BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL CHENNAI

Friday the 24th day of June 2022

CORAM : Miss.LEENA NAIR, ADMINISTRATIVE MEMBER
AND
Mr.R.PADMANABHAN, JUDICIAL MEMBER

Appeal No. 101 of 2021

M/s. Indira Projects & Development (T) Pvt. Ltd.,
Rep. by its Authorised Signatory ... Appellant

Vs

1. Tvl.B.Madhan kumar
2. Mrs.Preethi
3. M.S.Elango
Rep. by his power Agent,
M/s. Prominent Developers,
Rep. by its partners
Tvl. C.Rajasekar and S.Senthilkumar ... Respondents

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the T.N.Real Estate Regulatory Authority, Chennai in C. No. 156 of 2020 dated 19.07.2021.

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1. Tvl.B.Madhan kumar
2. Mrs.Preethi ...Complainants

Vs

1. M/s. Indira Projects & Development (T) Pvt. Ltd.,
   Rep. by its Authorised Signatory.
2.M.S.Elango
   Rep. by his power Agent,
   M/s. Prominent Developers, Rep. by it's partners
   Tvl. C.Rajasekar & S.Senthilkumar ...Respondents

This appeal was taken on file on 22.09.2021 and came up for final hearing on 13.06.2022 in the presence of Mr.Thiagarajan, Counsel for the appellant and M/s.A.Smrithi, N.Vasanth Kumar, Counsel for the respondents 1 and 2. The 3rd respondent remained absent despite notice served on him. 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

The common facts that are relevant for the disposal of this appeal in brief are as follows:

1. The parties hereinafter will be referred to as per their rank and status before the TNRERA, for convenient understanding.

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2. The complainants on 16.05.2019 purchased a villa plot measuring about 910 sq. ft. from the 2nd respondent, who is the owner of the entire lay out area. The 1st respondent already commenced a villa project named "Sun Ville" over the land belonging to the 2nd respondent. Even before the sale deed got registered, the complainants on 06.05.2019 entered into a construction agreement with the 1st respondent/builder for constructing an individual house. As such both the 1st and 2nd respondents are promoters of the project "Sun Ville". Admittedly, the said real estate project was not registered with TNRERA even though it was commenced after the commencement of the Real Estate (Regulation & Development) Act, 2016.

3. The total cost inclusive of the land cost, development cost and building cost etc., would come to a tune of Rs.48,54,465/-. It is an admitted fact that the complainants have in all paid Rs.31,00,000/- under the following heads. Towards the land cost Rs.19,11,000/-, Development cost Rs.9,10,000/- and portion of building cost Rs.2,79,000/-. Though the construction agreement was executed on 06.05.2019, the 1st respondent commenced the construction work nearly after one year during June 2020. Due to the belated commencement of the construction work there was some misunderstanding between the complainants and the 1st respondent. The misunderstanding got developed and the construction work was stopped at the foundation level itself.

4. It is the case of the complainants that the heights of all the pillars beneath the ground level (foundation level) were lesser than mentioned in the approved building plan. Thereafter, the complainant demanded repayment of the amount paid towards the construction cost by sending emails. There was no response from the first respondent.

5. The first respondent while denying receipt of any payment towards construction cost, made a counter claim of Rs.4,32,075/- being the construction cost incurred by him upto the basement level. Since there is an arbitration clause in the construction agreement, the RERA has jurisdiction to try the complaint.

6. The second respondent remained absent. The counter filed by the second respondent before the RERA was perused. His contention was that as the owner of the land he had executed the sale deed in favour of the complainants on 16.05.2019 vide document No.6164/2019 on the file of SRO, Guduvanchery and played no role in the construction. Therefore the 2nd respondent prayed to exonerate him from this case.

7. After hearing both sides the TNRERA by its order dated 19.07.2021 in C.No.156/2020 directed the 1st respondent to register the real estate project namely "Sun Ville" with TNRERA on or before 31.08.2021. In respect of the refund of the amount and compensation the complainant was instructed to file a fresh complaint before the Adjudicating Officer. In the event of any such fresh complaint is filed for compensation, the

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1st respondent was allowed to make his counter claim before the Adjudicating Officer.

8. As against the order passed by the TNRERA the 1st respondent has preferred this appeal before this Tribunal. Heard both sides.

9. Points for Determination.

1.Whether the Real Estate Project namely " Sun Ville " of the first respondent is required to be registered with the TNRERA ?

2. Whether the TNRERA has no jurisdiction to try this case in view of the arbitration clause in the construction agreement ?

Point No.1.

10. Admittedly, the real estate project namely "Sun Ville" is comprised of 33 villas constructed over 21.47 cents of land in Survey No.197/2 (Part) in Mannivakkam Village, Chengalpet Taluk, Kanchipuram District. The Section 2(zn) of the Real Estate (Regulation and Development) Act 2016 defines " real estate project" which reads as follows.

> ***2(zn) : "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, 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, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;***

Further, Section 3(2(a)) of the Act would read as follows:

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3. ***Prior registration of real estate project with Real Estate Regulatory Authority.:- (1) – Omitted -***

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

Therefore the real estate project namely "Sun Ville" of the 1st respondent which is being developed in an area of 21.47 cents out of 1 acre and 97 cents of land and in which 33 separate villas are proposed to be constructed, without any doubt, is required to be registered with the TNRERA. The order of the TNRERA directing the 1st respondent to register the project on or before 31.08.2021 is perfectly correct and does not require any intervention of this Tribunal. The arguments put forth by the learned Counsel for the appellant in this regard is rejected.

10. Point No.2.

With regard to the plea of arbitration clause in the construction agreement, the Division bench of Hon'ble Supreme Court in EMMAR MGF Land Limited Vs Aftab Singh, a case in which Real Estate Project dispute was involved, held that the existence of an arbitration clause in

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the agreement, even after amendment under Section 8 of the Arbitration and Conciliation Act, does not debar a Complainant/consumer to reach a consumer forum under the Consumer Protection Act or any other statute. Therefore, the finding given by TNRERA in this regard is also correct and requires no intervention by this Tribunal.

11. With regard to the other aspects the TNRERA has not passed any adverse order against the Appellant /1st respondent. The complaint filed by the complainants was in fact disposed off with a direction to the complainants to file a separate complaint before the Adjudicating Officer attached to the TNRERA for getting refund of the advance amount and for compensation. In such event the 1st respondent/builder was also allowed to make his counter claim if any with the Adjudicating Officer. There cannot be any grievance to the appellant as there is nothing against him.

In the result, the appeal is hereby dismissed. Both parties are directed to bear their own costs. Connected Miscellaneous Applications pending if any are closed.

This Order is directly dictated to the Stenographer and typed by her in the computer, corrected and pronounced by us in the open court on this 24th day of June 2022.

Sd/xxxx
ADMN. MEMBER

Sd/xxxx
JUDICIAL MEMBER

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