area of land is narrated in B schedule reduced to the tune of 2/3 area from the sale agreement. The purchasers construed the reduction as any other defect. But the developers denied the same. How far the denial is acceptable has to be decided only on evidence in the trial. Furthermore, Section 14 of the RERA Act specifically

stated about the ways and means for deviation from the approved plan or layout out plan which runs as follows:

Adherence to sanctioned plans and project specifications by the promoter

1. .....

2 (i) .....

(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.

(iii) .....

19. As per the above said provision for deviation also there is a separate provision contemplated in Section 14. Without invoking Section 14 the developer cannot suo moto make alterations or additions in the sanctioned plan of the building or the common areas within the project, without the previous written consent of atleast 2/3rd of the allottees. Here in this case on hand, no such steps were taken by the developers, in such circumstances, how far the developers actions are justifiable has to be analyzed only through evidence in the Trial.

20. On the side of the developers the only contention is that the allottees have no right, to question the action of the developers under RERA Act since the developers have completed the project before the RERA Rules came into force. The above said plea or answer are not tenable as per the order of this Tribunal in A.No.1/2018 and as per the latest Division Bench judgment of Honble Madras High Court. The principles of the Act will prevail over the Rules. Furthermore after the promulgation of RERA Act as per Section 79

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act.

21. Therefore the rights of the allottes regarding reduction in common areas of land can be questioned only under the RERA Act. Other specifications are barred in this regard. In such circumstances the allottes have no other go except to invoke the provisions of the RERA Act, therefore this Tribunal comes to a conclusion that complaint is maintainable. The point No.1 is answered accordingly.

Point No.2:

22. The complainant put forth two main grounds, the first one is with regard to registration of project and the second one is with regard to common areas of land in the proposed sale deed. So the allottees invoking the obligations and responsibilities of the developer under RERA Act. Before that the background of the enactment of RERA Act has to be looked into and the same is as follows:

> ***DRAFT REPORT ON THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013 Background Over the past few 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.***

Then the Real Estate Act was come into force and the preamble of the Act is 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.

23. The main purpose of this Real Estate Act is to ensure the sale of Real Estate Project in an efficient and transparent manner and to protect the consumers in the real estate sector. So efficiency, transparency and protection of consumers these are the main ingredients. In this case, the developer entered into an agreement for sale with the allottees UDS of 339 square feet out of 37.362 acres but in the proposed sale deed the developer reduced the common area land from 37.362 acres to 12.828 acres without the consent and knowledge of the allottees and moreover against the sale agreement entered into between them. There is no transparency in the attitude of the developers. When there is specific provisions contemplated in the Act for any modification or addition in Section 14 the developer without invoking that provision the action of the builder in unilaterally compelling the allottees to sign in the sale deed, has been questioned by the allottees. If the rights of the parties are not protected by giving opportunity to both the parties to decide the rights, the purpose of Act itself will be defeated. This Appellate Tribunal on 23.5.2018 itself in A.No.1/2018 has specifically and categorically laid down that mere completion of columns and beams as contemplated under Rule 3(2)(h) (ii and iii) is not sufficient and the apartments or building must be completed as defined in Section 2(e) and 2(j) as intended to be used as residential or commercial use as a usable commodity. Furthermore in that judgment it is clearly stated that merely because it is mentioned in DTCP list as exempted it cannot be treated as exempted and the Tribunal has the right to go into the details whether the building is completed as per the Act. A point has been raised by the Appellants unilaterally reducing the total extent of the land in the proposed sale deed by the builder. The appellant had relied on the Judgment of

this Tribunal in A.No.1/2018 in regard to the fact even if it is exempted by the DTCP the authority has power to verify and not to accept the same when it violates the Act and the building is not in a usable condition. Unfortunately, the Learned Authority has not followed the above referred judgment and based upon the certificate of DTCP alone the exemption is granted. Hence the findings of the Learned Regulatory Authority is not justifiable. Therefore this Tribunal comes to a conclusion that these appeals are deserve to be allowed. Point No.2 is answered accordingly.

24. In the result A.No.8/2020 is allowed and the order of the Regulatory Authority in C.No.246/2019 dated 06.11.2019 is set aside and the complaint in C.No.246/2019 as maintainable and the Regulatory Authority is directed to restore the C.No.246/2019 to file and after giving opportunities for both sides dispose the complaint on merits within three months.

25. In the result A.No.9/2020 is allowed and the order of the Regulatory Authority in C.No.247/2019 dated 06.11.2019 is set aside and the complaint in C.No.247/2019 as maintainable and the Regulatory Authority is directed to restore the C.No.247/2019 to file and after giving opportunities for both sides dispose the complaint on merits within three months.

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 8th Day of December 2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

Verified RealEstate